PART 1026—TRUTH IN LENDING (REGULATION Z)

Subpart A—General

Sec.

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AUTHORITY: 12 U.S.C. 2601, 2603–2605, 2607, 2609, 2617, 3353, 5511, 5512, 5532, 5581; 15 U.S.C. 1601 *et seq.*''

SOURCE: 76 FR 79772, Dec. 22, 2011, unless otherwise noted.

Subpart A—General

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

(a) *Authority.* This part, known as Regulation Z, is issued by the Bureau of Consumer Financial Protection to implement the Federal Truth in Lending Act, which is contained in title I of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*). This part also implements title XII, section 1204 of the Competitive Equality Banking Act of 1987 (Pub. L. 100–86, 101 Stat. 552). Furthermore, this part implements certain provisions of the Real Estate Settlement Procedures Act of 1974, as amended (12 U.S.C. 2601 *et seq.*). In addition, this part implements certain provisions of the Financial Institutions Reform, Recovery, and Enforcement Act, as amended (12 U.S.C. 3331 *et seq.*). The Bureau's information-collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170–0015 (Truth in Lending).

(b) *Purpose.* The purpose of this part is to promote the informed use of consumer credit by requiring disclosures about its terms and cost, to ensure that consumers are provided with greater and more timely information on the nature and costs of the residential real estate settlement process, and to effect certain changes in the settlement process for residential real estate that will result in more effective advance disclosure to home buyers and sellers of settlement costs. The regulation also includes substantive protections. It gives consumers the right to cancel certain credit transactions that involve a lien on a consumer's principal dwelling, regulates certain credit card practices, and provides a means for fair and timely resolution of credit billing disputes. The regulation does not generally govern charges for consumer credit, except that several provisions in subpart G set forth special rules addressing certain charges applicable to credit card accounts under an open-end (not home-secured) consumer credit plan. The regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling. It also imposes limitations on home-equity plans that are subject to the requirements of § 1026.40 and mortgages that are subject to the requirements of § 1026.32. The regulation prohibits certain acts or practices in connection with credit secured by a dwelling in § 1026.36, and credit secured by a consumer's principal dwelling in § 1026.35. The regulation also regulates certain practices of creditors who extend private education loans as defined in § 1026.46(b)(5). In addition, it imposes certain limitations on increases in costs for mortgage transactions subject to § 1026.19(e) and (f).

(c) *Coverage.* (1) In general, this part applies to each individual or business that offers or extends credit, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376, when four conditions are met:

(i) The credit is offered or extended to consumers;

(ii) The offering or extension of credit is done regularly;

(iii) The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and

(iv) The credit is primarily for personal, family, or household purposes.

(2) If a credit card is involved, however, certain provisions apply even if the credit is not subject to a finance charge, or is not payable by a written agreement in more than four installments, or if the credit card is to be used for business purposes.

(3) In addition, certain requirements of §1026.40 apply to persons who are not creditors but who provide applications for home-equity plans to consumers.

(4) Furthermore, certain requirements of §1026.57 apply to institutions of higher education.

(5) Except in transactions subject to §1026.19(e) and (f), no person is required to provide the disclosures required by sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), or 129D(j)(1)(A) of the Truth in Lending Act, section 4(c) of the Real Estate Settlement Procedures Act, or the disclosure required prior to settlement by section 129C(h) of the Truth in Lending Act. Except in transactions subject to §1026.20(e), no person is required to provide the disclosure required by section 129D(j)(1)(B) of the Truth in Lending Act. Except in transactions subject to §1026.39(d)(5), no person becoming a creditor with respect to an existing residential mortgage loan is required to provide the disclosure required by section 129C(h) of the Truth in Lending Act.

(d) *Organization.* The regulation is divided into subparts and appendices as follows:

(1) Subpart A contains general information. It sets forth:

(i) The authority, purpose, coverage, and organization of the regulation;

(ii) The definitions of basic terms;

(iii) The transactions that are exempt from coverage; and

(iv) The method of determining the finance charge.

(2) Subpart B contains the rules for open-end credit. It requires that account-opening disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home-equity plans subject to the requirements of §1026.60 and §1026.40, respectively. It also describes special rules that apply to credit card transactions, treatment of payments and credit balances, procedures for resolving credit billing errors, annual percentage rate calculations, rescission requirements, and advertising.

(3) Subpart C relates to closed-end credit. It contains rules on disclosures, treatment of credit balances, annual percentage rate calculations, rescission requirements, and advertising.

(4) Subpart D contains rules on oral disclosures, disclosures in languages other than English, record retention, effect on state laws, state exemptions, and rate limitations.

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

(6) Subpart F relates to private education loans. It contains rules on disclosures, limitations on changes in terms after approval, the right to cancel the loan, and limitations on cobranding in the marketing of private education loans.

(7) Subpart G relates to credit card accounts under an open-end (not home-secured) consumer credit plan (except for §1026.57(c), which applies to all open-end credit plans). Section 1026.51 contains rules on evaluation of a consumer's ability to make the required payments under the terms of an account. Section 1026.52 limits the fees

that a consumer can be required to pay with respect to an open-end (not home-secured) consumer credit plan during the first year after account opening. Section 1026.53 contains rules on allocation of payments in excess of the minimum payment. Section 1026.54 sets forth certain limitations on the imposition of finance charges as the result of a loss of a grace period. Section 1026.55 contains limitations on increases in annual percentage rates, fees, and charges for credit card accounts. Section 1026.56 prohibits the assessment of fees or charges for over-the-limit transactions unless the consumer affirmatively consents to the creditor's payment of over-the-limit transactions. Section 1026.57 sets forth rules for reporting and marketing of college student open-end credit. Section 1026.58 sets forth requirements for the Internet posting of credit card accounts under an open-end (not home-secured) consumer credit plan.

(8) Several appendices contain information such as the procedures for determinations about state laws, state exemptions and issuance of official interpretations, special rules for certain kinds of credit plans, and the rules for computing annual percentage rates in closed-end credit transactions and total-annual-loan-cost rates for reverse mortgage transactions.

(e) *Enforcement and liability.* Section 108 of the Truth in Lending Act contains the administrative enforcement provisions for that Act. Sections 112, 113, 130, 131, and 134 contain provisions relating to liability for failure to comply with the requirements of the Truth in Lending Act and the regulation. Section 1204(c) of title XII of the Competitive Equality Banking Act of 1987, Public Law 100–86, 101 Stat. 552, incorporates by reference administrative enforcement and civil liability provisions of sections 108 and 130 of the Truth in Lending Act. Section 19 of the Real Estate Settlement Procedures Act contains the administrative enforcement provisions for that Act.

[76 FR 79772, Dec. 22, 2011, as amended at 77 FR 70114, Nov. 23, 2012; 78 FR 6962, Jan. 31, 2013; 78 FR 80106, Dec. 31, 2013; 80 FR 32687, June 9, 2015; 82 FR 37768, Aug. 11, 2017]

§ 1026.2 Definitions and rules of construction.

(a) *Definitions.* For purposes of this part, the following definitions apply:

(1) *Act* means the Truth in Lending Act (15 U.S.C. 1601 *et seq.*).

(2) *Advertisement* means a commercial message in any medium that promotes, directly or indirectly, a credit transaction.

(3)(i) *Application* means the submission of a consumer's financial information for the purposes of obtaining an extension of credit.

(ii) For transactions subject to § 1026.19(e), (f), or (g) of this part, an application consists of the submission of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought.

(4) *Billing cycle* or *cycle* means the interval between the days or dates of regular periodic statements. These intervals shall be equal and no longer than a quarter of a year. An interval will be considered equal if the number of days in the cycle does not vary more than four days from the regular day or date of the periodic statement.

(5) *Bureau* means the Bureau of Consumer Financial Protection.

(6) *Business day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 1026.15 and 1026.23, and for purposes of §§ 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.19(e)(1)(iii)(B), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(e)(4)(ii), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii), 1026.20(e)(5), 1026.31, and 1026.46(d)(4), the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(7) *Card issuer* means a person that issues a credit card or that person's agent with respect to the card.

(8) *Cardholder* means a natural person to whom a credit card is issued for consumer credit purposes, or a natural person who has agreed with the card issuer to pay consumer credit obligations arising from the issuance of a credit card to another natural person. For purposes of § 1026.12(a) and (b), the term includes any person to whom a credit card is issued for any purpose, including business, commercial or agricultural use, or a person who has agreed with the card issuer to pay obligations arising from the issuance of such a credit card to another person.

(9) *Cash price* means the price at which a creditor, in the ordinary course of business, offers to sell for cash property or service that is the subject of the transaction. At the creditor's option, the term may include the price of accessories, services related to the sale, service contracts and taxes and fees for license, title, and registration. The term does not include any finance charge.

(10) *Closed-end credit* means consumer credit other than ''open-end credit'' as defined in this section.

(11) *Consumer* means a cardholder or natural person to whom consumer credit is offered or extended. However, for purposes of rescission under §§ 1026.15 and 1026.23, the term also includes a natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest. For purposes of §§ 1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41, the term includes a confirmed successor in interest.

(12) *Consumer credit* means credit offered or extended to a consumer primarily for personal, family, or household purposes.

(13) *Consummation* means the time that a consumer becomes contractually obligated on a credit transaction.

(14) *Credit* means the right to defer payment of debt or to incur debt and defer its payment.

(15)(i) *Credit card* means any card, plate, or other single credit device that may be used from time to time to obtain credit. The term credit card includes a hybrid prepaid-credit card as defined in § 1026.61.

(ii) *Credit card account under an open-end (not home-secured) consumer credit plan* means any open-end credit account that is accessed by a credit card, except:

(A) A home-equity plan subject to the requirements of § 1026.40 that is accessed by a credit card;

(B) An overdraft line of credit that is accessed by a debit card; or

(C) An overdraft line of credit that is accessed by an account number, except if the account number is a hybrid prepaid-credit card that can access a covered separate credit feature as defined in § 1026.61.

(iii) *Charge card* means a credit card on an account for which no periodic rate is used to compute a finance charge.

(iv) *Debit card* means any card, plate, or other single device that may be used from time to time to access an asset account other than a prepaid account as defined in § 1026.61. The term *debit card* does not include a prepaid card as defined in § 1026.61.

(16) *Credit sale* means a sale in which the seller is a creditor. The term includes a bailment or lease (unless terminable without penalty at any time by the consumer) under which the consumer:

(i) Agrees to pay as compensation for use a sum substantially equivalent to, or in excess of, the total value of the property and service involved; and

(ii) Will become (or has the option to become), for no additional consideration or for nominal consideration, the owner of the property upon compliance with the agreement.

(17) *Creditor* means:

(i) A person who regularly extends consumer credit that is subject to a finance charge or is payable by written agreement in more than four installments (not including a down payment), and to whom the obligation is initially payable, either on the face of the note or contract, or by agreement when there is no note or contract.

(ii) For purposes of §§ 1026.4(c)(8) (Discounts), 1026.9(d) (Finance charge imposed at time of transaction), and 1026.12(e) (Prompt notification of returns and crediting of refunds), a person that honors a credit card.

(iii) For purposes of subpart B, any card issuer that extends either open-end credit or credit that is not subject to a finance charge and is not payable by written agreement in more than four installments.

(iv) For purposes of subpart B (except for the credit and charge card disclosures contained in §§1026.60 and 1026.9(e) and (f), the finance charge disclosures contained in §1026.6(a)(1) and (b)(3)(i) and §1026.7(a)(4) through (7) and (b)(4) through (6) and the right of rescission set forth in §1026.15) and subpart C, any card issuer that extends closed-end credit that is subject to a finance charge or is payable by written agreement in more than four installments.

(v) A person regularly extends consumer credit only if it extended credit (other than credit subject to the requirements of §1026.32) more than 25 times (or more than 5 times for transactions secured by a dwelling) in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year. A person regularly extends consumer credit if, in any 12-month period, the person originates more than one credit extension that is subject to the requirements of §1026.32 or one or more such credit extensions through a mortgage broker.

(18) *Downpayment* means an amount, including the value of property used as a trade-in, paid to a seller to reduce the cash price of goods or services purchased in a credit sale transaction. A deferred portion of a downpayment may be treated as part of the downpayment if it is payable not later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(19) *Dwelling* means 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.

(20) *Open-end credit* means consumer credit extended by a creditor under a plan in which:

(i) The creditor reasonably contemplates repeated transactions;

(ii) The creditor may impose a finance charge from time to time on an outstanding unpaid balance; and

(iii) The amount of credit that may be extended to the consumer during the term of the plan (up to any limit set by the creditor) is generally made available to the extent that any outstanding balance is repaid.

(21) *Periodic rate* means a rate of finance charge that is or may be imposed by a creditor on a balance for a day, week, month, or other subdivision of a year.

(22) *Person* means a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.

(23) *Prepaid finance charge* means any finance charge paid separately in cash or by check before or at consummation of a transaction, or withheld from the proceeds of the credit at any time.

(24) *Residential mortgage transaction* means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained in the consumer's principal dwelling to finance the acquisition or initial construction of that dwelling.

(25) *Security interest* means an interest in property that secures performance of a consumer credit obligation and that is recognized by State or Federal law. It does not include incidental interests such as interests in proceeds, accessions, additions, fixtures, insurance proceeds (whether or not the creditor is a loss payee or beneficiary), premium rebates, or interests in after-acquired property. For purposes of disclosures under §§1026.6, 1026.18, 1026.19(e) and (f), and 1026.38(l)(6), the term does not include an interest that arises solely by operation of law. However, for purposes of the right of rescission under §§1026.15 and 1026.23, the term does include interests that arise solely by operation of law.

(26) *State* means any state, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(27)(i) *Successor in interest* means a person to whom an ownership interest in a dwelling securing a closed-end consumer credit transaction is transferred from a consumer, provided that the transfer is:

(A) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(B) A transfer to a relative resulting from the death of the consumer;

(C) A transfer where the spouse or children of the consumer become an owner of the property;

(D) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the consumer becomes an owner of the property; or

(E) A transfer into an *inter vivos* trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

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

(b) *Rules of construction.* For purposes of this part, the following rules of construction apply:

(1) Where appropriate, the singular form of a word includes the plural form and plural includes singular.

(2) Where the words *obligation* and *transaction* are used in the regulation, they refer to a consumer credit obligation or transaction, depending upon the context. Where the word *credit* is used in the regulation, it means *consumer credit* unless the context clearly indicates otherwise.

(3) Unless defined in this part, the words used have the meanings given to them by state law or contract.

(4) Where the word *amount* is used in this part to describe disclosure requirements, it refers to a numerical amount.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80106, Dec. 31, 2013; 81 FR 72388, Oct. 19, 2016; 81 FR 84369, Nov. 22, 2016]

§ 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:

(a) *Business, commercial, agricultural, or organizational credit.* (1) An extension of credit primarily for a business, commercial or agricultural purpose.

(2) An extension of credit to other than a natural person, including credit to government agencies or instrumentalities.

(b) *Credit over applicable threshold amount*—(1) *Exemption*—(i) *Requirements.* An extension of credit in which the amount of credit extended exceeds the applicable threshold amount or in which there is an express written commitment to extend credit in excess of the applicable threshold amount, unless the extension of credit is:

(A) Secured by any real property, or by personal property used or expected to be used as the principal dwelling of the consumer; or

(B) A private education loan as defined in § 1026.46(b)(5).

(ii) *Annual adjustments.* The threshold amount in paragraph (b)(1)(i) of this section is adjusted annually to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable. See the official commentary to this paragraph (b) for the threshold amount applicable to a specific extension of credit or express written commitment to extend credit.

(2) *Transition rule for open-end accounts exempt prior to July 21, 2011.* An open-end account that is exempt on July 20, 2011 based on an express written commitment to extend credit in excess of $25,000 remains exempt until December 31, 2011 unless:

(i) The creditor takes a security interest in any real property, or in personal property used or expected to be used as the principal dwelling of the consumer; or

(ii) The creditor reduces the express written commitment to extend credit to $25,000 or less.

(c) *Public utility credit.* An extension of credit that involves public utility services provided through pipe, wire, other connected facilities, or radio or similar transmission (including extensions of such facilities), if the charges for service, delayed payment, or any discounts for prompt payment are filed with or regulated by any government unit. The financing of durable goods or home improvements by a public utility is not exempt.

(d) *Securities or commodities accounts.* Transactions in securities or commodities accounts in which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(e) *Home fuel budget plans.* An installment agreement for the purchase of home fuels in which no finance charge is imposed.

(f) *Student loan programs.* Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et*).

(g) *Employer-sponsored retirement plans.* An extension of credit to a participant in an employer-sponsored retirement plan qualified under section 401(a) of the Internal Revenue Code, a tax-sheltered annuity under section 403(b) of the Internal Revenue Code, or an eligible governmental deferred compensation plan under section 457(b) of the Internal Revenue Code (26 U.S.C. 401(a); 26 U.S.C. 403(b); 26 U.S.C. 457(b)), provided that the extension of credit is comprised of fully vested funds from such participant's account and is made in compliance with the Internal Revenue Code (26 U.S.C. 1 *et seq.*).

(h) *Partial exemption for certain mortgage loans.* The special disclosure requirements in §1026.19(g) and, unless the creditor chooses to provide the disclosures described in §1026.19(e) and (f), in §1026.19(e) and (f) 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)(i) The costs payable by the consumer in connection with the transaction at consummation are limited to:

(A) Recording fees;

(B) Transfer taxes;

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

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

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

(6) The following disclosures are provided:

(i) Disclosures described in §1026.18 that comply with this part; or

(ii) Alternatively, disclosures described in §1026.19(e) and (f) that comply with this part.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80107, Dec. 31, 2013; 82 FR 37768, Aug. 11, 2017]

§ 1026.4 Finance charge.

(a) *Definition.* The finance charge is the cost of consumer credit as a dollar amount. It includes any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit. It does not include any charge of a type payable in a comparable cash transaction.

(1) *Charges by third parties.* The finance charge includes fees and amounts charged by someone other than the creditor, unless otherwise excluded under this section, if the creditor:

(i) Requires the use of a third party as a condition of or an incident to the extension of credit, even if the consumer can choose the third party; or

(ii) Retains a portion of the third-party charge, to the extent of the portion retained.

(2) *Special rule; closing agent charges.* Fees charged by a third party that conducts the loan closing (such as a settlement agent, attorney, or escrow or title company) are finance charges only if the creditor:

(i) Requires the particular services for which the consumer is charged;

(ii) Requires the imposition of the charge; or

(iii) Retains a portion of the third-party charge, to the extent of the portion retained.

(3) *Special rule; mortgage broker fees.* Fees charged by a mortgage broker (including fees paid by the consumer directly to the broker or to the creditor for delivery to the broker) are finance charges even if the creditor does not require the consumer to use a mortgage broker and even if the creditor does not retain any portion of the charge.

(b) *Examples of finance charges.* The finance charge includes the following types of charges, except for charges specifically excluded by paragraphs (c) through (e) of this section:

(1) Interest, time price differential, and any amount payable under an add-on or discount system of additional charges.

(2) Service, transaction, activity, and carrying charges, including any charge imposed on a checking or other transaction account (except a prepaid account as defined in § 1026.61) to the extent that the charge exceeds the charge for a similar account without a credit feature.

(3) Points, loan fees, assumption fees, finder's fees, and similar charges.

(4) Appraisal, investigation, and credit report fees.

(5) Premiums or other charges for any guarantee or insurance protecting the creditor against the consumer's default or other credit loss.

(6) Charges imposed on a creditor by another person for purchasing or accepting a consumer's obligation, if the consumer is required to pay the charges in cash, as an addition to the obligation, or as a deduction from the proceeds of the obligation.

(7) Premiums or other charges for credit life, accident, health, or loss-of-income insurance, written in connection with a credit transaction.

(8) Premiums or other charges for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, written in connection with a credit transaction.

(9) Discounts for the purpose of inducing payment by a means other than the use of credit.

(10) Charges or premiums paid for debt cancellation or debt suspension coverage written in connection with a credit transaction, whether or not the coverage is insurance under applicable law.

(11) With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61:

(i) Any fee or charge described in paragraphs (b)(1) through (10) of this section imposed on the covered separate credit feature, whether it is structured as a credit subaccount of the prepaid account or a separate credit account.

(ii) Any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

(c) *Charges excluded from the finance charge.* The following charges are not finance charges:

(1) Application fees charged to all applicants for credit, whether or not credit is actually extended.

(2) Charges for actual unanticipated late payment, for exceeding a credit limit, or for delinquency, default, or a similar occurrence.

(3) Charges imposed by a financial institution for paying items that overdraw an account, unless the payment of such items and the imposition of the charge were previously agreed upon in writing. This paragraph does not apply

to credit offered in connection with a prepaid account as defined in § 1026.61.

(4) Fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis. This paragraph does not apply to a fee to participate in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in § 1026.61, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account.

(5) Seller's points.

(6) Interest forfeited as a result of an interest reduction required by law on a time deposit used as security for an extension of credit.

(7) *Real-estate related fees.* The following fees in a transaction secured by real property or in a residential mortgage transaction, if the fees are bona fide and reasonable in amount:

(i) Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.

(ii) Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.

(iii) Notary and credit-report fees.

(iv) Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.

(v) Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.

(8) Discounts offered to induce payment for a purchase by cash, check, or other means, as provided in section 167(b) of the Act.

(d) *Insurance and debt cancellation and debt suspension coverage*—(1) *Voluntary credit insurance premiums.* Premiums for credit life, accident, health, or loss-of-income insurance may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage is not required by the creditor, and this fact is disclosed in writing.

(ii) The premium for the initial term of insurance coverage is disclosed in writing. If the term of insurance is less than the term of the transaction, the term of insurance also shall be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 1026.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(iii) The consumer signs or initials an affirmative written request for the insurance after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(2) *Property insurance premiums.* Premiums for insurance against loss of or damage to property, or against liability arising out of the ownership or use of property, including single interest insurance if the insurer waives all right of subrogation against the consumer, may be excluded from the finance charge if the following conditions are met:

(i) The insurance coverage may be obtained from a person of the consumer's choice, and this fact is disclosed. (A creditor may reserve the right to refuse to accept, for reasonable cause, an insurer offered by the consumer.)

(ii) If the coverage is obtained from or through the creditor, the premium for the initial term of insurance coverage shall be disclosed. If the term of insurance is less than the term of the transaction, the term of insurance shall also be disclosed. The premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 1026.17(g), and certain closed-end credit transactions involving an insurance plan that limits the total amount of indebtedness subject to coverage.

(3) *Voluntary debt cancellation or debt suspension fees.* Charges or premiums paid for debt cancellation coverage for amounts exceeding the value of the collateral securing the obligation or for debt cancellation or debt suspension coverage in the event of the loss of

life, health, or income or in case of accident may be excluded from the finance charge, whether or not the coverage is insurance, if the following conditions are met:

(i) The debt cancellation or debt suspension agreement or coverage is not required by the creditor, and this fact is disclosed in writing;

(ii) The fee or premium for the initial term of coverage is disclosed in writing. If the term of coverage is less than the term of the credit transaction, the term of coverage also shall be disclosed. The fee or premium may be disclosed on a unit-cost basis only in open-end credit transactions, closed-end credit transactions by mail or telephone under § 1026.17(g), and certain closed-end credit transactions involving a debt cancellation agreement that limits the total amount of indebtedness subject to coverage;

(iii) The following are disclosed, as applicable, for debt suspension coverage: That the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

(iv) The consumer signs or initials an affirmative written request for coverage after receiving the disclosures specified in this paragraph, except as provided in paragraph (d)(4) of this section. Any consumer in the transaction may sign or initial the request.

(4) *Telephone purchases.* If a consumer purchases credit insurance or debt cancellation or debt suspension coverage for an open-end (not home-secured) plan by telephone, the creditor must make the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, orally. In such a case, the creditor shall:

(i) Maintain evidence that the consumer, after being provided the disclosures orally, affirmatively elected to purchase the insurance or coverage; and(ii) Mail the disclosures under paragraphs (d)(1)(i) and (ii) or (d)(3)(i) through (iii) of this section, as applicable, within three business days after the telephone purchase.

(e) *Certain security interest charges.* If itemized and disclosed, the following charges may be excluded from the finance charge:

(1) Taxes and fees prescribed by law that actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest.

(2) The premium for insurance in lieu of perfecting a security interest to the extent that the premium does not exceed the fees described in paragraph (e)(1) of this section that otherwise would be payable.

(3) *Taxes on security instruments.* Any tax levied on security instruments or on documents evidencing indebtedness if the payment of such taxes is a requirement for recording the instrument securing the evidence of indebtedness.

(f) *Prohibited offsets.* Interest, dividends, or other income received or to be received by the consumer on deposits or investments shall not be deducted in computing the finance charge.

[76 FR 79772, Dec. 22, 2011, as amended at 81 FR 84369, Nov. 22, 2016]

Subpart B—Open-End Credit

§ 1026.5 General disclosure requirements.

(a) *Form of disclosures*—(1) *General.* (i) The creditor shall make the disclosures required by this subpart clearly and conspicuously.

(ii) The creditor shall make the disclosures required by this subpart in writing, in a form that the consumer may keep, except that:

(A) The following disclosures need not be written: Disclosures under § 1026.6(b)(3) of charges that are imposed as part of an open-end (not home-secured) plan that are not required to be disclosed under § 1026.6(b)(2) and related disclosures of charges under § 1026.9(c)(2)(iii)(B); disclosures under § 1026.9(c)(2)(vi); disclosures under § 1026.9(d) when a finance charge is imposed at the time of the transaction; and disclosures under § 1026.56(b)(1)(i).

(B) The following disclosures need not be in a retainable form: Disclosures that need not be written under paragraph (a)(1)(ii)(A) of this section; disclosures for credit and charge card applications and solicitations under § 1026.60; home-equity disclosures under § 1026.40(d); the alternative summary billing-rights statement under §1026.9(a)(2); the credit and charge card renewal disclosures required under §1026.9(e); and the payment requirements under §1026.10(b), except as provided in §1026.7(b)(13).

(iii) The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§1026.60, 1026.40, and 1026.16 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.

(2) *Terminology.* (i) Terminology used in providing the disclosures required by this subpart shall be consistent.

(ii) For home-equity plans subject to §1026.40, the terms *finance charge* and *annual percentage rate,* when required to be disclosed with a corresponding amount or percentage rate, shall be more conspicuous than any other required disclosure. The terms need not be more conspicuous when used for periodic statement disclosures under §1026.7(a)(4) and for advertisements under §1026.16.

(iii) If disclosures are required to be presented in a tabular format pursuant to paragraph (a)(3) of this section, the term *penalty APR* shall be used, as applicable. The term *penalty APR* need not be used in reference to the annual percentage rate that applies with the loss of a promotional rate, assuming the annual percentage rate that applies is not greater than the annual percentage rate that would have applied at the end of the promotional period; or if the annual percentage rate that applies with the loss of a promotional rate is a variable rate, the annual percentage rate is calculated using the same index and margin as would have been used to calculate the annual percentage rate that would have applied at the end of the promotional period. If credit insurance or debt cancellation or debt suspension coverage is required as part of the plan, the term *required* shall be used and the program shall be identified by its name. If an annual percentage rate is required to be presented in a tabular format pursuant to paragraph (a)(3)(i) or (a)(3)(iii) of this section, the term *fixed,* or a similar term, may not be used to describe such rate unless the creditor also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(3) *Specific formats.* (i) Certain disclosures for credit and charge card applications and solicitations must be provided in a tabular format in accordance with the requirements of §1026.60(a)(2).

(ii) Certain disclosures for home-equity plans must precede other disclosures and must be given in accordance with the requirements of §1026.40(a).

(iii) Certain account-opening disclosures must be provided in a tabular format in accordance with the requirements of §1026.6(b)(1).

(iv) Certain disclosures provided on periodic statements must be grouped together in accordance with the requirements of §1026.7(b)(6) and (b)(13).

(v) Certain disclosures provided on periodic statements must be given in accordance with the requirements of §1026.7(b)(12).

(vi) Certain disclosures accompanying checks that access a credit card account must be provided in a tabular format in accordance with the requirements of §1026.9(b)(3).

(vii) Certain disclosures provided in a change-in-terms notice must be provided in a tabular format in accordance with the requirements of §1026.9(c)(2)(iv)(D).

(viii) Certain disclosures provided when a rate is increased due to delinquency, default or as a penalty must be provided in a tabular format in accordance with the requirements of §1026.9(g)(3)(ii).

(b) *Time of disclosures*—(1) *Account-opening disclosures*—(i) *General rule.* The creditor shall furnish account-opening disclosures required by §1026.6 before the first transaction is made under the plan.

(ii) *Charges imposed as part of an open-end (not home-secured) plan.* Charges that are imposed as part of an open-end (not home-secured) plan and are not required to be disclosed under

§ 1026.6(b)(2) may be disclosed after account opening but before the consumer agrees to pay or becomes obligated to pay for the charge, provided they are disclosed at a time and in a manner that a consumer would be likely to notice them. This provision does not apply to charges imposed as part of a home-equity plan subject to the requirements of § 1026.40.

(iii) *Telephone purchases.* Disclosures required by § 1026.6 may be provided as soon as reasonably practicable after the first transaction if:

(A) The first transaction occurs when a consumer contacts a merchant by telephone to purchase goods and at the same time the consumer accepts an offer to finance the purchase by establishing an open-end plan with the merchant or third-party creditor;

(B) The merchant or third-party creditor permits consumers to return any goods financed under the plan and provides consumers with a sufficient time to reject the plan and return the goods free of cost after the merchant or third-party creditor has provided the written disclosures required by § 1026.6; and

(C) The consumer's right to reject the plan and return the goods is disclosed to the consumer as a part of the offer to finance the purchase.

(iv) *Membership fees*—(A) *General.* In general, a creditor may not collect any fee before account-opening disclosures are provided. A creditor may collect, or obtain the consumer's agreement to pay, membership fees, including application fees excludable from the finance charge under § 1026.4(c)(1), before providing account-opening disclosures if, after receiving the disclosures, the consumer may reject the plan and have no obligation to pay these fees (including application fees) or any other fee or charge. A membership fee for purposes of this paragraph has the same meaning as a fee for the issuance or availability of credit described in § 1026.60(b)(2). If the consumer rejects the plan, the creditor must promptly refund the membership fee if it has been paid, or take other action necessary to ensure the consumer is not obligated to pay that fee or any other fee or charge.

(B) *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of § 1026.40 are not subject to the requirements of paragraph (b)(1)(iv)(A) of this section.

(v) *Application fees.* A creditor may collect an application fee excludable from the finance charge under § 1026.4(c)(1) before providing account-opening disclosures. However, if a consumer rejects the plan after receiving account-opening disclosures, the consumer must have no obligation to pay such an application fee, or if the fee was paid, it must be refunded. *See* § 1026.5(b)(1)(iv)(A).

(2) *Periodic statements*—(i) *Statement required.* The creditor shall mail or deliver a periodic statement as required by § 1026.7 for each billing cycle at the end of which an account has a debit or credit balance of more than $1 or on which a finance charge has been imposed. A periodic statement need not be sent for an account if the creditor deems it uncollectible, if delinquency collection proceedings have been instituted, if the creditor has charged off the account in accordance with loan-loss provisions and will not charge any additional fees or interest on the account, or if furnishing the statement would violate Federal law.

(ii) *Timing requirements*—(A) *Credit card accounts under an open-end (not home-secured) consumer credit plan.* For credit card accounts under an open-end (not home-secured) consumer credit plan, a card issuer must adopt reasonable procedures designed to ensure that:

(*1*) Periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to § 1026.7(b)(11)(i)(A); and

(*2*) The card issuer does not treat as late for any purpose a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

(B) *Open-end consumer credit plans.* For accounts under an open-end consumer credit plan, a creditor must adopt reasonable procedures designed to ensure that:

(*1*) If a grace period applies to the account:

(*i*) Periodic statements are mailed or delivered at least 21 days prior to the date on which the grace period expires; and

(*ii*) The creditor does not impose finance charges as a result of the loss of the grace period if a payment that satisfies the terms of the grace period is received by the creditor within 21 days after mailing or delivery of the periodic statement.

(*2*) Regardless of whether a grace period applies to the account:

(*i*) Periodic statements are mailed or delivered at least 14 days prior to the date on which the required minimum periodic payment must be received in order to avoid being treated as late for any purpose; and

(*ii*) The creditor does not treat as late for any purpose a required minimum periodic payment received by the creditor within 14 days after mailing or delivery of the periodic statement.

(*3*) For purposes of paragraph (b)(2)(ii)(B) of this section, ''grace period'' means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate.

(3) *Credit and charge card application and solicitation disclosures.* The card issuer shall furnish the disclosures for credit and charge card applications and solicitations in accordance with the timing requirements of § 1026.60.

(4) *Home-equity plans.* Disclosures for home-equity plans shall be made in accordance with the timing requirements of § 1026.40(b).

(c) *Basis of disclosures and use of estimates.* Disclosures shall reflect the terms of the legal obligation between the parties. If any information necessary for accurate disclosure is unknown to the creditor, it shall make the disclosure based on the best information reasonably available and shall state clearly that the disclosure is an estimate.

(d) *Multiple creditors; multiple consumers.* If the credit plan 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 account. If the right of rescission under § 1026.15 is applicable, however, the disclosures required by §§ 1026.6 and 1026.15(b) shall be made to each consumer having the right to rescind.

(e) *Effect of subsequent events.* If a disclosure becomes inaccurate because of an event that occurs after the creditor mails or delivers the disclosures, the resulting inaccuracy is not a violation of this part, although new disclosures may be required under § 1026.9(c).

§ 1026.6 Account-opening disclosures.

(a) *Rules affecting home-equity plans.* The requirements of this paragraph (a) apply only to home-equity plans subject to the requirements of § 1026.40. A creditor shall disclose the items in this section, to the extent applicable:

(1) *Finance charge.* The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows:

(i) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(ii) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If a creditor offers a variable-rate plan, the creditor shall also disclose: The circumstances under which the rate(s) may increase; any limitations on the increase; and the effect(s) of an increase. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates shall apply shall also be disclosed. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(iii) An explanation of the method used to determine the balance on which the finance charge may be computed.

(iv) An explanation of how the amount of any finance charge will be determined, including a description of how any finance charge other than the periodic rate will be determined.

(2) *Other charges.* The amount of any charge other than a finance charge that may be imposed as part of the plan, or an explanation of how the charge will be determined.

(3) *Home-equity plan information.* The following disclosures described in §1026.40(d), as applicable:

(i) A statement of the conditions under which the creditor may take certain action, as described in §1026.40(d)(4)(i), such as terminating the plan or changing the terms.

(ii) The payment information described in §1026.40(d)(5)(i) and (ii) for both the draw period and any repayment period.

(iii) A statement that negative amortization may occur as described in §1026.40(d)(9).

(iv) A statement of any transaction requirements as described in §1026.40(d)(10).

(v) A statement regarding the tax implications as described in §1026.40(d)(11).

(vi) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §1026.40(d)(6) and (d)(12)(ii).

(vii) The variable-rate disclosures described in §1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii), as well as the disclosure described in §1026.40(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

(4) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(5) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§1026.12(c) and 1026.13 and that is substantially similar to the statement found in Model Form G–3 or, at the creditor's option, G–3(A), in appendix G to this part.

(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply to plans other than home-equity plans subject to the requirements of §1026.40.

(1) *Form of disclosures; tabular format for open-end (not home-secured) plans.* Creditors must provide the account-opening disclosures specified in paragraph (b)(2)(i) through (b)(2)(v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (b)(2)(xiv) of this section in the form of a table with the headings, content, and format substantially similar to any of the applicable tables in G–17 in appendix G.

(i) *Highlighting.* In the table, any annual percentage rate required to be disclosed pursuant to paragraph (b)(2)(i) of this section; any introductory rate permitted to be disclosed pursuant to paragraph (b)(2)(i)(B) or required to be disclosed under paragraph (b)(2)(i)(F) of this section, any rate that will apply after a premium initial rate expires permitted to be disclosed pursuant to paragraph (b)(2)(i)(C) or required to be disclosed pursuant to paragraph (b)(2)(i)(F), and any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2)(ii), (b)(2)(iv), (b)(2)(vii) through (b)(2)(xii) of this section must be disclosed in bold text. However, bold text shall not be used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(ii) *Location.* Only the information required or permitted by paragraphs (b)(2)(i) through (v) (except for (b)(2)(i)(D)(*2*)) and (b)(2)(vii) through (xiv) of this section shall be in the table. Disclosures required by paragraphs (b)(2)(i)(D)(*2*), (b)(2)(i)(D)(*3*), (b)(2)(vi), and (b)(2)(xv) of this section shall be placed directly below the table. Disclosures required by paragraphs (b)(3) through (5) of this section that are not otherwise required to be in the table and other information may be presented with the account agreement or account-opening disclosure statement, provided such information appears outside the required table.

(iii) *Fees that vary by state.* Creditors that impose fees referred to in paragraphs (b)(2)(vii) through (b)(2)(xi) of this section that vary by state and that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose in the account-opening table the specific fee applicable to the consumer's account, or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the amount of the fee applicable to the consumer's account is disclosed. A creditor may not list fees for multiple states in the account-opening summary table.

(iv) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(2) *Required disclosures for account-opening table for open-end (not home-secured) plans.* A creditor shall disclose the items in this section, to the extent applicable:

(i) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance, or a balance transfer, expressed as an annual percentage rate (as determined by §1026.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: A penalty rate that may apply upon the occurrence of one or more specific events.

(A) *Variable-rate information.* If a rate disclosed under paragraph (b)(2)(i) of this section is a variable rate, the creditor shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the creditor must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases or decreases shall not be included in the table.

(B) *Discounted initial rates.* If the initial rate is an introductory rate, as that term is defined in §1026.16(g)(2)(ii), the creditor must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(2)(i) of this section. Where the rate is not tied to an index or formula, the creditor must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the creditor must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements of paragraph (b)(4)(ii)(G) of this section. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the introductory rate along with the rate that would otherwise apply to the account if the creditor also discloses the time period during which the introductory rate will remain in effect, and uses the term ''introductory'' or ''intro'' in immediate proximity to the introductory rate.

(C) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the creditor must disclose the premium initial rate pursuant to paragraph (b)(2)(i) of this section. Consistent with paragraph (b)(2)(i) of this section, the premium initial rate for purchases must be in at least 16-point type. Except as provided in paragraph (b)(2)(i)(F) of this section, the creditor is not required to, but may disclose in the table the rate that will apply after the premium initial rate expires if the creditor also discloses the time period during which the premium initial rate will remain in effect. If the creditor also discloses in the table the rate that will apply after the premium initial rate for purchases expires, that rate also must be in at least 16-point type.

(D) *Penalty rates*—(*1*) *In general.* Except as provided in paragraph (b)(2)(i)(D)(*2*) and (b)(2)(i)(D)(*3*) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose pursuant to paragraph (b)(2)(i) of this section the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. If more than one penalty rate may apply, the creditor at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(*2*) *Introductory rates.* If the creditor discloses in the table an introductory rate, as that term is defined in §1026.16(g)(2)(ii), creditors must briefly disclose directly beneath the table the circumstances under which the introductory rate may be revoked, and the rate that will apply after the introductory rate is revoked.

(*3*) *Employee preferential rates.* If a creditor discloses in the table a preferential annual percentage rate for which only employees of the creditor, employees of a third party, or other individuals with similar affiliations with the creditor or third party, such as executive officers, directors, or principal shareholders are eligible, the creditor must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.

(E) *Point of sale where APRs vary by state or based on creditworthiness.* Creditors imposing annual percentage rates that vary by state or based on the consumer's creditworthiness and providing the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may, at the creditor's option, disclose pursuant to paragraph (b)(2)(i) of this section in the account-opening table:

(*1*) The specific annual percentage rate applicable to the consumer's account; or

(*2*) The range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state or will be determined based on the consumer's creditworthiness and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the annual percentage rate applicable to the consumer's account is disclosed. A creditor may not list annual percentage rates for multiple states in the account-opening table.

(F) *Credit card accounts under an open-end (not home-secured) consumer credit plan.* Notwithstanding paragraphs (b)(2)(i)(B) and (b)(2)(i)(C) of this section, for credit card accounts under an open-end (not home-secured) plan, issuers must disclose in the table:

(*1*) Any introductory rate as that term is defined in §1026.16(g)(2)(ii) that would apply to the account, consistent with the requirements of paragraph (b)(2)(i)(B) of this section, and

(*2*) Any rate that would apply upon the expiration of a premium initial rate, consistent with the requirements of paragraph (b)(2)(i)(C) of this section.

(ii) *Fees for issuance or availability.* (A) Any annual or other periodic fee that may be imposed for the issuance or availability of an open-end plan, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(B) Any non-periodic fee that relates to opening the plan. A creditor must disclose that the fee is a one-time fee.

(iii) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Bureau to reflect changes in the Consumer Price Index. The Bureau shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on the June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The creditor may, at its option, disclose in the table minimum interest charges below this threshold.

(iv) *Transaction charges*. Any transaction charge imposed by the creditor for use of the open-end plan for purchases.

(v) *Grace period*. The date by which or the period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the creditor may disclose the range of days, the minimum number of days, or the average number of the days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all features on the account, the phrase ''How to Avoid Paying Interest'' shall be used as the heading for the row describing the grace period. If a grace period is not offered on all features of the account, in disclosing this fact in the tabular format, the phrase ''Paying Interest'' shall be used as the heading for the row describing this fact.

(vi) *Balance computation method*. The name of the balance computation method listed in §1026.60(g) that is used to determine the balance on which the finance charge is computed for each feature, or an explanation of the method used if it is not listed, along with a statement that an explanation of the method(s) required by paragraph (b)(4)(i)(D) of this section is provided with the account-opening disclosures. In determining which balance computation method to disclose, the creditor shall assume that credit extended will not be repaid within any grace period, if any.

(vii) *Cash advance fee*. Any fee imposed for an extension of credit in the form of cash or its equivalent.

(viii) *Late payment fee*. Any fee imposed for a late payment.

(ix) *Over-the-limit fee*. Any fee imposed for exceeding a credit limit.

(x) *Balance transfer fee*. Any fee imposed to transfer an outstanding balance.

(xi) *Returned-payment fee*. Any fee imposed by the creditor for a returned payment.

(xii) *Required insurance, debt cancellation or debt suspension coverage*. (A) A fee for insurance described in §1026.4(b)(7) or debt cancellation or suspension coverage described in §1026.4(b)(10), if the insurance, or debt cancellation or suspension coverage is required as part of the plan; and

(B) A cross reference to any additional information provided about the insurance or coverage, as applicable.

(xiii) *Available credit*. If a creditor requires fees for the issuance or availability of credit described in paragraph (b)(2)(ii) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the plan, a creditor must disclose the available credit remaining after these fees or security deposit are debited to the account. The determination whether the 15 percent threshold is met must be based on the minimum credit limit for the plan. However, the disclosure provided under this paragraph must be based on the actual initial credit limit provided on the account. In determining whether the 15 percent threshold test is met, the creditor must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the creditor in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. The creditor shall also disclose that the consumer has the right to reject the plan and not be obligated to pay those fees or any other fee or charges until the consumer has used the account or made a payment on the account after receiving a periodic statement. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(xiv) *Web site reference.* For issuers of credit cards that are not charge cards, a reference to the Web site established by the Bureau and a statement that consumers may obtain on the Web site information about shopping for and using credit cards. Until January 1, 2013, issuers may substitute for this reference a reference to the Web site established by the Board of Governors of the Federal Reserve System.

(xv) *Billing error rights reference.* A statement that information about consumers' right to dispute transactions is included in the account-opening disclosures.

(3) *Disclosure of charges imposed as part of open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For charges imposed as part of an open-end (not home-secured) plan, the circumstances under which the charge may be imposed, including the amount of the charge or an explanation of how the charge is determined. For finance charges, a statement of when the charge begins to accrue and an explanation of whether or not any time period exists within which any credit that has been extended may be repaid without incurring the charge. If such a time period is provided, a creditor may, at its option and without disclosure, elect not to impose a finance charge when payment is received after the time period expires.

(ii) Charges imposed as part of the plan are:

(A) Finance charges identified under §1026.4(a) and §1026.4(b).

(B) Charges resulting from the consumer's failure to use the plan as agreed, except amounts payable for collection activity after default, attorney's fees whether or not automatically imposed, and post-judgment interest rates permitted by law.

(C) Taxes imposed on the credit transaction by a state or other governmental body, such as documentary stamp taxes on cash advances.

(D) Charges for which the payment, or nonpayment, affect the consumer's access to the plan, the duration of the plan, the amount of credit extended, the period for which credit is extended, or the timing or method of billing or payment.

(E) Charges imposed for terminating a plan.

(F) Charges for voluntary credit insurance, debt cancellation or debt suspension.

(iii) Charges that are not imposed as part of the plan include:

(A) Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

(B) A charge for a package of services that includes an open-end credit feature, if the fee is required whether or not the open-end credit feature is included and the non-credit services are not merely incidental to the credit feature.

(C) Charges under §1026.4(e) disclosed as specified.

(D) With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61, any fee or charge imposed on the asset feature of the prepaid account to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card.

(E) With regard to a non-covered separate credit feature accessible by a prepaid card as defined in §1026.61, any fee or charge imposed on the asset feature of the prepaid account.

(4) *Disclosure of rates for open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) For each periodic rate that may be used to calculate interest:

(A) *Rates.* The rate, expressed as a periodic rate and a corresponding annual percentage rate.

(B) *Range of balances.* The range of balances to which the rate is applicable; however, a creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

(C) *Type of transaction.* The type of transaction to which the rate applies, if different rates apply to different types of transactions.

(D) *Balance computation method.* An explanation of the method used to determine the balance to which the rate is applied.

(ii) *Variable-rate accounts.* For interest rate changes that are tied to increases in an index or formula (variable-rate accounts) specifically set forth in the account agreement:

(A) The fact that the annual percentage rate may increase.

(B) How the rate is determined, including the margin.

(C) The circumstances under which the rate may increase.

(D) The frequency with which the rate may increase.

(E) Any limitation on the amount the rate may change.

(F) The effect(s) of an increase.

(G) Except as specified in paragraph (b)(4)(ii)(H) of this section, a rate is accurate if it is a rate as of a specified date and this rate was in effect within the last 30 days before the disclosures are provided.

(H) Creditors imposing annual percentage rates that vary according to an index that is not under the creditor's control that provide the disclosures required by paragraph (b) of this section in person at the time the open-end (not home-secured) plan is established in connection with financing the purchase of goods or services may disclose in the table a rate, or range of rates to the extent permitted by §1026.6(b)(2)(i)(E), that was in effect within the last 90 days before the disclosures are provided, along with a reference directing the consumer to the account agreement or other disclosure provided with the account-opening table where an annual percentage rate applicable to the consumer's account in effect within the last 30 days before the disclosures are provided is disclosed.

(iii) *Rate changes not due to index or formula.* For interest rate changes that are specifically set forth in the account agreement and not tied to increases in an index or formula:

(A) The initial rate (expressed as a periodic rate and a corresponding annual percentage rate) required under paragraph (b)(4)(i)(A) of this section.

(B) How long the initial rate will remain in effect and the specific events that cause the initial rate to change.

(C) The rate (expressed as a periodic rate and a corresponding annual percentage rate) that will apply when the initial rate is no longer in effect and any limitation on the time period the new rate will remain in effect.

(D) The balances to which the new rate will apply.

(E) The balances to which the current rate at the time of the change will apply.

(5) *Additional disclosures for open-end (not home-secured) plans.* A creditor shall disclose, to the extent applicable:

(i) *Voluntary credit insurance, debt cancellation or debt suspension.* The disclosures in §1026.4(d)(1)(i) and (d)(1)(ii) and (d)(3)(i) through (d)(3)(iii) if the creditor offers optional credit insurance or debt cancellation or debt suspension coverage that is identified in §1026.4(b)(7) or (b)(10).

(ii) *Security interests.* The fact that the creditor has or will acquire a security interest in the property purchased under the plan, or in other property identified by item or type.

(iii) *Statement of billing rights.* A statement that outlines the consumer's rights and the creditor's responsibilities under §§1026.12(c) and 1026.13 and that is substantially similar to the statement found in Model Form G–3(A) in appendix G to this part.

[76 FR 79772, Dec. 22, 2011, as amended at 81 FR 84369, Nov. 22, 2016]

§ 1026.7 Periodic statement.

The creditor shall furnish the consumer with a periodic statement that discloses the following items, to the extent applicable:

(a) *Rules affecting home-equity plans.* The requirements of paragraph (a) of this section apply only to home-equity plans subject to the requirements of §1026.40. Alternatively, a creditor subject to this paragraph may, at its option, comply with any of the requirements of paragraph (b) of this section; however, any creditor that chooses not to provide a disclosure under paragraph (a)(7) of this section must comply with paragraph (b)(6) of this section.

(1) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions.* An identification of each credit transaction in accordance with § 1026.8.

(3) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in accounting does not result in any finance or other charge.

(4) *Periodic rates.* (i) Except as provided in paragraph (a)(4)(ii) of this section, each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. If no finance charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no finance charge will be imposed. If different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the periodic rate(s) may vary.

(ii) *Exception.* An annual percentage rate that differs from the rate that would otherwise apply and is offered only for a promotional period need not be disclosed except in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed.* The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed.

(6) *Amount of finance charge and other charges.* Creditors may comply with paragraphs (a)(6) of this section, or with paragraph (b)(6) of this section, at their option.

(i) *Finance charges.* The amount of any finance charge debited or added to the account during the billing cycle, using the term *finance charge.* The components of the finance charge shall be individually itemized and identified to show the amount(s) due to the application of any periodic rates and the amounts(s) of any other type of finance charge. If there is more than one periodic rate, the amount of the finance charge attributable to each rate need not be separately itemized and identified.

(ii) *Other charges.* The amounts, itemized and identified by type, of any charges other than finance charges debited to the account during the billing cycle.

(7) *Annual percentage rate.* At a creditor's option, when a finance charge is imposed during the billing cycle, the annual percentage rate(s) determined under § 1026.14(c) using the term *annual percentage rate.*

(8) *Grace period.* The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors.* The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by § 1026.9(a)(2).

(10) *Closing date of billing cycle; new balance.* The closing date of the billing cycle and the account balance outstanding on that date.

(b) *Rules affecting open-end (not home-secured) plans.* The requirements of paragraph (b) of this section apply only to plans other than home-equity plans subject to the requirements of § 1026.40.

(1) *Previous balance.* The account balance outstanding at the beginning of the billing cycle.

(2) *Identification of transactions.* An identification of each credit transaction in accordance with § 1026.8.

(3) *Credits.* Any credit to the account during the billing cycle, including the amount and the date of crediting. The date need not be provided if a delay in crediting does not result in any finance or other charge.

(4) *Periodic rates.* (i) Except as provided in paragraph (b)(4)(ii) of this section, each periodic rate that may be used to compute the interest charge expressed as an annual percentage rate and using the term *Annual Percentage*

Rate, along with the range of balances to which it is applicable. If no interest charge is imposed when the outstanding balance is less than a certain amount, the creditor is not required to disclose that fact, or the balance below which no interest charge will be imposed. The types of transactions to which the periodic rates apply shall also be disclosed. For variable-rate plans, the fact that the annual percentage rate may vary.

(ii) *Exception*. A promotional rate, as that term is defined in §1026.16(g)(2)(i), is required to be disclosed only in periods in which the offered rate is actually applied.

(5) *Balance on which finance charge computed*. The amount of the balance to which a periodic rate was applied and an explanation of how that balance was determined, using the term *Balance Subject to Interest Rate*. When a balance is determined without first deducting all credits and payments made during the billing cycle, the fact and the amount of the credits and payments shall be disclosed. As an alternative to providing an explanation of how the balance was determined, a creditor that uses a balance computation method identified in §1026.60(g) may, at the creditor's option, identify the name of the balance computation method and provide a toll-free telephone number where consumers may obtain from the creditor more information about the balance computation method and how resulting interest charges were determined. If the method used is not identified in §1026.60(g), the creditor shall provide a brief explanation of the method used.

(6) *Charges imposed*. (i) The amounts of any charges imposed as part of a plan as stated in §1026.6(b)(3), grouped together, in proximity to transactions identified under paragraph (b)(2) of this section, substantially similar to Sample G–18(A) in appendix G to this part.

(ii) *Interest*. Finance charges attributable to periodic interest rates, using the term *Interest Charge*, must be grouped together under the heading *Interest Charged*, itemized and totaled by type of transaction, and a total of finance charges attributable to periodic interest rates, using the term *Total Interest*, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A) in appendix G to this part.

(iii) *Fees*. Charges imposed as part of the plan other than charges attributable to periodic interest rates must be grouped together under the heading *Fees*, identified consistent with the feature or type, and itemized, and a total of charges, using the term *Fees*, must be disclosed for the statement period and calendar year to date, using a format substantially similar to Sample G–18(A) in appendix G to this part.

(7) *Change-in-terms and increased penalty rate summary for open-end (not home-secured) plans*. Creditors that provide a change-in-terms notice required by §1026.9(c), or a rate increase notice required by §1026.9(g), on or with the periodic statement, must disclose the information in §1026.9(c)(2)(iv)(A) and (c)(2)(iv)(B) (if applicable) or §1026.9(g)(3)(i) on the periodic statement in accordance with the format requirements in §1026.9(c)(2)(iv)(D), and §1026.9(g)(3)(ii). See Forms G–18(F) and G–18(G) in appendix G to this part.

(8) *Grace period*. The date by which or the time period within which the new balance or any portion of the new balance must be paid to avoid additional finance charges. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge if payment is received after the time period's expiration.

(9) *Address for notice of billing errors*. The address to be used for notice of billing errors. Alternatively, the address may be provided on the billing rights statement permitted by §1026.9(a)(2).

(10) *Closing date of billing cycle; new balance*. The closing date of the billing cycle and the account balance outstanding on that date. The new balance must be disclosed in accordance with the format requirements of paragraph (b)(13) of this section.

(11) *Due date; late payment costs*. (i) Except as provided in paragraph (b)(11)(ii) of this section and in accordance with the format requirements in paragraph (b)(13) of this section, for a credit card account under an open-end (not home-secured) consumer credit

plan, a card issuer must provide on each periodic statement:

(A) The due date for a payment. The due date disclosed pursuant to this paragraph shall be the same day of the month for each billing cycle.

(B) The amount of any late payment fee and any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of a late payment. If a range of late payment fees may be assessed, the card issuer may state the range of fees, or the highest fee and an indication that the fee imposed could be lower. If the rate may be increased for more than one feature or balance, the card issuer may state the range of rates or the highest rate that could apply and at the issuer's option an indication that the rate imposed could be lower.

(ii) *Exception.* The requirements of paragraph (b)(11)(i) of this section do not apply to the following:

(A) Periodic statements provided solely for charge card accounts, other than covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in §1026.61; and

(B) Periodic statements provided for a charged-off account where payment of the entire account balance is due immediately.

(12) *Repayment disclosures*—(i) *In general.* Except as provided in paragraphs (b)(12)(ii) and (b)(12)(v) of this section, for a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer must provide the following disclosures on each periodic statement:

(A) The following statement with a bold heading: ''Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance;''

(B) The minimum payment repayment estimate, as described in appendix M1 to this part. If the minimum payment repayment estimate is less than 2 years, the card issuer must disclose the estimate in months. Otherwise, the estimate must be disclosed in years and rounded to the nearest whole year;

(C) The minimum payment total cost estimate, as described in appendix M1 to this part. The minimum payment total cost estimate must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option;

(D) A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the current outstanding balance shown on the periodic statement. A statement that the minimum payment repayment estimate and the minimum payment total cost estimate are based on the assumption that only minimum payments are made and no other amounts are added to the balance;

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section; and

(F)(*1*) Except as provided in paragraph (b)(12)(i)(F)(*2*) of this section, the following disclosures:

(*i*) The estimated monthly payment for repayment in 36 months, as described in appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option;

(*ii*) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years;

(*iii*) The total cost estimate for repayment in 36 months, as described in appendix M1 to this part. The total cost estimate for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option; and

(*iv*) The savings estimate for repayment in 36 months, as described in appendix M1 to this part. The savings estimate for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the card issuer's option.

(*2*) The requirements of paragraph (b)(12)(i)(F)(*1*) of this section do not apply to a periodic statement in any of the following circumstances:

(*i*) The minimum payment repayment estimate that is disclosed on the periodic statement pursuant to paragraph (b)(12)(i)(B) of this section after rounding is three years or less;

(*ii*) The estimated monthly payment for repayment in 36 months, as described in appendix M1 to this part, after rounding as set forth in paragraph (b)(12)(i)(F)(*1*)(*i*) of this section that is calculated for a particular billing cycle is less than the minimum payment required for the plan for that billing cycle; and

(*iii*) A billing cycle where an account has both a balance in a revolving feature where the required minimum payments for this feature will not amortize that balance in a fixed amount of time specified in the account agreement and a balance in a fixed repayment feature where the required minimum payment for this fixed repayment feature will amortize that balance in a fixed amount of time specified in the account agreement which is less than 36 months.

(ii) *Negative or no amortization.* If negative or no amortization occurs when calculating the minimum payment repayment estimate as described in appendix M1 of this part, a card issuer must provide the following disclosures on the periodic statement instead of the disclosures set forth in paragraph (b)(12)(i) of this section:

(A) The following statement: ''Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month'';

(B) The following statement: ''If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner'';

(C) The estimated monthly payment for repayment in 36 months, as described in appendix M1 to this part. The estimated monthly payment for repayment in 36 months must be rounded either to the nearest whole dollar or to the nearest cent, at the issuer's option;

(D) A statement that the card issuer estimates that the consumer will repay the outstanding balance shown on the periodic statement in 3 years if the consumer pays the estimated monthly payment each month for 3 years; and

(E) A toll-free telephone number where the consumer may obtain from the card issuer information about credit counseling services consistent with paragraph (b)(12)(iv) of this section.

(iii) *Format requirements.* A card issuer must provide the disclosures required by paragraph (b)(12)(i) or (b)(12)(ii) of this section in accordance with the format requirements of paragraph (b)(13) of this section, and in a format substantially similar to Samples G–18(C)(1), G–18(C)(2) and G–18(C)(3) in appendix G to this part, as applicable.

(iv) *Provision of information about credit counseling services*—(A) *Required information.* To the extent available from the United States Trustee or a bankruptcy administrator, a card issuer must provide through the toll-free telephone number disclosed pursuant to paragraphs (b)(12)(i) or (b)(12)(ii) of this section the name, street address, telephone number, and Web site address for at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in, at the card issuer's option, either the state in which the billing address for the account is located or the state specified by the consumer.

(B) *Updating required information.* At least annually, a card issuer must update the information provided pursuant to paragraph (b)(12)(iv)(A) of this section for consistency with the information available from the United States Trustee or a bankruptcy administrator.

(v) *Exemptions.* Paragraph (b)(12) of this section does not apply to:

(A) Charge card accounts that require payment of outstanding balances in full at the end of each billing cycle;

(B) A billing cycle immediately following two consecutive billing cycles in which the consumer paid the entire balance in full, had a zero outstanding balance or had a credit balance; and

(C) A billing cycle where paying the minimum payment due for that billing cycle will pay the entire outstanding balance on the account for that billing cycle.

(13) *Format requirements.* The due date required by paragraph (b)(11) of this section shall be disclosed on the front of the first page of the periodic statement. The amount of the late payment fee and the annual percentage rate(s) required by paragraph (b)(11) of this section shall be stated in close proximity to the due date. The ending balance required by paragraph (b)(10) of this section and the disclosures required by paragraph (b)(12) of this section shall be disclosed closely proximate to the minimum payment due. The due date, late payment fee and annual percentage rate, ending balance, minimum payment due, and disclosures required by paragraph (b)(12) of this section shall be grouped together. Sample G–18(D) in appendix G to this part sets forth an example of how these terms may be grouped.

(14) *Deferred interest or similar transactions.* For accounts with an outstanding balance subject to a deferred interest or similar program, the date by which that outstanding balance must be paid in full in order to avoid the obligation to pay finance charges on such balance must be disclosed on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction. The disclosure provided pursuant to this paragraph must be substantially similar to Sample G–18(H) in appendix G to this part.

[76 FR 79772, Dec. 22, 2011, as amended at 81 FR 84369, Nov. 22, 2016]

§ 1026.8 Identifying transactions on periodic statements.

The creditor shall identify credit transactions on or with the first periodic statement that reflects the transaction by furnishing the following information, as applicable:

(a) *Sale credit.* (1) Except as provided in paragraph (a)(2) of this section, for each credit transaction involving the sale of property or services, the creditor must disclose the amount and date of the transaction, and either:

(i) A brief identification of the property or services purchased, for creditors and sellers that are the same or related; or

(ii) The seller's name; and the city and state or foreign country where the transaction took place. The creditor may omit the address or provide any suitable designation that helps the consumer to identify the transaction when the transaction took place at a location that is not fixed; took place in the consumer's home; or was a mail, Internet, or telephone order.

(2) Creditors need not comply with paragraph (a)(1) of this section if an actual copy of the receipt or other credit document is provided with the first periodic statement reflecting the transaction, and the amount of the transaction and either the date of the transaction to the consumer's account or the date of debiting the transaction are disclosed on the copy or on the periodic statement.

(b) *Nonsale credit.* For each credit transaction not involving the sale of property or services, the creditor must disclose a brief identification of the transaction; the amount of the transaction; and at least one of the following dates: The date of the transaction, the date the transaction was debited to the consumer's account, or, if the consumer signed the credit document, the date appearing on the document. If an actual copy of the receipt or other credit document is provided and that copy shows the amount and at least one of the specified dates, the brief identification may be omitted.

(c) *Alternative creditor procedures; consumer inquiries for clarification or documentation.* The following procedures apply to creditors that treat an inquiry for clarification or documentation as a notice of a billing error, including correcting the account in accordance with § 1026.13(e):

(1) Failure to disclose the information required by paragraphs (a) and (b) of this section is not a failure to comply with the regulation, provided that the creditor also maintains procedures

reasonably designed to obtain and provide the information. This applies to transactions that take place outside a state, as defined in § 1026.2(a)(26), whether or not the creditor maintains procedures reasonably adapted to obtain the required information.

(2) As an alternative to the brief identification for sale or nonsale credit, the creditor may disclose a number or symbol that also appears on the receipt or other credit document given to the consumer, if the number or symbol reasonably identifies that transaction with that creditor.

§ 1026.9 Subsequent disclosure requirements.

(a) *Furnishing statement of billing rights*—(1) *Annual statement.* The creditor shall mail or deliver the billing rights statement required by § 1026.6(a)(5) and (b)(5)(iii) at least once per calendar year, at intervals of not less than 6 months nor more than 18 months, either to all consumers or to each consumer entitled to receive a periodic statement under § 1026.5(b)(2) for any one billing cycle.

(2) *Alternative summary statement.* As an alternative to paragraph (a)(1) of this section, the creditor may mail or deliver, on or with each periodic statement, a statement substantially similar to Model Form G–4 or Model Form G–4(A) in appendix G to this part, as applicable. Creditors offering home-equity plans subject to the requirements of § 1026.40 may use either Model Form, at their option.

(b) *Disclosures for supplemental credit access devices and additional features.* (1) If a creditor, within 30 days after mailing or delivering the account-opening disclosures under § 1026.6(a)(1) or (b)(3)(ii)(A), as applicable, adds a credit feature to the consumer's account or mails or delivers to the consumer a credit access device, including but not limited to checks that access a credit card account, for which the finance charge terms are the same as those previously disclosed, no additional disclosures are necessary. Except as provided in paragraph (b)(3) of this section, after 30 days, if the creditor adds a credit feature or furnishes a credit access device (other than as a renewal, resupply, or the original issuance of a credit card) on the same finance charge terms, the creditor shall disclose, before the consumer uses the feature or device for the first time, that it is for use in obtaining credit under the terms previously disclosed.

(2) Except as provided in paragraph (b)(3) of this section, whenever a credit feature is added or a credit access device is mailed or delivered to the consumer, and the finance charge terms for the feature or device differ from disclosures previously given, the disclosures required by § 1026.6(a)(1) or (b)(3)(ii)(A), as applicable, that are applicable to the added feature or device shall be given before the consumer uses the feature or device for the first time.

(3) *Checks that access a credit card account.* (i) *Disclosures.* For open-end plans not subject to the requirements of § 1026.40, if checks that can be used to access a credit card account are provided more than 30 days after account-opening disclosures under § 1026.6(b) are mailed or delivered, or are provided within 30 days of the account-opening disclosures and the finance charge terms for the checks differ from the finance charge terms previously disclosed, the creditor shall disclose on the front of the page containing the checks the following terms in the form of a table with the headings, content, and form substantially similar to Sample G–19 in appendix G to this part:

(A) If a promotional rate, as that term is defined in § 1026.16(g)(2)(i) applies to the checks:

(*1*) The promotional rate and the time period during which the promotional rate will remain in effect;

(*2*) The type of rate that will apply (such as whether the purchase or cash advance rate applies) after the promotional rate expires, and the annual percentage rate that will apply after the promotional rate expires. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section; and

(*3*) The date, if any, by which the consumer must use the checks in order to qualify for the promotional rate. If the creditor will honor checks used after such date but will apply an annual percentage rate other than the promotional rate, the creditor must disclose this fact and the type of annual percentage rate that will apply if the consumer uses the checks after such date.

(B) If no promotional rate applies to the checks:

(*1*) The type of rate that will apply to the checks and the applicable annual percentage rate. For a variable-rate account, a creditor must disclose an annual percentage rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraph (b)(3)(ii) of this section.

(*2*) [Reserved]

(C) Any transaction fees applicable to the checks disclosed under §1026.6(b)(2)(iv); and

(D) Whether or not a grace period is given within which any credit extended by use of the checks may be repaid without incurring a finance charge due to a periodic interest rate. When disclosing whether there is a grace period, the phrase ''How to Avoid Paying Interest on Check Transactions'' shall be used as the row heading when a grace period applies to credit extended by the use of the checks. When disclosing the fact that no grace period exists for credit extended by use of the checks, the phrase ''Paying Interest'' shall be used as the row heading.

(ii) *Accuracy.* The disclosures in paragraph (b)(3)(i) of this section must be accurate as of the time the disclosures are mailed or delivered. A variable annual percentage rate is accurate if it was in effect within 60 days of when the disclosures are mailed or delivered.

(iii) *Variable rates.* If any annual percentage rate required to be disclosed pursuant to paragraph (b)(3)(i) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases shall not be included in the table.

(c) *Change in terms*—(1) *Rules affecting home-equity plans*—(i) *Written notice required.* For home-equity plans subject to the requirements of §1026.40, whenever any term required to be disclosed under §1026.6(a) is changed or the required minimum periodic payment is increased, the creditor shall mail or deliver written notice of the change to each consumer who may be affected. The notice shall be mailed or delivered at least 15 days prior to the effective date of the change. The 15-day timing requirement does not apply if the change has been agreed to by the consumer; the notice shall be given, however, before the effective date of the change.

(ii) *Notice not required.* For home-equity plans subject to the requirements of §1026.40, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge or when the change results from an agreement involving a court proceeding.

(iii) *Notice to restrict credit.* For home-equity plans subject to the requirements of §1026.40, if the creditor prohibits additional extensions of credit or reduces the credit limit pursuant to §1026.40(f)(3)(i) or (f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

(2) *Rules affecting open-end (not home-secured) plans*—(i) *Changes where written advance notice is required*—(A) *General.* For plans other than home-equity plans subject to the requirements of §1026.40, except as provided in paragraphs (c)(2)(i)(B), (c)(2)(iii) and (c)(2)(v) of this section, when a significant change in account terms as described in paragraph (c)(2)(ii) of this section is made, a creditor must provide a written notice of the change at least 45 days prior to the effective date of the change to each consumer who

may be affected. The 45-day timing requirement does not apply if the consumer has agreed to a particular change as described in paragraph (c)(2)(i)(B) of this section; for such changes, notice must be given in accordance with the timing requirements of paragraph (c)(2)(i)(B) of this section. Increases in the rate applicable to a consumer's account due to delinquency, default or as a penalty described in paragraph (g) of this section that are not due to a change in the contractual terms of the consumer's account must be disclosed pursuant to paragraph (g) of this section instead of paragraph (c)(2) of this section.

(B) *Changes agreed to by the consumer.* A notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change if the consumer agrees to the particular change. This paragraph (c)(2)(i)(B) applies only when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. The following are not considered agreements between the consumer and the creditor for purposes of this paragraph (c)(2)(i)(B): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account; and the consumer's request to reopen a closed account or to upgrade an existing account to another account offered by the creditor with different credit or other features.

(ii) *Significant changes in account terms.* For purposes of this section, a ''significant change in account terms'' means a change to a term required to be disclosed under §1026.6(b)(1) and (b)(2), an increase in the required minimum periodic payment, a change to a term required to be disclosed under §1026.6(b)(4), or the acquisition of a security interest.

(iii) *Charges not covered by §1026.6(b)(1) and (b)(2).* Except as provided in paragraph (c)(2)(vi) of this section, if a creditor increases any component of a charge, or introduces a new charge, required to be disclosed under §1026.6(b)(3) that is not a significant change in account terms as described in paragraph (c)(2)(ii) of this section, a creditor must either, at its option:

(A) Comply with the requirements of paragraph (c)(2)(i) of this section; or

(B) Provide notice of the amount of the charge before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure of the charge. The notice may be provided orally or in writing.

(iv) *Disclosure requirements*—(A) *Significant changes in account terms.* If a creditor makes a significant change in account terms as described in paragraph (c)(2)(ii) of this section, the notice provided pursuant to paragraph (c)(2)(i) of this section must provide the following information:

(*1*) A summary of the changes made to terms required by §1026.6(b)(1) and (b)(2) or §1026.6(b)(4), a description of any increase in the required minimum periodic payment, and a description of any security interest being acquired by the creditor;

(*2*) A statement that changes are being made to the account;

(*3*) For accounts other than credit card accounts under an open-end (not home-secured) consumer credit plan subject to §1026.9(c)(2)(iv)(B), a statement indicating the consumer has the right to opt out of these changes, if applicable, and a reference to additional information describing the opt-out right provided in the notice, if applicable;

(*4*) The date the changes will become effective;

(*5*) If applicable, a statement that the consumer may find additional information about the summarized changes, and other changes to the account, in the notice;

(*6*) If the creditor is changing a rate on the account, other than a penalty rate, a statement that if a penalty rate currently applies to the consumer's account, the new rate described in the notice will not apply to the consumer's account until the consumer's account balances are no longer subject to the penalty rate;

(*7*) If the change in terms being disclosed is an increase in an annual percentage rate, the balances to which the increased rate will be applied. If applicable, a statement identifying the balances to which the current rate will continue to apply as of the effective date of the change in terms; and

(*8*) If the change in terms being disclosed is an increase in an annual percentage rate for a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

(B) *Right to reject for credit card accounts under an open-end (not home-secured) consumer credit plan.* In addition to the disclosures in paragraph (c)(2)(iv)(A) of this section, if a card issuer makes a significant change in account terms on a credit card account under an open-end (not home-secured) consumer credit plan, the creditor must generally provide the following information on the notice provided pursuant to paragraph (c)(2)(i) of this section. This information is not required to be provided in the case of an increase in the required minimum periodic payment, an increase in a fee as a result of a reevaluation of a determination made under § 1026.52(b)(1)(i) or an adjustment to the safe harbors in § 1026.52(b)(1)(ii) to reflect changes in the Consumer Price Index, a change in an annual percentage rate applicable to a consumer's account, an increase in a fee previously reduced consistent with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation if the amount of the increased fee does not exceed the amount of that fee prior to the reduction, or when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment:

(*1*) A statement that the consumer has the right to reject the change or changes prior to the effective date of the changes, unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for that payment;

(*2*) Instructions for rejecting the change or changes, and a toll-free telephone number that the consumer may use to notify the creditor of the rejection; and

(*3*) If applicable, a statement that if the consumer rejects the change or changes, the consumer's ability to use the account for further advances will be terminated or suspended.

(C) *Changes resulting from failure to make minimum periodic payment within 60 days from due date for credit card accounts under an open-end (not home-secured) consumer credit plan.* For a credit card account under an open-end (not home-secured) consumer credit plan:

(*1*) If the significant change required to be disclosed pursuant to paragraph (c)(2)(i) of this section is an increase in an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (c)(2)(i) of this section must state that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

(*2*) If the significant change required to be disclosed pursuant to paragraph (c)(2)(i) of this section is an increase in a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (c)(2)(i) of this section must also state the reason for the increase.

(D) *Format requirements*—(*1*) *Tabular format.* The summary of changes described in paragraph (c)(2)(iv)(A)(*1*) of this section must be in a tabular format (except for a summary of any increase in the required minimum periodic payment, a summary of a term required to be disclosed under § 1026.6(b)(4) that is not required to be disclosed under § 1026.6(b)(1) and (b)(2), or a description of any security interest being acquired by the creditor), with headings and format substantially similar to any of the account-opening tables found in G–17 in appendix G to this part. The table must disclose the changed term and information relevant to the change, if that relevant information is required by §1026.6(b)(1) and (b)(2). The new terms shall be described in the same level of detail as required when disclosing the terms under §1026.6(b)(2).

(*2*) *Notice included with periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(*1*) of this section must be disclosed on the front of any page of the statement. The summary of changes described in paragraph (c)(2)(iv)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(*2*) through (c)(2)(iv)(A)(*7*) and, if applicable, paragraphs (c)(2)(iv)(A)(*8*), (c)(2)(iv)(B), and (c)(2)(iv)(C) of this section, and be substantially similar to the format shown in Sample G–20 or G–21 in appendix G to this part.

(*3*) *Notice provided separately from periodic statement.* If a notice required by paragraph (c)(2)(i) of this section is not included on or with a periodic statement, the information described in paragraph (c)(2)(iv)(A)(*1*) of this section must, at the creditor's option, be disclosed on the front of the first page of the notice or segregated on a separate page from other information given with the notice. The summary of changes required to be in a table pursuant to paragraph (c)(2)(iv)(A)(*1*) of this section may be on more than one page, and may use both the front and reverse sides, so long as the table begins on the front of the first page of the notice and there is a reference on the first page indicating that the table continues on the following page. The summary of changes described in paragraph (c)(2)(iv)(A)(*1*) of this section must immediately follow the information described in paragraph (c)(2)(iv)(A)(*2*) through (c)(2)(iv)(A)(*7*) and, if applicable, paragraphs (c)(2)(iv)(A)(*8*), (c)(2)(iv)(B), and (c)(2)(iv)(C), of this section, substantially similar to the format shown in Sample G–20 or G–21 in appendix G to this part.

(v) *Notice not required.* For open-end plans (other than home equity plans subject to the requirements of §1026.40) a creditor is not required to provide notice under this section:

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge; suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

(B) When the change is an increase in an annual percentage rate or fee upon the expiration of a specified period of time, provided that:

(*1*) Prior to commencement of that period, the creditor disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate or fee that would apply after expiration of the period;

(*2*) The disclosure of the length of the period and the annual percentage rate or fee that would apply after expiration of the period are set forth in close proximity and in equal prominence to the first listing of the disclosure of the rate or fee that applies during the specified period of time; and

(*3*) The annual percentage rate or fee that applies after that period does not exceed the rate or fee disclosed pursuant to paragraph (c)(2)(v)(B)(*1*) of this paragraph or, if the rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*) of this section was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that was used to calculate the variable rate disclosed pursuant to paragraph (c)(2)(v)(B)(*1*);

(C) When the change is an increase in a variable annual percentage rate in accordance with a credit card or other account agreement that provides for changes in the rate according to operation of an index that is not under the control of the creditor and is available to the general public; or

(D) When the change is an increase in an annual percentage rate, a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (b)(2)(ix) or (b)(2)(xii), or the required minimum periodic payment due to the completion of a workout or temporary hardship arrangement by the consumer or the consumer's failure to comply with the terms of such an arrangement, provided that:

(*1*) The annual percentage rate or fee or charge applicable to a category of transactions or the required minimum periodic payment following any such increase does not exceed the rate or fee or charge or required minimum periodic payment that applied to that category of transactions prior to commencement of the arrangement or, if the rate that applied to a category of transactions prior to the commencement of the workout or temporary hardship arrangement was a variable rate, the rate following any such increase is a variable rate determined by the same formula (index and margin) that applied to the category of transactions prior to commencement of the workout or temporary hardship arrangement; and

(*2*) The creditor has provided the consumer, prior to the commencement of such arrangement, with a clear and conspicuous disclosure of the terms of the arrangement (including any increases due to such completion or failure). This disclosure must generally be provided in writing. However, a creditor may provide the disclosure of the terms of the arrangement orally by telephone, provided that the creditor mails or delivers a written disclosure of the terms of the arrangement to the consumer as soon as reasonably practicable after the oral disclosure is provided.

(vi) *Reduction of the credit limit.* For open-end plans that are not subject to the requirements of § 1026.40, if a creditor decreases the credit limit on an account, advance notice of the decrease must be provided before an over-the-limit fee or a penalty rate can be imposed solely as a result of the consumer exceeding the newly decreased credit limit. Notice shall be provided in writing or orally at least 45 days prior to imposing the over-the-limit fee or penalty rate and shall state that the credit limit on the account has been or will be decreased.

(d) *Finance charge imposed at time of transaction.* (1) Any person, other than the card issuer, who imposes a finance charge at the time of honoring a consumer's credit card, shall disclose the amount of that finance charge prior to its imposition.

(2) The card issuer, other than the person honoring the consumer's credit card, shall have no responsibility for the disclosure required by paragraph (d)(1) of this section, and shall not consider any such charge for the purposes of §§ 1026.60, 1026.6 and 1026.7.

(e) *Disclosures upon renewal of credit or charge card*—(1) *Notice prior to renewal.* A card issuer that imposes any annual or other periodic fee to renew a credit or charge card account of the type subject to § 1026.60, including any fee based on account activity or inactivity or any card issuer that has changed or amended any term of a cardholder's account required to be disclosed under § 1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, shall mail or deliver written notice of the renewal to the cardholder. If the card issuer imposes any annual or other periodic fee for renewal, the notice shall be provided at least 30 days or one billing cycle, whichever is less, before the mailing or the delivery of the periodic statement on which any renewal fee is initially charged to the account. If the card issuer has changed or amended any term required to be disclosed under § 1026.6(b)(1) and (b)(2) and such changed or amended term has not previously been disclosed to the consumer, the notice shall be provided at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card. The notice shall contain the following information:

(i) The disclosures contained in § 1026.60(b)(1) through (b)(7) that would apply if the account were renewed; and

(ii) How and when the cardholder may terminate credit availability under the account to avoid paying the renewal fee, if applicable.

(2) *Notification on periodic statements.* The disclosures required by this paragraph may be made on or with a periodic statement. If any of the disclosures are provided on the back of a periodic statement, the card issuer shall include a reference to those disclosures on the front of the statement.

(f) *Change in credit card account insurance provider*—(1) *Notice prior to change.* If a credit card issuer plans to change the provider of insurance for repayment of all or part of the outstanding balance of an open-end credit card account of the type subject to §1026.60, the card issuer shall mail or deliver to the cardholder written notice of the change not less than 30 days before the change in provider occurs. The notice shall also include the following items, to the extent applicable:

(i) Any increase in the rate that will result from the change;

(ii) Any substantial decrease in coverage that will result from the change; and

(iii) A statement that the cardholder may discontinue the insurance.

(2) *Notice when change in provider occurs.* If a change described in paragraph (f)(1) of this section occurs, the card issuer shall provide the cardholder with a written notice no later than 30 days after the change, including the following items, to the extent applicable:

(i) The name and address of the new insurance provider;

(ii) A copy of the new policy or group certificate containing the basic terms of the insurance, including the rate to be charged; and

(iii) A statement that the cardholder may discontinue the insurance.

(3) *Substantial decrease in coverage.* For purposes of this paragraph, a substantial decrease in coverage is a decrease in a significant term of coverage that might reasonably be expected to affect the cardholder's decision to continue the insurance. Significant terms of coverage include, for example, the following:

(i) Type of coverage provided;

(ii) Age at which coverage terminates or becomes more restrictive;

(iii) Maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or other term affecting the dollar amount of coverage or benefits provided;

(iv) Eligibility requirements and number and identity of persons covered;

(v) Definition of a key term of coverage such as disability;

(vi) Exclusions from or limitations on coverage; and

(vii) Waiting periods and whether coverage is retroactive.

(4) *Combined notification.* The notices required by paragraph (f)(1) and (2) of this section may be combined provided the timing requirement of paragraph (f)(1) of this section is met. The notices may be provided on or with a periodic statement.

(g) *Increase in rates due to delinquency or default or as a penalty*—(1) *Increases subject to this section.* For plans other than home-equity plans subject to the requirements of §1026.40, except as provided in paragraph (g)(4) of this section, a creditor must provide a written notice to each consumer who may be affected when:

(i) A rate is increased due to the consumer's delinquency or default; or

(ii) A rate is increased as a penalty for one or more events specified in the account agreement, such as making a late payment or obtaining an extension of credit that exceeds the credit limit.

(2) *Timing of written notice.* Whenever any notice is required to be given pursuant to paragraph (g)(1) of this section, the creditor shall provide written notice of the increase in rates at least 45 days prior to the effective date of the increase. The notice must be provided after the occurrence of the events described in paragraphs (g)(1)(i) and (g)(1)(ii) of this section that trigger the imposition of the rate increase.

(3)(i) *Disclosure requirements for rate increases*—(A) *General.* If a creditor is increasing the rate due to delinquency or default or as a penalty, the creditor must provide the following information on the notice sent pursuant to paragraph (g)(1) of this section:

(*1*) A statement that the delinquency or default rate or penalty rate, as applicable, has been triggered;

(*2*) The date on which the delinquency or default rate or penalty rate will apply;

(*3*) The circumstances under which the delinquency or default rate or penalty rate, as applicable, will cease to apply to the consumer's account, or that the delinquency or default rate or penalty rate will remain in effect for a potentially indefinite time period;

(*4*) A statement indicating to which balances the delinquency or default rate or penalty rate will be applied;

(*5*) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless a consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(*6*) For a credit card account under an open-end (not home-secured) consumer credit plan, a statement of no more than four principal reasons for the rate increase, listed in their order of importance.

(B) *Rate increases resulting from failure to make minimum periodic payment within 60 days from due date.* For a credit card account under an open-end (not home-secured) consumer credit plan, if the rate increase required to be disclosed pursuant to paragraph (g)(1) of this section is an increase pursuant to § 1026.55(b)(4) based on the consumer's failure to make a minimum periodic payment within 60 days from the due date for that payment, the notice provided pursuant to paragraph (g)(1) of this section must also state that the increase will cease to apply to transactions that occurred prior to or within 14 days of provision of the notice, if the creditor receives six consecutive required minimum periodic payments on or before the payment due date, beginning with the first payment due following the effective date of the increase.

(ii) *Format requirements.* (A) If a notice required by paragraph (g)(1) of this section is included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement, above the notice described in paragraph (c)(2)(iv) of this section if that notice is provided on the same statement.

(B) If a notice required by paragraph (g)(1) of this section is not included on or with a periodic statement, the information described in paragraph (g)(3)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the increase in the rate to a penalty rate may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(4) of this section.

(4) *Exception for decrease in credit limit.* A creditor is not required to provide a notice pursuant to paragraph (g)(1) of this section prior to increasing the rate for obtaining an extension of credit that exceeds the credit limit, provided that:

(i) The creditor provides at least 45 days in advance of imposing the penalty rate a notice, in writing, that includes:

(A) A statement that the credit limit on the account has been or will be decreased.

(B) A statement indicating the date on which the penalty rate will apply, if the outstanding balance exceeds the credit limit as of that date;

(C) A statement that the penalty rate will not be imposed on the date specified in paragraph (g)(4)(i)(B) of this section, if the outstanding balance does not exceed the credit limit as of that date;

(D) The circumstances under which the penalty rate, if applied, will cease to apply to the account, or that the penalty rate, if applied, will remain in effect for a potentially indefinite time period;

(E) A statement indicating to which balances the penalty rate may be applied; and

(F) If applicable, a description of any balances to which the current rate will continue to apply as of the effective date of the rate increase, unless the consumer fails to make a minimum periodic payment within 60 days from the due date for that payment; and

(ii) The creditor does not increase the rate applicable to the consumer's account to the penalty rate if the outstanding balance does not exceed the credit limit on the date set forth in the notice and described in paragraph (g)(4)(i)(B) of this section.

(iii)(A) If a notice provided pursuant to paragraph (g)(4)(i) of this section is included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be in the form of a table and provided on the front of any page of the periodic statement; or

(B) If a notice required by paragraph (g)(4)(i) of this section is not included on or with a periodic statement, the information described in paragraph (g)(4)(i) of this section must be disclosed on the front of the first page of the notice. Only information related to the reduction in credit limit may be included with the notice, except that this notice may be combined with a notice described in paragraph (c)(2)(iv) or (g)(1) of this section.

(h) *Consumer rejection of certain significant changes in terms*—(1) *Right to reject*. If paragraph (c)(2)(iv)(B) of this section requires disclosure of the consumer's right to reject a significant change to an account term, the consumer may reject that change by notifying the creditor of the rejection before the effective date of the change.

(2) *Effect of rejection*. If a creditor is notified of a rejection of a significant change to an account term as provided in paragraph (h)(1) of this section, the creditor must not:

(i) Apply the change to the account;

(ii) Impose a fee or charge or treat the account as in default solely as a result of the rejection; or

(iii) Require repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in §1026.55(c)(2).

(3) *Exception*. Section 1026.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment.

EFFECTIVE DATE NOTE: At 86 FR 69781, Dec. 8, 2021, §1026.9 was amended by revising paragraphs (c)(1)(ii) and (c)(2)(v)(A), effective Apr. 1,2021. For the convenience of the user, the revised text is set forth as follows:

§ 1026.9 Subsequent disclosure requirements.

* * * * *

(c) * * *

(1) * * *

(ii) *Notice not required*. For home-equity plans subject to the requirements of §1026.40, a creditor is not required to provide notice under this section when the change involves a reduction of any component of a finance or other charge (except that on or after October 1, 2022, this provision on when the change involves a reduction of any component of a finance or other charge does not apply to any change in the margin when a LIBOR index is replaced, as permitted by §1026.40(f)(3)(ii)(A) or (B)) or when the change results from an agreement involving a court proceeding.

* * * * *

(2) * * *

(v) * * *

(A) When the change involves charges for documentary evidence; a reduction of any component of a finance or other charge (except that on or after October 1, 2022, this provision on when the change involves a reduction of any component of a finance or other charge does not apply to any change in the margin when a LIBOR index is replaced, as permitted by §1026.55(b)(7)(i) or (ii)); suspension of future credit privileges (except as provided in paragraph (c)(2)(vi) of this section) or termination of an account or plan; when the change results from an agreement involving a court proceeding; when the change is an extension of the grace period; or if the change is applicable only to checks that access a credit card account and the changed terms are disclosed on or with the checks in accordance with paragraph (b)(3) of this section;

§ 1026.10 Payments.

(a) *General rule*. A creditor shall credit a payment to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge or except as provided in paragraph (b) of this section.

(b) *Specific requirements for payments*—(1) *General rule*. A creditor may specify reasonable requirements for payments that enable most consumers to make conforming payments.

(2) *Examples of reasonable requirements for payments*. Reasonable requirements for making payment may include:

(i) Requiring that payments be accompanied by the account number or payment stub;

(ii) Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person (except as provided in paragraph (b)(3) of this section), provided that such cut-off times shall be no earlier than 5 p.m. on the payment due date at the location specified by the creditor for the receipt of such payments;

(iii) Specifying that only checks or money orders should be sent by mail;

(iv) Specifying that payment is to be made in U.S. dollars; or

(v) Specifying one particular address for receiving payments, such as a post office box.

(3) *In-person payments on credit card accounts*—(i) *General.* Notwithstanding §1026.10(b), payments on a credit card account under an open-end (not home-secured) consumer credit plan made in person at a branch or office of a card issuer that is a financial institution prior to the close of business of that branch or office shall be considered received on the date on which the consumer makes the payment. A card issuer that is a financial institution shall not impose a cut-off time earlier than the close of business for any such payments made in person at any branch or office of the card issuer at which such payments are accepted. Notwithstanding §1026.10(b)(2)(ii), a card issuer may impose a cut-off time earlier than 5 p.m. for such payments, if the close of business of the branch or office is earlier than 5 p.m.

(ii) *Financial institution.* For purposes of paragraph (b)(3) of this section, ''financial institution'' shall mean a bank, savings association, or credit union.

(4) *Nonconforming payments*—(i) *In general.* Except as provided in paragraph (b)(4)(ii) of this section, if a creditor specifies, on or with the periodic statement, requirements for the consumer to follow in making payments as permitted under this §1026.10, but accepts a payment that does not conform to the requirements, the creditor shall credit the payment within five days of receipt.

(ii) *Payment methods promoted by creditor.* If a creditor promotes a method for making payments, such payments shall be considered conforming payments in accordance with this paragraph (b) and shall be credited to the consumer's account as of the date of receipt, except when a delay in crediting does not result in a finance or other charge.

(c) *Adjustment of account.* If a creditor fails to credit a payment, as required by paragraphs (a) or (b) of this section, in time to avoid the imposition of finance or other charges, the creditor shall adjust the consumer's account so that the charges imposed are credited to the consumer's account during the next billing cycle.

(d) *Crediting of payments when creditor does not receive or accept payments on due date*—(1) *General.* Except as provided in paragraph (d)(2) of this section, if a creditor does not receive or accept payments by mail on the due date for payments, the creditor may generally not treat a payment received the next business day as late for any purpose. For purposes of this paragraph (d), the ''next business day'' means the next day on which the creditor accepts or receives payments by mail.

(2) *Payments accepted or received other than by mail.* If a creditor accepts or receives payments made on the due date by a method other than mail, such as electronic or telephone payments, the creditor is not required to treat a payment made by that method on the next business day as timely, even if it does not accept mailed payments on the due date.

(e) *Limitations on fees related to method of payment.* For credit card accounts under an open-end (not home-secured) consumer credit plan, a creditor may not impose a separate fee to allow consumers to make a payment by any method, such as mail, electronic, or telephone payments, unless such payment method involves an expedited service by a customer service representative of the creditor. For purposes of paragraph (e) of this section, the term ''creditor'' includes a third party that collects, receives, or processes payments on behalf of a creditor.

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

§ 1026.11 Treatment of credit balances; account termination.

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

(1) Credit the amount of the credit balance to the consumer's account;

(2) Refund any part of the remaining credit balance within seven business days from receipt of a written request from the consumer;

(3) 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. 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.

(b) *Account termination.* (1) A creditor shall not terminate an account prior to its expiration date solely because the consumer does not incur a finance charge.

(2) Nothing in paragraph (b)(1) of this section prohibits a creditor from terminating an account that is inactive for three or more consecutive months. An account is inactive for purposes of this paragraph if no credit has been extended (such as by purchase, cash advance or balance transfer) and if the account has no outstanding balance.

(c) *Timely settlement of estate debts*—(1) *General rule.* (i) *Reasonable policies and procedures required.* For credit card accounts under an open-end (not home-secured) consumer credit plan, card issuers must adopt reasonable written policies and procedures designed to ensure that an administrator of an estate of a deceased accountholder can determine the amount of and pay any balance on the account in a timely manner.

(ii) *Application to joint accounts.* Paragraph (c) of this section does not apply to the account of a deceased consumer if a joint accountholder remains on the account.

(2) *Timely statement of balance*—(i) *Requirement.* Upon request by the administrator of an estate, a card issuer must provide the administrator with the amount of the balance on a deceased consumer's account in a timely manner.

(ii) *Safe harbor.* For purposes of paragraph (c)(2)(i) of this section, providing the amount of the balance on the account within 30 days of receiving the request is deemed to be timely.

(3) *Limitations after receipt of request from administrator*—(i) *Limitation on fees and increases in annual percentage rates.* After receiving a request from the administrator of an estate for the amount of the balance on a deceased consumer's account, a card issuer must not impose any fees on the account (such as a late fee, annual fee, or over-the-limit fee) or increase any annual percentage rate, except as provided by § 1026.55(b)(2).

(ii) *Limitation on trailing or residual interest.* A card issuer must waive or rebate any additional finance charge due to a periodic interest rate if payment in full of the balance disclosed pursuant to paragraph (c)(2) of this section is received within 30 days after disclosure.

§ 1026.12 Special credit card provisions.

(a) *Issuance of credit cards.* Regardless of the purpose for which a credit card is to be used, including business, commercial, or agricultural use, no credit card shall be issued to any person except:

(1) In response to an oral or written request or application for the card; or

(2) As a renewal of, or substitute for, an accepted credit card.

(b) *Liability of cardholder for unauthorized use*—(1)(i) *Definition of unauthorized use.* For purposes of this section, the term ''unauthorized use'' means the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit.

(ii) *Limitation on amount.* The liability of a cardholder for unauthorized use of a credit card shall not exceed the lesser of $50 or the amount of money, property, labor, or services obtained by the unauthorized use before notification to the card issuer under paragraph (b)(3) of this section.

(2) *Conditions of liability.* A cardholder shall be liable for unauthorized use of a credit card only if:

(i) The credit card is an accepted credit card;

(ii) The card issuer has provided adequate notice of the cardholder's maximum potential liability and of means by which the card issuer may be notified of loss or theft of the card. The notice shall state that the cardholder's liability shall not exceed $50 (or any lesser amount) and that the cardholder may give oral or written notification, and shall describe a means of notification (for example, a telephone number, an address, or both); and

(iii) The card issuer has provided a means to identify the cardholder on the account or the authorized user of the card.

(3) *Notification to card issuer.* Notification to a card issuer is given when steps have been taken as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information about the loss, theft, or possible unauthorized use of a credit card, regardless of whether any particular officer, employee, or agent of the card issuer does, in fact, receive the information. Notification may be given, at the option of the person giving it, in person, by telephone, or in writing. Notification in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier.

(4) *Effect of other applicable law or agreement.* If state law or an agreement between a cardholder and the card issuer imposes lesser liability than that provided in this paragraph, the lesser liability shall govern.

(5) *Business use of credit cards.* If 10 or more credit cards are issued by one card issuer for use by the employees of an organization, this section does not prohibit the card issuer and the organization from agreeing to liability for unauthorized use without regard to this section. However, liability for unauthorized use may be imposed on an employee of the organization, by either the card issuer or the organization, only in accordance with this section.

(c) *Right of cardholder to assert claims or defenses against card issuer*—(1) *General rule.* When a person who honors a credit card fails to resolve satisfactorily a dispute as to property or services purchased with the credit card in a consumer credit transaction, the cardholder may assert against the card issuer all claims (other than tort claims) and defenses arising out of the transaction and relating to the failure to resolve the dispute. The cardholder may withhold payment up to the amount of credit outstanding for the property or services that gave rise to the dispute and any finance or other charges imposed on that amount.

(2) *Adverse credit reports prohibited.* If, in accordance with paragraph (c)(1) of this section, the cardholder withholds payment of the amount of credit outstanding for the disputed transaction, the card issuer shall not report that amount as delinquent until the dispute is settled or judgment is rendered.

(3) *Limitations*—(i) *General.* The rights stated in paragraphs (c)(1) and (c)(2) of this section apply only if:

(A) The cardholder has made a good faith attempt to resolve the dispute with the person honoring the credit card; and

(B) The amount of credit extended to obtain the property or services that result in the assertion of the claim or defense by the cardholder exceeds $50, and the disputed transaction occurred in the same state as the cardholder's current designated address or, if not within the same state, within 100 miles from that address.

(ii) *Exclusion.* The limitations stated in paragraph (c)(3)(i)(B) of this section shall not apply when the person honoring the credit card:

(A) Is the same person as the card issuer;

(B) Is controlled by the card issuer directly or indirectly;

(C) Is under the direct or indirect control of a third person that also directly or indirectly controls the card issuer;

(D) Controls the card issuer directly or indirectly;

(E) Is a franchised dealer in the card issuer's products or services; or

(F) Has obtained the order for the disputed transaction through a mail solicitation made or participated in by the card issuer.

(d) *Offsets by card issuer prohibited*—(1) *General rule.* A card issuer may not take any action, either before or after termination of credit card privileges, to offset a cardholder's indebtedness arising from a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer.

(2) *Rights of the card issuer.* This paragraph (d) does not alter or affect the right of a card issuer acting under state or Federal law to do any of the following with regard to funds of a cardholder held on deposit with the card issuer if the same procedure is constitutionally available to creditors generally: Obtain or enforce a consensual security interest in the funds; attach or otherwise levy upon the funds; or obtain or enforce a court order relating to the funds.

(3) *Periodic deductions.* (i) This paragraph (d) does not prohibit a plan, if authorized in writing by the cardholder, under which the card issuer may periodically deduct all or part of the cardholder's credit card debt from a deposit account held with the card issuer (subject to the limitations in §1026.13(d)(1)).

(ii) With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61, for purposes of this paragraph (d)(3), ''periodically'' means no more frequently than once per calendar month, such as on a monthly due date disclosed on the applicable periodic statement in accordance with the requirements of §1026.7(b)(11)(i)(A) or on an earlier date in each calendar month in accordance with a written authorization signed by the consumer.

(e) *Prompt notification of returns and crediting of refunds.* (1) When a creditor other than the card issuer accepts the return of property or forgives a debt for services that is to be reflected as a credit to the consumer's credit card account, that creditor shall, within 7 business days from accepting the return or forgiving the debt, transmit a credit statement to the card issuer through the card issuer's normal channels for credit statements.

(2) The card issuer shall, within 3 business days from receipt of a credit statement, credit the consumer's account with the amount of the refund.

(3) If a creditor other than a card issuer routinely gives cash refunds to consumers paying in cash, the creditor shall also give credit or cash refunds to consumers using credit cards, unless it discloses at the time the transaction is consummated that credit or cash refunds for returns are not given. This section does not require refunds for returns nor does it prohibit refunds in kind.

(f) *Discounts; tie-in arrangements.* No card issuer may, by contract or otherwise:

(1) Prohibit any person who honors a credit card from offering a discount to a consumer to induce the consumer to pay by cash, check, or similar means rather than by use of a credit card or its underlying account for the purchase of property or services; or

(2) Require any person who honors the card issuer's credit card to open or maintain any account or obtain any other service not essential to the operation of the credit card plan from the card issuer or any other person, as a condition of participation in a credit card plan. If maintenance of an account for clearing purposes is determined to be essential to the operation of the credit card plan, it may be required only if no service charges or minimum balance requirements are imposed.

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 1026) or Regulation E (12 CFR part 1005) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR

1005.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

[76 FR 79772, Dec. 22, 2011, as amended at 81 FR 84369, Nov. 22, 2016]

§ 1026.13 Billing error resolution.

(a) *Definition of billing error.* For purposes of this section, the term billing error means:

(1) A reflection on or with a periodic statement of an extension of credit that is not made to the consumer or to a person who has actual, implied, or apparent authority to use the consumer's credit card or open-end credit plan.

(2) A reflection on or with a periodic statement of an extension of credit that is not identified in accordance with the requirements of §§ 1026.7(a)(2) or (b)(2), as applicable, and 1026.8.

(3) A reflection on or with a periodic statement of an extension of credit for property or services not accepted by the consumer or the consumer's designee, or not delivered to the consumer or the consumer's designee as agreed.

(4) A reflection on a periodic statement of the creditor's failure to credit properly a payment or other credit issued to the consumer's account.

(5) A reflection on a periodic statement of a computational or similar error of an accounting nature that is made by the creditor.

(6) A reflection on a periodic statement of an extension of credit for which the consumer requests additional clarification, including documentary evidence.

(7) The creditor's failure to mail or deliver a periodic statement to the consumer's last known address if that address was received by the creditor, in writing, at least 20 days before the end of the billing cycle for which the statement was required.

(b) *Billing error notice.* A billing error notice is a written notice from a consumer that:

(1) Is received by a creditor at the address disclosed under § 1026.7(a)(9) or (b)(9), as applicable, no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error;

(2) Enables the creditor to identify the consumer's name and account number; and

(3) To the extent possible, indicates the consumer's belief and the reasons for the belief that a billing error exists, and the type, date, and amount of the error.

(c) *Time for resolution; general procedures.* (1) The creditor shall mail or deliver written acknowledgment to the consumer within 30 days of receiving a billing error notice, unless the creditor has complied with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within the 30-day period; and

(2) The creditor shall comply with the appropriate resolution procedures of paragraphs (e) and (f) of this section, as applicable, within 2 complete billing cycles (but in no event later than 90 days) after receiving a billing error notice.

(d) *Rules pending resolution.* Until a billing error is resolved under paragraph (e) or (f) of this section, the following rules apply:

(1) *Consumer's right to withhold disputed amount; collection action prohibited.* The consumer need not pay (and the creditor may not try to collect) any portion of any required payment that the consumer believes is related to the disputed amount (including related finance or other charges). If the cardholder has enrolled in an automatic payment plan offered by the card issuer and has agreed to pay the credit card indebtedness by periodic deductions from the cardholder's deposit account, the card issuer shall not deduct any part of the disputed amount or related finance or other charges if a billing error notice is received any time up to 3 business days before the scheduled payment date.

(2) *Adverse credit reports prohibited.* The creditor or its agent shall not (directly or indirectly) make or threaten to make an adverse report to any person about the consumer's credit standing, or report that an amount or account is delinquent, because the consumer failed to pay the disputed amount or related finance or other charges.

(3) *Acceleration of debt and restriction of account prohibited.* A creditor shall not accelerate any part of the consumer's indebtedness or restrict or close a consumer's account solely because the consumer has exercised in good faith rights provided by this section. A creditor may be subject to the forfeiture penalty under 15 U.S.C. 1666(e) for failure to comply with any of the requirements of this section.

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

(e) *Procedures if billing error occurred as asserted.* If a creditor determines that a billing error occurred as asserted, it shall within the time limits in paragraph (c)(2) of this section:

(1) Correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable; and

(2) Mail or deliver a correction notice to the consumer.

(f) *Procedures if different billing error or no billing error occurred.* If, after conducting a reasonable investigation, a creditor determines that no billing error occurred or that a different billing error occurred from that asserted, the creditor shall within the time limits in paragraph (c)(2) of this section:

(1) Mail or deliver to the consumer an explanation that sets forth the reasons for the creditor's belief that the billing error alleged by the consumer is incorrect in whole or in part;

(2) Furnish copies of documentary evidence of the consumer's indebtedness, if the consumer so requests; and

(3) If a different billing error occurred, correct the billing error and credit the consumer's account with any disputed amount and related finance or other charges, as applicable.

(g) *Creditor's rights and duties after resolution.* If a creditor, after complying with all of the requirements of this section, determines that a consumer owes all or part of the disputed amount and related finance or other charges, the creditor:

(1) Shall promptly notify the consumer in writing of the time when payment is due and the portion of the disputed amount and related finance or other charges that the consumer still owes;

(2) Shall allow any time period disclosed under §1026.6(a)(1) or (b)(2)(v), as applicable, and §1026.7(a)(8) or (b)(8), as applicable, during which the consumer can pay the amount due under paragraph (g)(1) of this section without incurring additional finance or other charges;

(3) May report an account or amount as delinquent because the amount due under paragraph (g)(1) of this section remains unpaid after the creditor has allowed any time period disclosed under §1026.6(a)(1) or (b)(2)(v), as applicable, and §1026.7(a)(8) or (b)(8), as applicable or 10 days (whichever is longer) during which the consumer can pay the amount; but

(4) May not report that an amount or account is delinquent because the amount due under paragraph (g)(1) of the section remains unpaid, if the creditor receives (within the time allowed for payment in paragraph (g)(3) of this section) further written notice from the consumer that any portion of the billing error is still in dispute, unless the creditor also:

(i) Promptly reports that the amount or account is in dispute;

(ii) Mails or delivers to the consumer (at the same time the report is made) a written notice of the name and address of each person to whom the creditor makes a report; and

(iii) Promptly reports any subsequent resolution of the reported delinquency to all persons to whom the creditor has made a report.

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

(i) *Relation to Electronic Fund Transfer Act and Regulation E.* A creditor shall comply with the requirements of Regulation E, 12 CFR 1005.11, and 1005.18(e) as applicable, governing error resolution rather than those of paragraphs (a), (b), (c), (e), (f), and (h) of this section if:

(1) Except with respect to a prepaid account as defined in §1026.61, an extension of credit that is incident to an electronic fund transfer occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; or

(2) With regard to a covered separate credit feature and an asset feature of a prepaid account where both are accessible by a hybrid prepaid-credit card as defined in §1026.61, an extension of credit that is incident to an electronic fund transfer occurs when the hybrid prepaid-credit card accesses both funds in the asset feature of the prepaid account and a credit extension from the credit feature with respect to a particular transaction.

[76 FR 79772, Dec. 22, 2011, as amended at 81 FR 84369, Nov. 22, 2016]

§ 1026.14 Determination of annual percentage rate.

(a) *General rule.* The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate. An annual percentage rate shall be considered accurate if it is not more than ⅛th of 1 percentage point above or below the annual percentage rate determined in accordance with this section. An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this part if:

(1) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(2) 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.

(b) *Annual percentage rate—in general.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§1026.60, 1026.40, 1026.6, 1026.7(a)(4) or (b)(4), 1026.9, 1026.15, 1026.16, 1026.26, 1026.55, and 1026.56 shall be computed by multiplying each periodic rate by the number of periods in a year.

(c) *Optional effective annual percentage rate for periodic statements for creditors offering open-end credit plans secured by a consumer's dwelling.* A creditor offering an open-end plan subject to the requirements of §1026.40 need not disclose an effective annual percentage rate. Such a creditor may, at its option, disclose an effective annual percentage rate(s) pursuant to §1026.7(a)(7) and compute the effective annual percentage rate as follows:

(1) *Solely periodic rates imposed.* If the finance charge is determined solely by applying one or more periodic rates, at the creditor's option, either:

(i) By multiplying each periodic rate by the number of periods in a year; or

(ii) By dividing the total finance charge for the billing cycle by the sum of the balances to which the periodic rates were applied and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year.

(2) *Minimum or fixed charge, but not transaction charge, imposed.* If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate, other than a charge with respect to any specific transaction during the billing cycle, by dividing the total finance charge for the billing cycle by the amount of the balance(s) to which it is applicable and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year. If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under this section. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate.

(3) *Transaction charge imposed.* If the finance charge imposed during the billing cycle is or includes a charge relating to a specific transaction during the billing cycle (even if the total finance charge also includes any other minimum, fixed, or other charge not due to the application of a periodic rate), by dividing the total finance charge imposed during the billing cycle by the total of all balances and other amounts on which a finance charge was imposed during the billing cycle without duplication, and multiplying the quotient (expressed as a percentage) by the number of billing cycles in a year, except that the annual percentage rate shall not be less than the largest rate determined by multiplying each periodic rate imposed during the billing cycle by the number of periods in a year. Where the finance charge imposed during the billing cycle is or includes a loan fee, points, or similar charge that relates to the opening, renewing, or continuing an account, the amount of such charge shall not be included in the calculation of the annual percentage rate. See appendix F to this part regarding determination of the denominator of the fraction under this paragraph.

(4) If the finance charge imposed during the billing cycle is or includes a minimum, fixed, or other charge not due to the application of a periodic rate and the total finance charge imposed during the billing cycle does not exceed 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, at the creditor's option, by multiplying each applicable periodic rate by the number of periods in a year, notwithstanding the provisions of paragraphs (c)(2) and (c)(3) of this section.

(d) *Calculations where daily periodic rate applied.* If the provisions of paragraph (c)(1)(ii) or (c)(2) of this section apply and all or a portion of the finance charge is determined by the application of one or more daily periodic rates, the annual percentage rate may be determined either:

(1) By dividing the total finance charge by the average of the daily balances and multiplying the quotient by the number of billing cycles in a year; or

(2) By dividing the total finance charge by the sum of the daily balances and multiplying the quotient by 365.

§ 1026.15 Right of rescission.

(a) *Consumer's right to rescind.* (1)(i) Except as provided in paragraph (a)(1)(ii) of this section, in a credit plan in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind: each credit extension made under the plan; the plan when the plan is opened; a security interest when added or increased to secure an existing plan; and the increase when a credit limit on the plan is increased.

(ii) As provided in section 125(e) of the Act, the consumer does not have the right to rescind each credit extension made under the plan if such extension is made in accordance with a previously established credit limit for the plan.

(2) 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, or when filed for telegraphic transmission, or, if sent by other means, when delivered to the creditor's designated place of business.

(3) The consumer may exercise the right to rescind until midnight of the third business day following the occurrence described in paragraph (a)(1) of this section that gave rise to the right of rescission, delivery of the notice required by paragraph (b) of this section, or delivery of all material disclosures, whichever occurs last. If the required notice and material disclosures are not delivered, the right to rescind shall expire 3 years after the occurrence giving rise to the right of rescission, or 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 section 125(f) of the Act. The term *material disclosures* means the information that

must be provided to satisfy the requirements in § 1026.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in § 1026.40(d)(5)(i) and (ii) that is required under § 1026.6(e)(2).

(4) When more than one consumer has the right to rescind, the exercise of the right by one consumer shall be effective as to all consumers.

(b) *Notice of right to rescind.* In any transaction or occurrence subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall identify the transaction or occurrence and clearly and conspicuously disclose the following:

(1) The retention or acquisition of a security interest in the consumer's principal dwelling.

(2) The consumer's right to rescind, as described in paragraph (a)(1) of this section.

(3) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(4) The effects of rescission, as described in paragraph (d) of this section.

(5) The date the rescission period expires.

(c) *Delay of creditor's performance.* Unless a consumer waives the right to rescind under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed, and no materials delivered until after the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded. A creditor does not violate this section if a third party with no knowledge of the event activating the rescission right does not delay in providing materials or services, as long as the debt incurred for those materials or services is not secured by the property subject to rescission.

(d) *Effects of rescission.* (1) When 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.

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

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind 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 shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) *Exempt transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A credit plan in which a state agency is a creditor.

§ 1026.16 Advertising.

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Advertisement of terms that require additional disclosures.* (1) Any term required to be disclosed under §1026.6(b)(3) set forth affirmatively or negatively in an advertisement for an open-end (not home-secured) credit plan triggers additional disclosures under this section. Any term required to be disclosed under §1026.6(a)(1) or (a)(2) set forth affirmatively or negatively in an advertisement for a home-equity plan subject to the requirements of §1026.40 triggers additional disclosures under this section. If any of the terms that trigger additional disclosures under this paragraph is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:

(i) Any minimum, fixed, transaction, activity or similar charge that is a finance charge under §1026.4 that could be imposed.

(ii) Any periodic rate that may be applied expressed as an annual percentage rate as determined under §1026.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.

(iii) Any membership or participation fee that could be imposed.

(2) If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.

(c) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of terms set forth in §1026.6 appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(d) *Additional requirements for home-equity plans*—(1) *Advertisement of terms that require additional disclosures.* If any of the terms required to be disclosed under §1026.6(a)(1) or (a)(2) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home-equity plan subject to the requirements of §1026.40, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under §1026.14(b).

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state with equal prominence and in close proximity to the initial rate:

(i) The period of time such initial rate will be in effect; and

(ii) A reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement of any minimum periodic payment and a balloon payment may result if only the minimum periodic payments are made, even if such a payment is uncertain or unlikely, the advertisement also shall state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result, if applicable. A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer is required to repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer makes only the minimum payments required under the plan, an advertisement for such a program which contains any statement of any minimum periodic payment shall also state with equal prominence and in close proximity to the minimum periodic payment statement:

(i) That a balloon payment will result; and

(ii) The amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home-equity plan is or may be tax deductible may not be misleading in this regard. If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a home-equity plan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(i) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(ii) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(5) *Misleading terms.* An advertisement may not refer to a home-equity plan as ''free money'' or contain a similarly misleading term.

(6) *Promotional rates and payments.* (i) *Definitions.* The following definitions apply for purposes of paragraph (d)(6) of this section:

(A) *Promotional rate.* The term ''promotional rate'' means, in a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.

(B) *Promotional payment.* The term ''promotional payment'' means:

(*1*) For a variable-rate plan, any minimum payment applicable for a promotional period that:

(*i*) Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and

(*ii*) Is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.

(*2*) For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

(C) *Promotional period.* A ''promotional period'' means a period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

(ii) *Stating the promotional period and post-promotional rate or payments.* If any annual percentage rate that may be applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than television or radio advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

(A) The period of time during which the promotional rate or promotional payment will apply;

(B) In the case of a promotional rate, any annual percentage rate that will apply under the plan. If such rate is variable, the annual percentage rate must be disclosed in accordance with the accuracy standards in §1026.40 or §1026.16(b)(1)(ii) as applicable; and

(C) In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan. In variable-rate transactions, payments that will be determined based on application of an index and margin shall be disclosed based on a reasonably current index and margin.

(iii) *Envelope excluded.* The requirements in paragraph (d)(6)(ii) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(e) *Alternative disclosures—television or radio advertisements.* An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraphs (b)(1) or (d)(1) of this section may alternatively comply with paragraphs (b)(1) or (d)(1) of this section by stating the information required by paragraphs (b)(1)(ii) or (d)(1)(ii) of this section, as applicable, and listing a toll-free telephone number, or any telephone number that allows a consumer to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain the additional cost information.

(f) *Misleading terms.* An advertisement may not refer to an annual percentage rate as ''fixed,'' or use a similar term, unless the advertisement also specifies a time period that the rate will be fixed and the rate will not increase during that period, or if no such time period is provided, the rate will not increase while the plan is open.

(g) *Promotional rates and fees*—(1) *Scope.* The requirements of this paragraph apply to any advertisement of an open-end (not home-secured) plan, including promotional materials accompanying applications or solicitations subject to §1026.60(c) or accompanying applications or solicitations subject to §1026.60(e).

(2) *Definitions.* (i) *Promotional rate* means any annual percentage rate applicable to one or more balances or transactions on an open-end (not home-secured) plan for a specified period of time that is lower than the annual percentage rate that will be in effect at the end of that period on such balances or transactions.

(ii) *Introductory rate* means a promotional rate offered in connection with the opening of an account.

(iii) *Promotional period* means the maximum time period for which a promotional rate or promotional fee may be applicable.

(iv) *Promotional fee* means a fee required to be disclosed under §1026.6(b)(1) and (2) applicable to an open-end (not home-secured) plan, or to one or more balances or transactions on an open-end (not home-secured) plan, for a specified period of time that is lower than the fee that will be in effect at the end of that period for such plan or types of balances or transactions.

(v) *Introductory fee* means a promotional fee offered in connection with the opening of an account.

(3) *Stating the term ''introductory''.* If any annual percentage rate or fee that may be applied to the account is an introductory rate or introductory fee, the term *introductory* or *intro* must be in immediate proximity to each listing of the introductory rate or introductory fee in a written or electronic advertisement.

(4) *Stating the promotional period and post-promotional rate or fee.* If any annual percentage rate that may be applied to the account is a promotional rate under paragraph (g)(2)(i) of this section or any fee that may be applied to the account is a promotional fee under paragraph (g)(2)(iv) of this section, the information in paragraphs (g)(4)(i) and, as applicable, (g)(4)(ii) or (iii) of this section must be stated in a clear and conspicuous manner in the advertisement. If the rate or fee is

stated in a written or electronic advertisement, the information in paragraphs (g)(4)(i) and, as applicable, (g)(4)(ii) or (iii) of this section must also be stated in a prominent location closely proximate to the first listing of the promotional rate or promotional fee.

(i) When the promotional rate or promotional fee will end;

(ii) The annual percentage rate that will apply after the end of the promotional period. If such rate is variable, the annual percentage rate must comply with the accuracy standards in §1026.60(c)(2), §1026.60(d)(3), §1026.60(e)(4), or §1026.16(b)(1)(ii), as applicable. If such rate cannot be determined at the time disclosures are given because the rate depends at least in part on a later determination of the consumer's creditworthiness, the advertisement must disclose the specific rates or the range of rates that might apply; and

(iii) The fee that will apply after the end of the promotional period.

(5) *Envelope excluded.* The requirements in paragraph (g)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement, linked to an application or solicitation provided electronically.

(h) *Deferred interest or similar offers*—(1) *Scope.* The requirements of this paragraph apply to any advertisement of an open-end credit plan not subject to §1026.40, including promotional materials accompanying applications or solicitations subject to §1026.60(c) or accompanying applications or solicitations subject to §1026.60(e).

(2) *Definitions.* "Deferred interest" means finance charges, accrued on balances or transactions, that a consumer is not obligated to pay or that will be waived or refunded to a consumer if those balances or transactions are paid in full by a specified date. The maximum period from the date the consumer becomes obligated for the balance or transaction until the specified date by which the consumer must pay the balance or transaction in full in order to avoid finance charges, or receive a waiver or refund of finance charges, is the "deferred interest period." "Deferred interest" does not include any finance charges the consumer avoids paying in connection with any recurring grace period.

(3) *Stating the deferred interest period.* If a deferred interest offer is advertised, the deferred interest period must be stated in a clear and conspicuous manner in the advertisement. If the phrase "no interest" or similar term regarding the possible avoidance of interest obligations under the deferred interest program is stated, the term "if paid in full" must also be stated in a clear and conspicuous manner preceding the disclosure of the deferred interest period in the advertisement. If the deferred interest offer is included in a written or electronic advertisement, the deferred interest period and, if applicable, the term "if paid in full" must also be stated in immediate proximity to each statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period.

(4) *Stating the terms of the deferred interest or similar offer.* If any deferred interest offer is advertised, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must be stated in the advertisement, in language similar to Sample G–24 in appendix G to this part. If the deferred interest offer is included in a written or electronic advertisement, the information in paragraphs (h)(4)(i) and (h)(4)(ii) of this section must also be stated in a prominent location closely proximate to the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period.

(i) A statement that interest will be charged from the date the consumer becomes obligated for the balance or transaction subject to the deferred interest offer if the balance or transaction is not paid in full within the deferred interest period; and

(ii) A statement, if applicable, that interest will be charged from the date the consumer incurs the balance or transaction subject to the deferred interest offer if the account is in default before the end of the deferred interest period.

(5) *Envelope excluded.* The requirements in paragraph (h)(4) of this section do not apply to an envelope or other enclosure in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

Subpart C—Closed-End Credit

§ 1026.17 General disclosure requirements.

(a) *Form of disclosures.* Except for the disclosures required by § 1026.19(e), (f), and (g):

(1) The creditor shall make the disclosures required by this subpart clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures required by this subpart may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by §§ 1026.17(g), 1026.19(b), and 1026.24 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under § 1026.18, § 1026.20(c) and (d), or § 1026.47. The disclosures required by § 1026.20(d) shall be provided as a separate document from all other written materials. The disclosures may include an acknowledgment of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: The creditor's identity under § 1026.18(a), the variable rate example under § 1026.18(f)(1)(iv), insurance or debt cancellation under § 1026.18(n), and certain security interest charges under § 1026.18(o). The itemization of the amount financed under § 1026.18(c)(1) must be separate from the other disclosures under § 1026.18, except for private education loan disclosures made in compliance with § 1026.47.

(2) Except for private education loan disclosures made in compliance with § 1026.47, the terms ''finance charge'' and ''annual percentage rate,'' when required to be disclosed under § 1026.18(d) and (e) together with a corresponding amount or percentage rate, shall be more conspicuous than any other disclosure, except the creditor's identity under § 1026.18(a). For private education loan disclosures made in compliance with § 1026.47, the term ''annual percentage rate,'' and the corresponding percentage rate must be less conspicuous than the term ''finance charge'' and corresponding amount under § 1026.18(d), the interest rate under §§ 1026.47(b)(1)(i) and (c)(1), and the notice of the right to cancel under § 1026.47(c)(4).

(b) *Time of disclosures.* The creditor shall make disclosures before consummation of the transaction. In certain residential mortgage transactions, special timing requirements are set forth in § 1026.19(a). In certain variable-rate transactions, special timing requirements for variable-rate disclosures are set forth in §§ 1026.19(b) and 1026.20(c) and (d). For private education loan disclosures made in compliance with § 1026.47, special timing requirements are set forth in § 1026.46(d). In certain transactions involving mail or telephone orders or a series of sales, the timing of disclosures may be delayed in accordance with paragraphs (g) and (h) of this section. This paragraph (b) does not apply to the disclosures required by §§ 1026.19(e), (f), and (g) and 1026.20(e).

(c) *Basis of disclosures and use of estimates.* (1) The disclosures shall reflect the terms of the legal obligation between the parties.

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

(ii) For a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest 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.

(3) The creditor may disregard the effects of the following in making calculations and disclosures.

(i) That payments must be collected in whole cents.

(ii) That dates of scheduled payments and advances may be changed because the scheduled date is not a business day.

(iii) That months have different numbers of days.

(iv) The occurrence of leap year.

(4) 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:

(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.

(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.

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

(ii) 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.

(d) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor 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 under §1026.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(e) *Effect of subsequent events.* 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 this part, although new disclosures may be required under paragraph (f) of this section, §1026.19, §1026.20, or §1026.48(c)(4).

(f) *Early disclosures.* Except for private education loan disclosures made in compliance with §1026.47, if disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation (subject to the provisions of §1026.19(a)(2), (e), and (f)):

(1) Any changed term unless the term was based on an estimate in accordance with §1026.17(c)(2) and was labeled an estimate;

(2) All changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than ⅛ of 1 percentage point in a regular transaction, or more than ¼ of 1 percentage point in an irregular transaction, as defined in §1026.22(a).

(g) *Mail or telephone orders—delay in disclosures.* Except for private education loan disclosures made in compliance with §1026.47 and mortgage disclosures made in compliance with §1026.19(a) or (e), (f), and (g), if a creditor receives a purchase order or a request for an extension of credit by mail, telephone, or facsimile machine without face-to-face or direct telephone solicitation, the creditor may delay the disclosures until the due date of the first payment, if the following information for representative amounts or ranges of credit is made available in written form or in electronic form to the consumer or to the public before the actual purchase order or request:

(1) The cash price or the principal loan amount.

(2) The total sale price.

(3) The finance charge.

(4) The annual percentage rate, and if the rate may increase after consummation, the following disclosures:

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(5) The terms of repayment.

(h) *Series of sales—delay in disclosures.* Except for mortgage disclosures made in compliance with §1026.19(a) or (e), (f), and (g), if a credit sale is one of a series made under an agreement providing that subsequent sales may be added to an outstanding balance, the creditor may delay the required disclosures until the due date of the first payment for the current sale, if the following two conditions are met:

(1) The consumer has approved in writing the annual percentage rate or rates, the range of balances to which they apply, and the method of treating any unearned finance charge on an existing balance.

(2) The creditor retains no security interest in any property after the creditor has received payments equal to the cash price and any finance charge attributable to the sale of that property. For purposes of this provision, in the case of items purchased on different dates, the first purchased is deemed the first item paid for; in the case of items purchased on the same date, the lowest priced is deemed the first item paid for.

(i) *Interim student credit extensions.* For transactions involving an interim credit extension under a student credit program for which an application is received prior to the mandatory compliance date of §§1026.46, 47, and 48, the creditor need not make the following disclosures: the finance charge under §1026.18(d), the payment schedule under §1026.18(g), the total of payments under §1026.18(h), or the total sale price under §1026.18(j) at the time the credit is actually extended. The creditor must make complete disclosures at the time the creditor and consumer agree upon the repayment schedule for the total obligation. At that time, a new set of disclosures must be made of all applicable items under §1026.18.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 11004, Feb. 14, 2013; 78 FR 80107, Dec. 31, 2013]

§ 1026.18 Content of disclosures.

For each transaction other than a mortgage transaction subject to §1026.19(e) and (f), the creditor shall disclose the following information as applicable:

(a) *Creditor.* The identity of the creditor making the disclosures.

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

(1) Determining the principal loan amount or the cash price (subtracting any downpayment);

(2) Adding any other amounts that are financed by the creditor and are not part of the finance charge; and

(3) Subtracting any prepaid finance charge.

(c) *Itemization of amount financed.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, a separate written itemization of the amount financed, including:

(i) The amount of any proceeds distributed directly to the consumer.

(ii) The amount credited to the consumer's account with the creditor.

(iii) Any amounts paid to other persons by the creditor on the consumer's behalf. The creditor shall identify those persons. The following payees may be described using generic or other general terms and need not be further identified: public officials or government agencies, credit reporting agencies, appraisers, and insurance companies.

(iv) The prepaid finance charge.

(2) The creditor need not comply with paragraph (c)(1) of this section if the creditor provides a statement that the consumer has the right to receive a written itemization of the amount financed, together with a space for the consumer to indicate whether it is desired, and the consumer does not request it.

(3) Good faith estimates of settlement costs provided for transactions subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) may be substituted for the disclosures required by paragraph (c)(1) of this section.

(d) *Finance charge.* The *finance charge,* using that term, and a brief description such as ''the dollar amount the credit will cost you.''

(1) *Mortgage loans.* In a transaction secured by real property or a dwelling, the disclosed finance charge and other disclosures affected by the disclosed finance charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

(i) Is understated by no more than $100; or

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

(2) *Other credit.* In any other transaction, the amount disclosed as the finance charge shall be treated as accurate if, in a transaction involving an amount financed of $1,000 or less, it is not more than $5 above or below the amount required to be disclosed; or, in a transaction involving an amount financed of more than $1,000, it is not more than $10 above or below the amount required to be disclosed.

(e) *Annual percentage rate.* The *annual percentage rate,* using that term, and a brief description such as ''the cost of your credit as a yearly rate.'' For any transaction involving a finance charge of $5 or less on an amount financed of $75 or less, or a finance charge of $7.50 or less on an amount financed of more than $75, the creditor need not disclose the annual percentage rate.

(f) *Variable rate.* (1) Except as provided in paragraph (f)(3) of this section, if the annual percentage rate may increase after consummation in a transaction not secured by the consumer's principal dwelling or in a transaction secured by the consumer's principal dwelling with a term of one year or less, the following disclosures:

(i) The circumstances under which the rate may increase.

(ii) Any limitations on the increase.

(iii) The effect of an increase.

(iv) An example of the payment terms that would result from an increase.

(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:

(i) The fact that the transaction contains a variable-rate feature.

(ii) A statement that variable-rate disclosures have been provided earlier.

(3) Information provided in accordance with §§ 1026.18(f)(2) and 1026.19(b) may be substituted for the disclosures required by paragraph (f)(1) of this section.

(g) *Payment schedule.* Other than for a transaction that is subject to paragraph (s) of this section, the number, amounts, and timing of payments scheduled to repay the obligation.

(1) In a demand obligation with no alternate maturity date, the creditor may comply with this paragraph by disclosing the due dates or payment periods of any scheduled interest payments for the first year.

(2) In a transaction in which a series of payments varies because a finance charge is applied to the unpaid principal balance, the creditor may comply with this paragraph by disclosing the following information:

(i) The dollar amounts of the largest and smallest payments in the series.

(ii) A reference to the variations in the other payments in the series.

(h) *Total of payments.* The *total of payments,* using that term, and a descriptive explanation such as ''the amount you will have paid when you have made all scheduled payments.'' In any transaction involving a single payment, the creditor need not disclose the total of payments.

(i) *Demand feature.* If the obligation has a demand feature, that fact shall be disclosed. When the disclosures are based on an assumed maturity of 1 year as provided in § 1026.17(c)(5), that fact shall also be disclosed.

(j) *Total sale price.* In a credit sale, the *total sale price,* using that term, and a descriptive explanation (including the amount of any downpayment) such as ''the total price of your purchase on credit, including your downpayment of

$____." The total sale price is the sum of the cash price, the items described in paragraph (b)(2), and the finance charge disclosed under paragraph (d) of this section.

(k) *Prepayment.* (1) When an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance, a statement indicating whether or not a charge may be imposed for paying all or part of a loan's principal balance before the date on which the principal is due.

(2) When an obligation includes a finance charge other than the finance charge described in paragraph (k)(1) of this section, a statement indicating whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or in part.

(l) *Late payment.* Any dollar or percentage charge that may be imposed before maturity due to a late payment, other than a deferral or extension charge.

(m) *Security interest.* The fact that the creditor has or will acquire a security interest in the property purchased as part of the transaction, or in other property identified by item or type.

(n) *Insurance and debt cancellation.* The items required by §1026.4(d) in order to exclude certain insurance premiums and debt cancellation fees from the finance charge.

(o) *Certain security interest charges.* The disclosures required by §1026.4(e) in order to exclude from the finance charge certain fees prescribed by law or certain premiums for insurance in lieu of perfecting a security interest.

(p) *Contract reference.* A statement that the consumer should refer to the appropriate contract document for information about nonpayment, default, the right to accelerate the maturity of the obligation, and prepayment rebates and penalties. At the creditor's option, the statement may also include a reference to the contract for further information about security interests and, in a residential mortgage transaction, about the creditor's policy regarding assumption of the obligation.

(q) *Assumption policy.* In a residential mortgage transaction, a statement whether or not a subsequent purchaser of the dwelling from the consumer may be permitted to assume the remaining obligation on its original terms.

(r) *Required deposit.* If the creditor requires the consumer to maintain a deposit as a condition of the specific transaction, a statement that the annual percentage rate does not reflect the effect of the required deposit. A required deposit need not include, for example:

(1) An escrow account for items such as taxes, insurance or repairs;

(2) A deposit that earns not less than 5 percent per year; or

(3) Payments under a Morris Plan.

(s) *Interest rate and payment summary for mortgage transactions.* For a closed-end transaction secured by real property or a dwelling, other than a transaction that is subject to §1026.19(e) and (f), the creditor shall disclose the following information about the interest rate and payments:

(1) *Form of disclosures.* The information in paragraphs (s)(2)–(4) of this section shall be in the form of a table, with no more than five columns, with headings and format substantially similar to Model Clause H–4(E), H–4(F), H–4(G), or H–4(H) in appendix H to this part. The table shall contain only the information required in paragraphs (s)(2)–(4) of this section, shall be placed in a prominent location, and shall be in a minimum 10-point font.

(2) *Interest rates*—(i) *Amortizing loans.* (A) For a fixed-rate mortgage, the interest rate at consummation.

(B) For an adjustable-rate or step-rate mortgage:

(*1*) The interest rate at consummation and the period of time until the first interest rate adjustment may occur, labeled as the "introductory rate and monthly payment";

(*2*) The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due and the earliest date on which that rate may apply, labeled as "maximum during first five years"; and

(*3*) The maximum interest rate that may apply during the life of the loan and the earliest date on which that rate may apply, labeled as "maximum ever."

(C) If the loan provides for payment increases as described in paragraph (s)(3)(i)(B) of this section, the interest rate in effect at the time the first such payment increase is scheduled to occur and the date on which the increase will occur, labeled as ''first adjustment'' if the loan is an adjustable-rate mortgage or, otherwise, labeled as ''first increase.''

(ii) *Negative amortization loans.* For a negative amortization loan:

(A) The interest rate at consummation and, if it will adjust after consummation, the length of time until it will adjust, and the label ''introductory'' or ''intro'';

(B) The maximum interest rate that could apply when the consumer must begin making fully amortizing payments under the terms of the legal obligation;

(C) If the minimum required payment will increase before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the first payment increase and the date the increase is scheduled to occur; and(D) If a second increase in the minimum required payment may occur before the consumer must begin making fully amortizing payments, the maximum interest rate that could apply at the time of the second payment increase and the date the increase is scheduled to occur.

(iii) *Introductory rate disclosure for amortizing adjustable-rate mortgages.* For an amortizing adjustable-rate mortgage, if the interest rate at consummation is less than the fully-indexed rate, placed in a box directly beneath the table required by paragraph (s)(1) of this section, in a format substantially similar to Model Clause H–4(I) in appendix H to this part:

(A) The interest rate that applies at consummation and the period of time for which it applies;

(B) A statement that, even if market rates do not change, the interest rate will increase at the first adjustment and a designation of the place in sequence of the month or year, as applicable, of such rate adjustment; and

(C) The fully-indexed rate.

(3) *Payments for amortizing loans*—(i) *Principal and interest payments.* If all periodic payments will be applied to accrued interest and principal, for each interest rate disclosed under paragraph (s)(2)(i) of this section:

(A) The corresponding periodic principal and interest payment, labeled as ''principal and interest;''

(B) If the periodic payment may increase without regard to an interest rate adjustment, the payment that corresponds to the first such increase and the earliest date on which the increase could occur;

(C) If an escrow account will be established, an estimate of the amount of taxes and insurance, including any mortgage insurance or any functional equivalent, payable with each periodic payment; and

(D) The sum of the amounts disclosed under paragraphs (s)(3)(i)(A) and (C) of this section or (s)(3)(i)(B) and (C) of this section, as applicable, labeled as ''total estimated monthly payment.''

(ii) *Interest-only payments.* If the loan is an interest-only loan, for each interest rate disclosed under paragraph (s)(2)(i) of this section, the corresponding periodic payment and:

(A) If the payment will be applied to only accrued interest, the amount applied to interest, labeled as ''interest payment,'' and a statement that none of the payment is being applied to principal;

(B) If the payment will be applied to accrued interest and principal, an itemization of the amount of the first such payment applied to accrued interest and to principal, labeled as ''interest payment'' and ''principal payment,'' respectively;

(C) The escrow information described in paragraph (s)(3)(i)(C) of this section; and

(D) The sum of all amounts required to be disclosed under paragraphs (s)(3)(ii)(A) and (C) of this section or (s)(3)(ii)(B) and (C) of this section, as applicable, labeled as ''total estimated monthly payment.''

(4) *Payments for negative amortization loans.* For negative amortization loans:

(i)(A) The minimum periodic payment required until the first payment increase or interest rate increase, corresponding to the interest rate disclosed under paragraph (s)(2)(ii)(A) of this section;

(B) The minimum periodic payment that would be due at the first payment increase and the second, if any, corresponding to the interest rates described in paragraphs (s)(2)(ii)(C) and (D) of this section; and

(C) A statement that the minimum payment pays only some interest, does not repay any principal, and will cause the loan amount to increase;

(ii) The fully amortizing periodic payment amount at the earliest time when such a payment must be made, corresponding to the interest rate disclosed under paragraph (s)(2)(ii)(B) of this section; and

(iii) If applicable, in addition to the payments in paragraphs (s)(4)(i) and (ii) of this section, for each interest rate disclosed under paragraph (s)(2)(ii) of this section, the amount of the fully amortizing periodic payment, labeled as the ''full payment option,'' and a statement that these payments pay all principal and all accrued interest.

(5) *Balloon payments.* (i) Except as provided in paragraph (s)(5)(ii) of this section, if the transaction will require a balloon payment, defined as a payment that is more than two times a regular periodic payment, the balloon payment shall be disclosed separately from other periodic payments disclosed in the table under this paragraph (s), outside the table and in a manner substantially similar to Model Clause H–4(J) in appendix H to this part.

(ii) If the balloon payment is scheduled to occur at the same time as another payment required to be disclosed in the table pursuant to paragraph (s)(3) or (s)(4) of this section, then the balloon payment must be disclosed in the table.

(6) *Special disclosures for loans with negative amortization.* For a negative amortization loan, the following information, in close proximity to the table required in paragraph (s)(1) of this section, with headings, content, and format substantially similar to Model Clause H–4(G) in appendix H to this part:

(i) The maximum interest rate, the shortest period of time in which such interest rate could be reached, the amount of estimated taxes and insurance included in each payment disclosed, and a statement that the loan offers payment options, two of which are shown.

(ii) The dollar amount of the increase in the loan's principal balance if the consumer makes only the minimum required payments for the maximum possible time and the earliest date on which the consumer must begin making fully amortizing payments, assuming that the maximum interest rate is reached at the earliest possible time.

(7) *Definitions.* For purposes of this §1026.18(s):

(i) The term ''adjustable-rate mortgage'' means a transaction secured by real property or a dwelling for which the annual percentage rate may increase after consummation.

(ii) The term ''step-rate mortgage'' means a transaction secured by real property or a dwelling for which the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation.

(iii) The term ''fixed-rate mortgage'' means a transaction secured by real property or a dwelling that is not an adjustable-rate mortgage or a step-rate mortgage.

(iv) The term ''interest-only'' means that, under the terms of the legal obligation, one or more of the periodic payments may be applied solely to accrued interest and not to loan principal; an ''interest-only loan'' is a loan that permits interest-only payments.

(v) The term ''amortizing loan'' means a loan in which payment of the periodic payments does not result in an increase in the principal balance under the terms of the legal obligation; the term ''negative amortization'' means payment of periodic payments that will result in an increase in the principal balance under the terms of the legal obligation; the term ''negative amortization loan'' means a loan, other than a reverse mortgage subject to §1026.33, that provides for a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization.

(vi) The term ''fully-indexed rate'' means the interest rate calculated using the index value and margin at the time of consummation.

(t) ''*No-guarantee-to-refinance'' statement*—(1) *Disclosure.* For a closed-end transaction secured by real property or a dwelling, other than a transaction that is subject to § 1026.19(e) and (f), the creditor shall disclose a statement that there is no guarantee the consumer can refinance the transaction to lower the interest rate or periodic payments.

(2) *Format.* The statement required by paragraph (t)(1) of this section must be in a form substantially similar to Model Clause H–4(K) in appendix H to this part.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80108, Dec. 31, 2013]

§ 1026.19 Certain mortgage and variable-rate transactions.

(a) *Mortgage transactions subject to RESPA*—(1)(i) *Time of disclosures.* In a reverse mortgage transaction subject to both § 1026.33 and the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by the consumer's dwelling, the creditor shall provide the consumer with good faith estimates of the disclosures required by § 1026.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

(ii) *Imposition of fees.* Except as provided in paragraph (a)(1)(iii) 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 reverse mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(iii) *Exception to fee restriction.* A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is *bona fide* and reasonable in amount.

(2) *Waiting periods for early disclosures and corrected disclosures.* (i) The creditor shall deliver or place in the mail the good faith estimates required by paragraph (a)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

(ii) If the annual percentage rate disclosed under paragraph (a)(1)(i) of this section becomes inaccurate, as defined in § 1026.22, the creditor shall provide corrected disclosures with all changed terms. The consumer must receive the corrected disclosures no later than three business days before consummation. If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.

(3) *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 or the three-business-day waiting period required by paragraph (a)(2) of this section, after receiving the disclosures required by § 1026.18. To modify or waive a 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.

(4) *Notice.* Disclosures made pursuant to paragraph (a)(1) or paragraph (a)(2) of this section shall contain the following statement: ''You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.'' The disclosure required by this paragraph shall be grouped together with the disclosures required by paragraphs (a)(1) or (a)(2) of this section.

(b) *Certain variable-rate transactions.* Except as provided in paragraph (d) of this section, 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 (except that 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 reaches the creditor by telephone, or through an intermediary agent or broker):

(1) The booklet titled *Consumer Handbook on Adjustable Rate Mortgages,* or a suitable substitute.

(2) A loan program disclosure for each variable-rate program in which the consumer expresses an interest. The following disclosures, as applicable, shall be provided:

(i) The fact that the interest rate, payment, or term of the loan can change.

(ii) The index or formula used in making adjustments, and a source of information about the index or formula.

(iii) An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(iv) A statement that the consumer should ask about the current margin value and current interest rate.

(v) The fact that the interest rate will be discounted, and a statement that the consumer should ask about the amount of the interest rate discount.

(vi) The frequency of interest rate and payment changes.

(vii) Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.

(viii) At the option of the creditor, either of the following:

(A) 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 disclosure. 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 the period.

(B) 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.

(ix) An explanation of how the consumer may calculate the payments for the loan amount to be borrowed based on either:

(A) The most recent payment shown in the historical example in paragraph (b)(2)(viii)(A) of this section; or

(B) The initial interest rate used to calculate the maximum interest rate and payment in paragraph (b)(2)(viii)(B) of this section.

(x) The fact that the loan program contains a demand feature.

(xi) The type of information that will be provided in notices of adjustments and the timing of such notices.

(xii) A statement that disclosure forms are available for the creditor's other variable-rate loan programs.

(c) *Electronic disclosures.* For an application that is accessed by the consumer in electronic form, the disclosures required by paragraph (b) of this section may be provided to the consumer in electronic form on or with the application.

(d) Information provided in accordance with variable-rate regulations of other Federal agencies may be substituted for the disclosures required by paragraph (b) of this section.

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

(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.

(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.

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

(A) Prepaid interest;

(B) Property insurance premiums;

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

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

(E) Property taxes and other charges paid for third-party services not required by the creditor.

(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. No later than three business days after 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 10 business days, or more than any additional number of days specified by the creditor before the offer expires, after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section.

(F) *Delayed settlement date on a construction loan*. In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (e)(3)(iv) of this section.

(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 or the disclosures required under paragraph (f)(1)(i) of this section (including any corrected disclosures provided under paragraph (f)(2)(i) or (ii) 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 (F) of this section applies.

(ii) *Relationship between revised Loan Estimates and Closing Disclosures*. 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 any 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.

(f) *Mortgage loans—final disclosures*—(1) *Provision of disclosures*—(i) *Scope*. In a transaction subject to paragraph (e)(1)(i) of this section, the creditor shall provide the consumer with the disclosures required under §1026.38 reflecting the actual terms of the transaction.

(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).

(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.

(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.

(4) *Transactions involving a seller*—(i) *Provision to seller.* In a transaction subject to paragraph (e)(1)(i) of this section that involves a seller, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.

(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.

(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 or a cooperative unit.

(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 transaction, 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.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80108, Dec. 31, 2013; 80 FR 8776, Feb. 19, 2015; 82 FR 37768, Aug. 11, 2017; 83 FR 19174, May 2, 2018]

§ 1026.20 Disclosure requirements regarding post-consummation events.

(a) *Refinancings.* A refinancing occurs when an existing obligation that was subject to this subpart is satisfied and replaced by a new obligation undertaken by the same consumer. A refinancing is a new transaction requiring new disclosures to the consumer. The new finance charge shall include any unearned portion of the old finance charge that is not credited to the existing obligation. The following shall not be treated as a refinancing:

(1) A renewal of a single payment obligation with no change in the original terms.

(2) A reduction in the annual percentage rate with a corresponding change in the payment schedule.

(3) An agreement involving a court proceeding.

(4) A change in the payment schedule or a change in collateral requirements as a result of the consumer's default or delinquency, unless the rate is increased, or the new amount financed exceeds the unpaid balance plus earned finance charge and premiums for continuation of insurance of the types described in § 1026.4(d).

(5) The renewal of optional insurance purchased by the consumer and added to an existing transaction, if disclosures relating to the initial purchase were provided as required by this subpart.

(b) *Assumptions.* 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 the assumption occurs, the creditor shall make new disclosures to the subsequent consumer, based on the remaining obligation. If the finance charge originally imposed on the existing obligation was an add-on or discount finance charge, the creditor need only disclose:

(1) The unpaid balance of the obligation assumed.

(2) The total charges imposed by the creditor in connection with the assumption.

(3) The information required to be disclosed under § 1026.18(k), (l), (m), and (n).

(4) The annual percentage rate originally imposed on the obligation.

(5) The payment schedule under § 1026.18(g) and the total of payments under § 1026.18(h) based on the remaining obligation.

(c) *Rate adjustments with a corresponding change in payment.* The creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with disclosures, as described in this paragraph (c), in connection with the adjustment of interest rates pursuant to the loan contract that results in a corresponding adjustment to the payment. To the extent that other provisions of this subpart C govern the disclosures required by this paragraph (c), those provisions apply to assignees and servicers as well as to creditors. The disclosures required by this paragraph (c) 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.

(1) *Coverage*—(i) *In general.* For purposes of this paragraph (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.

(ii) *Exemptions.* 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 pursuant to § 1026.20(d) was not an estimate; or

(C) The creditor, assignee or servicer of an adjustable-rate mortgage when the servicer on the loan is subject to the Fair Debt Collections Practices Act (FDCPA) (15 U.S.C. 1692 *et seq.*) with regard to the loan and the consumer has sent a notification pursuant to FDCPA section 805(c) (15 U.S.C. 1692c(c)).

(2) *Timing and content.* Except as otherwise provided in paragraph (c)(2) of this section, the disclosures required by this paragraph (c) shall be provided to consumers at least 60, but no more than 120, days before the first payment at the adjusted level is due. The disclosures shall be provided to consumers at least 25, but no more than 120, days before the first payment at the adjusted level is due for ARMs with uniformly scheduled interest rate adjustments occurring every 60 days or more frequently and 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. The disclosures shall be provided to consumers as soon as practicable, but not less than 25 days before the first payment at the adjusted level is due, for the first adjustment to an ARM if it occurs within 60 days of consummation and the new interest rate disclosed at consummation pursuant to § 1026.20(d) was an estimate. The disclosures required by this paragraph (c) shall include:

(i) A statement providing:

(A) 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;

(B) The effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur; and

(C) 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.

(ii) A table containing the following information:

(A) The current and new interest rates;

(B) The current and new payments and the date the first new payment is due; and

(C) For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to principal, interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed shall be the payment allocation for the last payment prior to the date of the disclosure. The new payment allocation disclosed shall be the expected payment allocation for the first payment for which the new interest rate will apply.

(iii) An explanation of how the interest rate is determined, including:

(A) The specific index or formula used in making interest rate adjustments and a source of information about the index or formula; and

(B) The type and 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.

(iv) Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan, as applicable, including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits.

(v) An explanation of how the new payment is determined, including:

(A) The index or formula used;

(B) 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;

(C) The loan balance expected on the date of the interest rate adjustment; and

(D) 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.

(vi) If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and 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.

(vii) The circumstances under which any prepayment penalty, as defined in § 1026.32(b)(6)(i), 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.

(3) *Format.* (i) The disclosures required by this paragraph (c) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H–4(D)(1) and (2) in appendix H to this part; and

(ii) The disclosures required by paragraph (c)(2)(ii) of this section shall be in the form of a table located within the table described in paragraph (c)(3)(i) of this section. These disclosures shall appear in the same order as, and with headings and format substantially similar to, the table inside the larger table in forms H–4(D)(1) and (2) in appendix H to this part.

(d) *Initial rate adjustment.* The creditor, assignee, or servicer of an adjustable-rate mortgage shall provide consumers with disclosures, as described in this paragraph (d), in connection with the initial interest rate adjustment pursuant to the loan contract. To the extent that other provisions of this subpart C govern the disclosures required by this paragraph (d), those provisions apply to assignees and servicers as well as to creditors. The disclosures required by this paragraph (d) shall be provided as a separate document from other documents provided by the creditor, assignee, or servicer. The disclosures shall be provided to consumers at least 210, but no more than 240, days before the first payment at the adjusted level is due. If the first payment at the adjusted level is due within the first 210 days after consummation, the disclosures shall be provided at consummation.

(1) *Coverage*—(i) *In general.* For purposes of this paragraph (d), 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.

(ii) *Exemptions.* The requirements of this paragraph (d) do not apply to ARMs with terms of one year or less.

(2) *Content.* If the new interest rate (or the new payment calculated from the new interest rate) is not known as of the date of the disclosure, an estimate shall be disclosed and labeled as such. This estimate shall be based on the calculation of the index reported in the source of information described in paragraph (d)(2)(iv)(A) of this section within fifteen business days prior to the date of the disclosure. The disclosures required by this paragraph (d) shall include:

(i) The date of the disclosure.

(ii) A statement providing:

(A) 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 that any change in the interest rate may result in a change in the mortgage payment;

(B) The effective date of the interest rate adjustment and when additional future interest rate adjustments are scheduled to occur; and

(C) 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.

(iii) A table containing the following information:

(A) The current and new interest rates;

(B) The current and new payments and the date the first new payment is due; and

(C) For interest-only or negatively-amortizing payments, the amount of the current and new payment allocated to principal, interest, and taxes and insurance in escrow, as applicable. The current payment allocation disclosed shall be the payment allocation for the last payment prior to the date of the disclosure. The new payment allocation disclosed shall be the expected payment allocation for the first payment for which the new interest rate will apply.

(iv) An explanation of how the interest rate is determined, including:

(A) The specific index or formula used in making interest rate adjustments and a source of information about the index or formula; and

(B) The type and 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.

(v) Any limits on the interest rate or payment increases at each interest rate adjustment and over the life of the loan, as applicable, including the extent to which such limits result in the creditor, assignee, or servicer foregoing any increase in the interest rate and the earliest date that such foregone interest rate increases may apply to future interest rate adjustments, subject to those limits.

(vi) An explanation of how the new payment is determined, including:

(A) The index or formula used;

(B) Any adjustment to the index or formula, such as the addition of a margin;

(C) The loan balance expected on the date of the interest rate adjustment;

(D) 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; and

(E) If the new interest rate or new payment provided is an estimate, a statement that another disclosure containing the actual new interest rate and new payment will be provided to the consumer between two and four months before the first payment at the adjusted level is due for interest rate adjustments that result in a corresponding payment change.

(vii) If applicable, a statement that the new payment will not be allocated to pay loan principal and will not reduce the loan balance. If the new payment will result in negative amortization, a statement that the new payment will not be allocated to pay loan principal and 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.

(viii) The circumstances under which any prepayment penalty, as defined in §1026.32(b)(6)(i), 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.

(ix) The telephone number of the creditor, assignee, or servicer for consumers to call if they anticipate not being able to make their new payments.

(x) The following alternatives to paying at the new rate that consumers may be able to pursue and a brief explanation of each alternative, expressed in simple and clear terms:

(A) Refinancing the loan with the current or another creditor or assignee;

(B) Selling the property and using the proceeds to pay the loan in full;

(C) Modifying the terms of the loan with the creditor, assignee, or servicer; and

(D) Arranging payment forbearance with the creditor, assignee, or servicer.

(xi) The Web site to access either the Bureau list or the HUD list of homeownership counselors and counseling organizations, the HUD toll-free telephone number to access the HUD list of homeownership counselors and counseling organizations, and the Bureau Web site to access contact information for State housing finance authorities (as defined in §1301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989).

(3) *Format.* (i) Except for the disclosures required by paragraph (d)(2)(i) of this section, the disclosures required by this paragraph (d) shall be provided in the form of a table and in the same order as, and with headings and format substantially similar to, forms H–4(D)(3) and (4) in appendix H to this part;

(ii) The disclosures required by paragraph (d)(2)(i) of this section shall appear outside of and above the table required in paragraph (d)(3)(i) of this section; and

(iii) The disclosures required by paragraph (d)(2)(iii) of this section shall be in the form of a table located within the table described in paragraph (d)(3)(i) of this section. These disclosures shall appear in the same order as, and with headings and format substantially similar to, the table inside the larger table in forms H–4(D)(3) and (4) in appendix H to this part.

(e) *Escrow account cancellation notice for certain mortgage transactions*—(1)

Scope. In a closed-end consumer credit transaction secured by a first lien on real property or a dwelling, other than a reverse mortgage subject to §1026.33, 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 in paragraph (e)(2) of this section in accordance with the form requirements in paragraph (e)(4) of this section, and the timing requirements in paragraph (e)(5) of this section. For purposes of this paragraph (e), the term ''escrow account'' has the same meaning as under 12 CFR 1024.17(b), and the term ''servicer'' has the same meaning as under 12 CFR 1024.2(b).

(2) *Content requirements.* If an escrow account was established in connection with a transaction subject to this paragraph (e) 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:

(i) 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.

(ii) Under the reference ''In the future'':

(A) A statement of the consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than a policy that the consumer could obtain directly;

(B) A statement with a telephone number that the consumer can use to request additional information about the cancellation of the escrow account;

(C) A statement of whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open; and

(D) A statement of whether there is a cut-off date by which the consumer can request that the account be kept open.

(3) *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.

(4) *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.

(5) *Timing*—(i) *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.

(ii) *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.

(iii) *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.

(f) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, §1024.32(c)(1) of this chapter, the servicer is not required to provide to the confirmed successor in interest any written disclosure required by paragraphs (c), (d), and (e) of this section unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, §1024.32(c)(1)(iv) of this chapter, that the confirmed successor in interest has not revoked.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 11004, Feb. 14, 2013; 78 FR 63005, Oct. 23, 2013; 78 FR 80111, Dec. 31, 2013; 81 FR 72388, Oct. 19, 2016]

§ 1026.21 Treatment of credit balances.

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

(a) Credit the amount of the credit balance to the consumer's account;

(b) Refund any part of the remaining credit balance, upon the written request of the consumer; and

(c) 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 6 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.

§ 1026.22 Determination of annual percentage rate.

(a) *Accuracy of annual percentage rate.* (1) The annual percentage rate is a measure of the cost of credit, expressed as a yearly rate, that relates the amount and timing of value received by the consumer to the amount and timing of payments made. The annual percentage rate shall be determined in accordance with either the actuarial method or the United States Rule method. Explanations, equations and instructions for determining the annual percentage rate in accordance with the actuarial method are set forth in appendix J to this part. An error in disclosure of the annual percentage rate or finance charge shall not, in itself, be considered a violation of this part if:

(i) The error resulted from a corresponding error in a calculation tool used in good faith by the creditor; and

(ii) 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.

(2) As a general rule, the annual percentage rate shall be considered accurate if it is not more than ⅛ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section.

(3) In an irregular transaction, the annual percentage rate shall be considered accurate if it is not more than ¼ of 1 percentage point above or below the annual percentage rate determined in accordance with paragraph (a)(1) of this section. For purposes of this paragraph (a)(3), 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).

(4) *Mortgage loans.* If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate determined in accordance with paragraph (a)(1) of this section, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, the disclosed annual percentage rate shall also be considered accurate if:

(i) The rate results from the disclosed finance charge; and

(ii)(A) The disclosed finance charge would be considered accurate under § 1026.18(d)(1) or § 1026.38(o)(2), as applicable; or

(B) For purposes of rescission, if the disclosed finance charge would be considered accurate under § 1026.23(g) or (h), whichever applies.

(5) *Additional tolerance for mortgage loans.* In a transaction secured by real property or a dwelling, in addition to the tolerances applicable under paragraphs (a)(2) and (3) of this section, if the disclosed finance charge is calculated incorrectly but is considered accurate under § 1026.18(d)(1) or § 1026.38(o)(2), as applicable, or § 1026.23(g) or (h), the disclosed annual percentage rate shall be considered accurate:

(i) 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 be considered accurate under paragraph (a)(4) of this section;

(ii) 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 be considered accurate under paragraph (a)(4) of this section.

(b) *Computation tools.* (1) The Regulation Z Annual Percentage Rate Tables produced by the Bureau may be used to determine the annual percentage rate, and any rate determined from those tables in accordance with the accompanying instructions complies with the requirements of this section. Volume I of the tables applies to single advance transactions involving up to 480 monthly payments or 104 weekly payments. It may be used for regular transactions and for transactions with any of the following irregularities: an irregular first period, an irregular first payment, and an irregular final payment. Volume II of the tables applies to transactions involving multiple advances and any type of payment or period irregularity.

(2) Creditors may use any other computation tool in determining the annual percentage rate if the rate so determined equals the rate determined in accordance with appendix J to this part, within the degree of accuracy set forth in paragraph (a) of this section.

(c) *Single add-on rate transactions.* If a single add-on rate is applied to all transactions with maturities up to 60 months and if all payments are equal in amount and period, a single annual percentage rate may be disclosed for all those transactions, so long as it is the highest annual percentage rate for any such transaction.

(d) *Certain transactions involving ranges of balances.* For purposes of disclosing the annual percentage rate referred to in § 1026.17(g)(4) (Mail or telephone orders—delay in disclosures) and (h) (Series of sales—delay in disclosures), if the same finance charge is imposed on all balances within a specified range of balances, the annual percentage rate computed for the median balance may be disclosed for all the balances. However, if the annual percentage rate computed for the median balance understates the annual percentage rate computed for the lowest balance by more than 8 percent of the latter rate, the annual percentage rate shall be computed on whatever lower balance will produce an annual percentage rate that does not result in an understatement of more than 8 percent of the rate determined on the lowest balance.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80112, Dec. 31, 2013; 80 FR 80229, Dec. 24, 2015]

§ 1026.23 Right of rescission.

(a) *Consumer's right to rescind.* (1) In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction, except for transactions described in paragraph (f) of this section. For purposes of this section, the addition to an existing obligation of a security interest in a consumer's principal dwelling is a transaction. The right of rescission applies only to the addition of the security interest and not the existing obligation. The creditor shall deliver the notice required by paragraph (b) of this section but need not deliver new material disclosures. Delivery of the required notice shall begin the rescission period.

(2) 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.

(3)(i) 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 3 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 section 125(f) of the Act.

(ii) For purposes of this paragraph (a)(3), the term ''material disclosures'' means the required disclosures of the annual percentage rate, the finance charge, the amount financed, the total of payments, the payment schedule, and the disclosures and limitations referred to in §§1026.32(c) and (d) and 1026.43(g).

(4) 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.

(b)(1) *Notice of right to rescind.* In a transaction subject to rescission, a creditor shall deliver two copies of the notice of the right to rescind to each consumer entitled to rescind (one copy to each if the notice is delivered in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act). The notice shall be on a separate document that identifies the transaction and shall clearly and conspicuously disclose the following:

(i) The retention or acquisition of a security interest in the consumer's principal dwelling.

(ii) The consumer's right to rescind the transaction.

(iii) How to exercise the right to rescind, with a form for that purpose, designating the address of the creditor's place of business.

(iv) The effects of rescission, as described in paragraph (d) of this section.

(v) The date the rescission period expires.

(2) *Proper form of notice.* To satisfy the disclosure requirements of paragraph (b)(1) of this section, the creditor shall provide the appropriate model form in appendix H of this part or a substantially similar notice.

(c) *Delay of creditor's performance.* Unless a consumer waives the right of rescission under paragraph (e) of this section, no money shall be disbursed other than in escrow, no services shall be performed and no materials delivered until the rescission period has expired and the creditor is reasonably satisfied that the consumer has not rescinded.

(d) *Effects of rescission.* (1) When 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.

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

(3) If the creditor has delivered any money or property, the consumer may retain possession until the creditor has met its obligation under paragraph (d)(2) of this section. When the creditor has complied with that paragraph, the

consumer shall tender the money or property to the creditor or, where the latter would be impracticable or inequitable, tender its reasonable value. At the consumer's option, tender of property may be made at the location of the property or at the consumer's residence. Tender of money must be made at the creditor's designated place of business. If the creditor does not take possession of the money or property within 20 calendar days after the consumer's tender, the consumer may keep it without further obligation.

(4) The procedures outlined in paragraphs (d)(2) and (3) of this section may be modified by court order.

(e) *Consumer's waiver of right to rescind.* The consumer may modify or waive the right to rescind 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 shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited.

(f) *Exempt transactions.* The right to rescind does not apply to the following:

(1) A residential mortgage transaction.

(2) A refinancing or consolidation by the same creditor of an extension of credit already secured by the consumer's principal dwelling. The right of rescission shall apply, however, to the extent the new amount financed exceeds the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing or consolidation.

(3) A transaction in which a state agency is a creditor.

(4) An advance, other than an initial advance, in a series of advances or in a series of single-payment obligations that is treated as a single transaction under §1026.17(c)(6), if the notice required by paragraph (b) of this section and all material disclosures have been given to the consumer.

(5) A renewal of optional insurance premiums that is not considered a refinancing under §1026.20(a)(5).

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

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

(A) Is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

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

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

(A) Is understated by no more than ½ of 1 percent of the face amount of the note or $100, whichever is greater; or

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

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

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

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

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

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

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

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

(h) *Special rules for foreclosures*—(1) *Right to rescind.* After the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the consumer shall have the right to rescind the transaction if:

(i) A mortgage broker fee that should have been included in the finance charge was not included; or

(ii) The creditor did not provide the properly completed appropriate model form in appendix H of this part, or a substantially similar notice of rescission.

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

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

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

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

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

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

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

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 30745, May 23, 2013; 78 FR 60440, Oct. 1, 2013; 82 FR 37769, Aug. 11, 2017]

§ 1026.24 Advertising.

(a) *Actually available terms.* If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) *Clear and conspicuous standard.* Disclosures required by this section shall be made clearly and conspicuously.

(c) *Advertisement of rate of finance charge.* If an advertisement states a rate of finance charge, it shall state the rate as an ''annual percentage rate,'' using that term. If the annual percentage rate may be increased after consummation, the advertisement shall state that fact. If an advertisement is for credit not secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate or periodic rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate. If an advertisement is for credit secured by a dwelling, the advertisement shall not state any other rate, except that a simple annual rate that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

(d) *Advertisement of terms that require additional disclosures*—(1) *Triggering terms.* If any of the following terms is set forth in an advertisement, the advertisement shall meet the requirements of paragraph (d)(2) of this section:

(i) The amount or percentage of any downpayment.

(ii) The number of payments or period of repayment.

(iii) The amount of any payment.

(iv) The amount of any finance charge.

(2) *Additional terms.* An advertisement stating any of the terms in paragraph (d)(1) of this section shall state the following terms, as applicable (an example of one or more typical extensions of credit with a statement of all the terms applicable to each may be used):

(i) The amount or percentage of the downpayment.

(ii) The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.

(iii) The ''annual percentage rate,'' using that term, and, if the rate may be increased after consummation, that fact.

(e) *Catalogs or other multiple-page advertisements; electronic advertisements.* (1) If a catalog or other multiple-page advertisement, or an electronic advertisement (such as an advertisement appearing on an Internet Web site), gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (d)(2) of this section, it shall be considered a single advertisement if:

(i) The table or schedule is clearly and conspicuously set forth; and

(ii) Any statement of the credit terms in paragraph (d)(1) of this section appearing anywhere else in the catalog or advertisement clearly refers to the page or location where the table or schedule begins.

(2) A catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site) complies with paragraph (d)(2) of this section if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(f) *Disclosure of rates and payments in advertisements for credit secured by a dwelling*—(1) *Scope.* The requirements of this paragraph apply to any advertisement for credit secured by a dwelling, other than television or radio advertisements, including promotional materials accompanying applications.

(2) *Disclosure of rates*—(i) *In general.* If an advertisement for credit secured by a dwelling states a simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the advertised loan, the advertisement shall disclose in a clear and conspicuous manner:

(A) Each simple annual rate of interest that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;

(B) The period of time during which each simple annual rate of interest will apply; and

(C) The annual percentage rate for the loan. If such rate is variable, the annual percentage rate shall comply with the accuracy standards in §§ 1026.17(c) and 1026.22.

(ii) *Clear and conspicuous requirement.* For purposes of paragraph (f)(2)(i) of this section, clearly and conspicuously disclosed means that the required information in paragraphs (f)(2)(i)(A) through (C) shall be disclosed with equal prominence and in close proximity to any advertised rate that triggered the required disclosures. The required information in paragraph (f)(2)(i)(C) may be disclosed with greater prominence than the other information.

(3) *Disclosure of payments*—(i) *In general.* In addition to the requirements of paragraph (c) of this section, if an advertisement for credit secured by a dwelling states the amount of any payment, the advertisement shall disclose in a clear and conspicuous manner:

(A) The amount of each payment that will apply over the term of the loan, including any balloon payment. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a reasonably current index and margin;

(B) The period of time during which each payment will apply; and

(C) In an advertisement for credit secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

(ii) *Clear and conspicuous requirement.* For purposes of paragraph (f)(3)(i) of this section, a clear and conspicuous disclosure means that the required information in paragraphs (f)(3)(i)(A) and (B) shall be disclosed with equal prominence and in close proximity to any advertised payment that triggered the required disclosures, and that the required information in paragraph (f)(3)(i)(C) shall be disclosed with prominence and in close proximity to the advertised payments.

(4) *Envelope excluded.* The requirements in paragraphs (f)(2) and (f)(3) of this section do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

(g) *Alternative disclosures—television or radio advertisements.* An advertisement made through television or radio stating any of the terms requiring additional disclosures under paragraph (d)(2) of this section may comply with paragraph (d)(2) of this section either by:

(1) Stating clearly and conspicuously each of the additional disclosures required under paragraph (d)(2) of this section; or

(2) Stating clearly and conspicuously the information required by paragraph (d)(2)(iii) of this section and listing a toll-free telephone number, or any telephone number that allows a consumer

to reverse the phone charges when calling for information, along with a reference that such number may be used by consumers to obtain additional cost information.

(h) *Tax implications.* If an advertisement distributed in paper form or through the Internet (rather than by radio or television) is for a loan secured by the consumer's principal dwelling, and the advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement shall clearly and conspicuously state that:

(1) The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

(2) The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.

(i) *Prohibited acts or practices in advertisements for credit secured by a dwelling.* The following acts or practices are prohibited in advertisements for credit secured by a dwelling:

(1) *Misleading advertising of "fixed" rates and payments.* Using the word "fixed" to refer to rates, payments, or the credit transaction in an advertisement for variable-rate transactions or other transactions where the payment will increase, unless:

(i) In the case of an advertisement solely for one or more variable-rate transactions,

(A) The phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" appears in the advertisement before the first use of the word "fixed" and is at least as conspicuous as any use of the word "fixed" in the advertisement; and

(B) Each use of the word "fixed" to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period;

(ii) In the case of an advertisement solely for non-variable-rate transactions where the payment will increase (e.g., a stepped-rate mortgage transaction with an initial lower payment), each use of the word "fixed" to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed, and the fact that the payment will increase after that period; or

(iii) In the case of an advertisement for both variable-rate transactions and non-variable-rate transactions,

(A) The phrase "Adjustable-Rate Mortgage," "Variable-Rate Mortgage," or "ARM" appears in the advertisement with equal prominence as any use of the term "fixed," "Fixed-Rate Mortgage," or similar terms; and

(B) Each use of the word "fixed" to refer to a rate, payment, or the credit transaction either refers solely to the transactions for which rates are fixed and complies with paragraph (i)(1)(ii) of this section, if applicable, or, if it refers to the variable-rate transactions, is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

(2) *Misleading comparisons in advertisements.* Making any comparison in an advertisement between actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available under the advertised product for a period less than the full term of the loan, unless:

(i) *In general.* The advertisement includes a clear and conspicuous comparison to the information required to be disclosed under §1026.24(f)(2) and (3); and

(ii) *Application to variable-rate transactions.* If the advertisement is for a variable-rate transaction, and the advertised payment or simple annual rate is based on the index and margin that will be used to make subsequent rate or payment adjustments over the term of the loan, the advertisement includes an equally prominent statement in close proximity to the payment or rate that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

(3) *Misrepresentations about government endorsement.* Making any statement in an advertisement that the product offered is a "government loan

program'', ''government-supported loan'', or is otherwise endorsed or sponsored by any Federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program that is, in fact, endorsed or sponsored by a Federal, state, or local government entity.

(4) *Misleading use of the current lender's name.* Using the name of the consumer's current lender in an advertisement that is not sent by or on behalf of the consumer's current lender, unless the advertisement:

(i) Discloses with equal prominence the name of the person or creditor making the advertisement; and

(ii) Includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer's current lender.

(5) *Misleading claims of debt elimination.* Making any misleading claim in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer's existing loan terms with, or obligations to, another creditor.

(6) *Misleading use of the term ''counselor''.* Using the term ''counselor'' in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

(7) *Misleading foreign-language advertisements.* Providing information about some trigger terms or required disclosures, such as an initial rate or payment, only in a foreign language in an advertisement, but providing information about other trigger terms or required disclosures, such as information about the fully-indexed rate or fully amortizing payment, only in English in the same advertisement.

Subpart D—Miscellaneous

§ 1026.25 Record retention.

(a) *General rule.* 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.

(b) *Inspection of records.* A creditor shall permit the agency responsible for enforcing this part with respect to that creditor to inspect its relevant records for compliance.

(c) *Records related to certain requirements for mortgage loans*—(1) *Records related to requirements for loans secured by real property or a cooperative unit*—(i) *General rule.* Except as provided under paragraph (c)(1)(ii) of this section, a creditor shall retain evidence of compliance with the requirements of § 1026.19(e) and (f) for three years after the later of the date of consummation, the date disclosures are required to be made, or the date the action is required to be taken.

(ii) *Closing disclosures.* (A) A creditor shall retain each completed disclosure required under § 1026.19(f)(1)(i) or (f)(4)(i), and all documents related to such disclosures, for five years after consummation, notwithstanding paragraph (c)(1)(ii)(B) of this section.

(B) If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage loan subject to § 1026.19(f) and does not service the mortgage loan, the creditor shall provide a copy of the disclosures required under § 1026.19(f)(1)(i) or (f)(4)(i) to the owner or servicer of the mortgage as a part of the transfer of the loan file. Such owner or servicer shall retain such disclosures for the remainder of the five-year period described under paragraph (c)(1)(ii)(A) of this section.

(C) The Bureau shall have the right to require provision of copies of records related to the disclosures required under § 1026.19(f)(1)(i) and (f)(4)(i).

(2) *Records related to requirements for loan originator compensation.* Notwithstanding paragraph (a) of this section, for transactions subject to § 1026.36:

(i) A creditor shall maintain records sufficient to evidence all compensation it pays to a loan originator, as defined in § 1026.36(a)(1), and the compensation agreement that governs those payments for three years after the date of payment.

(ii) A loan originator organization, as defined in §1026.36(a)(1)(iii), shall maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person; all compensation it pays to any individual loan originator, as defined in §1026.36(a)(1)(ii); and the compensation agreement that governs each such receipt or payment, for three years after the date of each such receipt or payment.

(3) *Records related to minimum standards for transactions secured by a dwelling.* Notwithstanding paragraph (a) of this section, a creditor shall retain evidence of compliance with §1026.43 of this regulation for three years after consummation of a transaction covered by that section.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 6583, Jan. 30, 2013; 78 FR 11410, Feb. 15, 2013; 78 FR 60382, Oct. 1, 2013; 78 FR 80112, Dec. 31, 2013; 82 FR 37769, Aug. 11, 2017]

§ 1026.26 Use of annual percentage rate in oral disclosures.

(a) *Open-end credit.* In an oral response to a consumer's inquiry about the cost of open-end credit, only the annual percentage rate or rates shall be stated, except that the periodic rate or rates also may be stated. If the annual percentage rate cannot be determined in advance because there are finance charges other than a periodic rate, the corresponding annual percentage rate shall be stated, and other cost information may be given.

(b) *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.

§ 1026.27 Language of disclosures.

Disclosures required by this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request. This requirement for providing English disclosures on request does not apply to advertisements subject to §§1026.16 and 1026.24.

§ 1026.28 Effect on state laws.

(a) *Inconsistent disclosure requirements.* (1) Except as provided in paragraph (d) of this section, State law requirements that are inconsistent with the requirements contained in chapter 1 (General Provisions), chapter 2 (Credit Transactions), or chapter 3 (Credit Advertising) of the Act and the implementing provisions of this part are preempted to the extent of the inconsistency. A State law is inconsistent if it requires a creditor to make disclosures or take actions that contradict the requirements of the Federal law. A State law is contradictory if it requires the use of the same term to represent a different amount or a different meaning than the Federal law, or if it requires the use of a term different from that required in the Federal law to describe the same item. A creditor, State, or other interested party may request the Bureau to determine whether a State law requirement is inconsistent. After the Bureau determines that a State law is inconsistent, a creditor may not make disclosures using the inconsistent term or form. A determination as to whether a State law is inconsistent with the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and §§1026.19(e) and (f), 1026.37, and 1026.38 shall be made in accordance with this section and not 12 CFR 1024.13.

(2)(i) State law requirements are inconsistent with the requirements contained in sections 161 (Correction of billing errors) or 162 (Regulation of credit reports) of the Act and the implementing provisions of this part and are preempted if they provide rights, responsibilities, or procedures for consumers or creditors that are different from those required by the Federal law. However, a state law that allows a consumer to inquire about an open-end credit account and imposes on the creditor an obligation to respond to such inquiry after the time allowed in the Federal law for the consumer to submit written notice of a billing error shall not be preempted in any situation where the time period for making written notice under this part has expired. If a creditor gives written notice of a consumer's rights under such state law, the notice shall state that reliance on the longer time period available under state law may result in the loss of important rights that could be preserved by acting more promptly under Federal law; it shall also explain that the state law provisions apply only after expiration of the time period for submitting a proper written notice of a billing error under the Federal law. If the state disclosures are made on the same side of a page as the required Federal disclosures, the state disclosures shall appear under a demarcation line below the Federal disclosures, and the Federal disclosures shall be identified by a heading indicating that they are made in compliance with Federal law.

(ii) State law requirements are inconsistent with the requirements contained in chapter 4 (Credit billing) of the Act (other than section 161 or 162) and the implementing provisions of this part and are preempted if the creditor cannot comply with state law without violating Federal law.

(iii) A state may request the Bureau to determine whether its law is inconsistent with chapter 4 of the Act and its implementing provisions.

(b) *Equivalent disclosure requirements*. If the Bureau determines that a disclosure required by state law (other than a requirement relating to the finance charge, annual percentage rate, or the disclosures required under § 1026.32) is substantially the same in meaning as a disclosure required under the Act or this part, creditors in that state may make the state disclosure in lieu of the Federal disclosure. A creditor, state, or other interested party may request the Bureau to determine whether a state disclosure is substantially the same in meaning as a Federal disclosure.

(c) *Request for determination*. The procedures under which a request for a determination may be made under this section are set forth in appendix A.

(d) *Special rule for credit and charge cards*. State law requirements relating to the disclosure of credit information in any credit or charge card application or solicitation that is subject to the requirements of section 127(c) of chapter 2 of the Act (§ 1026.60 of the regulation) or in any renewal notice for a credit or charge card that is subject to the requirements of section 127(d) of chapter 2 of the Act (§ 1026.9(e) of the regulation) are preempted. State laws relating to the enforcement of section 127(c) and (d) of the Act are not preempted.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80112, Dec. 31, 2013]

§ 1026.29 State exemptions.

(a) *General rule*. Any state may apply to the Bureau to exempt a class of transactions within the state from the requirements of chapter 2 (Credit transactions) or chapter 4 (Credit billing) of the Act and the corresponding provisions of this part. The Bureau shall grant an exemption if it determines that:

(1) The state law is substantially similar to the Federal law or, in the case of chapter 4, affords the consumer greater protection than the Federal law; and

(2) There is adequate provision for enforcement.

(b) *Civil liability*. (1) No exemptions granted under this section shall extend to the civil liability provisions of sections 130 and 131 of the Act.

(2) If an exemption has been granted, the disclosures required by the applicable state law (except any additional requirements not imposed by Federal law) shall constitute the disclosures required by the Act.

(c) *Applications*. The procedures under which a state may apply for an exemption under this section are set forth in appendix B to this part.

§ 1026.30 Limitation on rates.

A creditor shall include in any consumer credit contract secured by a dwelling and subject to the Act and this part the maximum interest rate that may be imposed during the term of the obligation when:

(a) In the case of closed-end credit, the annual percentage rate may increase after consummation, or

(b) In the case of open-end credit, the annual percentage rate may increase during the plan.

Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 1026.31 General rules.

(a) *Relation to other subparts in this part.* The requirements and limitations of this subpart are in addition to and not in lieu of those contained in other subparts of this part.

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

(c) *Timing of disclosure*—(1) *Disclosures for high-cost mortgages.* The creditor shall furnish the disclosures required by § 1026.32 at least three business days prior to consummation or account opening of a high-cost mortgage as defined in § 1026.32(a).

(i) *Change in terms.* After complying with this paragraph (c)(1) and prior to consummation or account opening, if the creditor changes any term that makes the disclosures inaccurate, new disclosures shall be provided in accordance with the requirements of this subpart.

(ii) *Telephone disclosures.* A creditor may provide new disclosures required by paragraph (c)(1)(i) of this section by telephone if the consumer initiates the change and if, prior to or at consummation or account opening:

(A) The creditor provides new written disclosures; and

(B) The consumer and creditor sign a statement that the new disclosures were provided by telephone at least three days prior to consummation or account opening, as applicable.

(iii) *Consumer's waiver of waiting period before consummation or account opening.* The consumer may, after receiving the disclosures required by this paragraph (c)(1), modify or waive the three-day waiting period between delivery of those disclosures and consummation or account opening 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 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 entitled to the waiting period. Printed forms for this purpose are prohibited, except when creditors are permitted to use printed forms pursuant to § 1026.23(e)(2).

(2) *Disclosures for reverse mortgages.* The creditor shall furnish the disclosures required by § 1026.33 at least three business days prior to:

(i) Consummation of a closed-end credit transaction; or

(ii) The first transaction under an open-end credit plan.

(d) *Basis of disclosures and use of estimates*—(1) *Legal obligation.* Disclosures shall reflect the terms of the legal obligation between the parties.

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

(3) *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.

(e) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor 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 under § 1026.15 or § 1026.23, however, the disclosures shall be made to each consumer who has the right to rescind.

(f) *Effect of subsequent events.* 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 (12 CFR part 1026), although new disclosures may be required for mortgages covered by § 1026.32 under paragraph (c) of this section, § 1026.9(c), § 1026.19, or § 1026.20.

(g) Accuracy of annual percentage rate. 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 section 1026.32, if it is accurate according to the requirements and within the tolerances under section 1026.22 for closed-end credit transactions or 1026.6(a) for open-end credit plans. The finance charge tolerances for rescission under section 1026.23(g) or (h) shall not apply for this purpose.

(h) *Corrections and unintentional violations.* A creditor or assignee in a high-cost mortgage, as defined in § 1026.32(a), who, when acting in good faith, failed to comply with any requirement under section 129 of the Act will not be deemed to have violated such requirement if the creditor or assignee satisfies either of the following sets of conditions:

(1)(i) Within 30 days of consummation or account opening and prior to the institution of any action, the consumer is notified of or discovers the violation;

(ii) Appropriate restitution is made within a reasonable time; and

(iii) Within a reasonable time, whatever adjustments are necessary are made to the loan or credit plan to either, at the choice of the consumer:

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631–1651; or

(B) Change the terms of the loan or credit plan in a manner beneficial to the consumer so that the loan or credit plan will no longer be a high-cost mortgage.

(2)(i) Within 60 days of the creditor's discovery or receipt of notification of an unintentional violation or bona fide error and prior to the institution of any action, the consumer is notified of the compliance failure;

(ii) Appropriate restitution is made within a reasonable time; and

(iii) Within a reasonable time, whatever adjustments are necessary are made to the loan or credit plan to either, at the choice of the consumer:

(A) Make the loan or credit plan satisfy the requirements of 15 U.S.C. 1631–1651; or

(B) Change the terms of the loan or credit plan in a manner beneficial to the consumer so that the loan or credit plan will no longer be a high-cost mortgage.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 6962, Jan. 31, 2013; 78 FR 60440, Oct. 1, 2013]

§ 1026.32 Requirements for high-cost mortgages.

(a) *Coverage.* (1) The requirements of this section apply to a *high-cost mortgage*, which is any consumer credit transaction that is secured by the consumer's principal dwelling, other than as provided in paragraph (a)(2) of this section, and in which:

(i) The annual percentage rate applicable to the transaction, as determined in accordance with paragraph (a)(3) of this section, will exceed the average prime offer rate, as defined in § 1026.35(a)(2), for a comparable transaction by more than:

(A) 6.5 percentage points for a first-lien transaction, other than as described in paragraph (a)(1)(i)(B) of this section;

(B) 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

(C) 8.5 percentage points for a subordinate-lien transaction; or

(ii) The transaction's total points and fees, as defined in paragraphs (b)(1) and (2) of this section, will exceed:

(A) 5 percent of the total loan amount for a transaction with a loan amount of $20,000 or more; the $20,000 figure shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

(B) 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; the $1,000 and $20,000 figures shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index that was reported on the preceding June 1; or

(iii) Under the terms of the loan contract or open-end credit agreement, the creditor can charge a prepayment penalty, as defined in paragraph (b)(6) of this section, more than 36 months after consummation or account opening, or prepayment penalties that can exceed, in total, more than 2 percent of the amount prepaid.

(2) *Exemptions.* This section does not apply to the following:

(i) A reverse mortgage transaction subject to §1026.33;

(ii) A transaction to finance the initial construction of a dwelling;

(iii) A transaction originated by a Housing Finance Agency, where the Housing Finance Agency is the creditor for the transaction; or

(iv) A transaction originated pursuant to the United States Department of Agriculture's Rural Development Section 502 Direct Loan Program.

(3) *Determination of annual percentage rate.* For purposes of paragraph (a)(1)(i) of this section, a creditor shall determine the annual percentage rate for a closed- or open-end credit transaction based on the following:

(i) For a transaction in which the annual percentage rate will not vary during the term of the loan or credit plan, the interest rate in effect as of the date the interest rate for the transaction is set;

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

(iii) For a transaction in which the interest rate may or will vary during the term of the loan or credit plan, other than a transaction described in paragraph (a)(3)(ii) of this section, the maximum interest rate that may be imposed during the term of the loan or credit plan.

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

(1) In connection with a closed-end credit transaction, *points and fees* means the following fees or charges that are known at or before consummation:

(i) All items included in the finance charge under §1026.4(a) and (b), except that the following items are excluded:

(A) Interest or the time-price differential;

(B) Any premium or other charge imposed in connection with any Federal or State agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss;

(C) For any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any Federal or State agency program:

(*1*) If the premium or other charge is payable after consummation, the entire amount of such premium or other charge; or

(*2*) If the premium or other charge is payable at or before consummation, the portion of any such premium or other charge that is not in excess of the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan;

(D) Any bona fide 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 under paragraph (b)(1)(i)(C), (iii), or (iv) of this section;

(E) 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:

(*1*) The average prime offer rate, as defined in §1026.35(a)(2), by more than one percentage point; or

(*2*) For purposes of paragraph (a)(1)(ii) of this section, for transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*) by more than one percentage point; and

(F) If no discount points have been excluded under paragraph (b)(1)(i)(E) of this section, 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:

(*1*) The average prime offer rate, as defined in §1026.35(a)(2), by more than two percentage points; or

(*2*) For purposes of paragraph (a)(1)(ii) of this section, for transactions that are secured by personal property, the average rate for a loan insured under Title I of the National Housing Act (12 U.S.C. 1702 *et seq.*) by more than two percentage points;

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in §1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:

(A) That compensation is paid by a consumer to a mortgage broker, as defined in §1026.36(a)(2), and already has been included in points and fees under paragraph (b)(1)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in §1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or

(D) That compensation is paid by a retailer of manufactured homes to its employee.

(iii) All items listed in §1026.4(c)(7) (other than amounts held for future payment of taxes), unless:

(A) The charge is reasonable;

(B) The creditor receives no direct or indirect compensation in connection with the charge; and

(C) The charge is not paid to an affiliate of the creditor;

(iv) Premiums or other charges payable at or before consummation for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract;

(v) The maximum prepayment penalty, as defined in paragraph (b)(6)(i) of this section, that may be charged or collected under the terms of the mortgage loan; and

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) or (ii) of this section, as applicable, 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 or plan, a servicer acting on behalf of the current holder, or an affiliate of either.

(2) In connection with an open-end credit plan, *points and fees* means the following fees or charges that are known at or before account opening:

(i) All items included in the finance charge under §1026.4(a) and (b), except that the following items are excluded:

(A) Interest or the time-price differential;

(B) Any premium or other charge imposed in connection with any Federal or State agency program for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss;

(C) For any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any Federal or State agency program:

(*1*) If the premium or other charge is payable after account opening, the entire amount of such premium or other charge; or

(*2*) If the premium or other charge is payable at or before account opening, the portion of any such premium or other charge that is not in excess of the amount payable under policies in effect at the time of account opening under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)), provided that the premium or charge is required to be refundable on a pro rata basis and the refund is automatically issued upon notification of the satisfaction of the underlying mortgage transaction;

(D) Any bona fide 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 under paragraphs (b)(2)(i)(C), (b)(2)(iii) or (b)(2)(iv) of this section;

(E) Up to two bona fide discount points payable by the consumer in connection with the transaction, provided that the conditions specified in paragraph (b)(1)(i)(E) of this section are met; and

(F) Up to one bona fide discount point payable by the consumer in connection with the transaction, provided that no discount points have been excluded under paragraph (b)(2)(i)(E) of this section and the conditions specified in paragraph (b)(1)(i)(F) of this section are met;

(ii) All compensation paid directly or indirectly by a consumer or creditor to a loan originator, as defined in §1026.36(a)(1), that can be attributed to that transaction at the time the interest rate is set unless:

(A) That compensation is paid by a consumer to a mortgage broker, as defined in §1026.36(a)(2), and already has been included in points and fees under paragraph (b)(2)(i) of this section;

(B) That compensation is paid by a mortgage broker, as defined in §1026.36(a)(2), to a loan originator that is an employee of the mortgage broker;

(C) That compensation is paid by a creditor to a loan originator that is an employee of the creditor; or

(D) That compensation is paid by a retailer of manufactured homes to its employee.

(iii) All items listed in §1026.4(c)(7) (other than amounts held for future payment of taxes) unless:

(A) The charge is reasonable;

(B) The creditor receives no direct or indirect compensation in connection with the charge; and

(C) The charge is not paid to an affiliate of the creditor;

(iv) Premiums or other charges payable at or before account opening for any credit life, credit disability, credit unemployment, or credit property insurance, or any other life, accident, health, or loss-of-income insurance for which the creditor is a beneficiary, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract;

(v) The maximum prepayment penalty, as defined in paragraph (b)(6)(ii) of this section, that may be charged or collected under the terms of the open-end credit plan;

(vi) The total prepayment penalty, as defined in paragraph (b)(6)(i) or (ii) of this section, as applicable, incurred by the consumer if the consumer refinances an existing closed-end credit transaction with an open-end credit plan, or terminates an existing open-end credit plan in connection with obtaining a new open-end credit plan, with the current holder of the existing transaction or plan, a servicer acting on behalf of the current holder, or an affiliate of either;

(vii) Any fees charged for participation in an open-end credit plan, payable at or before account opening, as described in §1026.4(c)(4); and

(viii) Any transaction fee, including any minimum fee or per-transaction fee, that will be charged for a draw on the credit line, where the creditor must assume that the consumer will make at least one draw during the term of the plan.

(3) *Bona fide discount point*—(i) *Closed-end credit.* The term *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.

(ii) *Open-end credit.* The term *bona fide discount point* means an amount equal to 1 percent of the credit limit for the plan when the account is opened, paid by the consumer, and 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. See comment 32(b)(3)(i)-

1 for additional guidance in determining whether a discount point is bona fide.

(4) *Total loan amount*—(i) *Closed-end credit.* The total loan amount for a closed-end credit transaction is calculated by taking the amount financed, as determined according to § 1026.18(b), and deducting any cost listed in § 1026.32(b)(1)(iii), (iv), or (vi) that is both included as points and fees under § 1026.32(b)(1) and financed by the creditor.

(ii) *Open-end credit.* The total loan amount for an open-end credit plan is the credit limit for the plan when the account is opened.

(5) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(6) *Prepayment penalty*—(i) *Closed-end credit transactions.* For a closed-end credit transaction, *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 extensions of credit insured by the Federal Housing Administration that are consummated before January 21, 2015.

(ii) *Open-end credit.* For an open-end credit plan, *prepayment penalty* means a charge imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term, other than a waived, bona fide third-party charge that the creditor imposes if the consumer terminates the open-end credit plan sooner than 36 months after account opening.

(c) *Disclosures.* In addition to other disclosures required by this part, in a mortgage subject to this section, the creditor shall disclose the following in conspicuous type size:

(1) *Notices.* The following statement: "You are not required to complete this agreement merely because you have received these disclosures or have signed a loan application. If you obtain this loan, the lender will have a mortgage on your home. You could lose your home, and any money you have put into it, if you do not meet your obligations under the loan."

(2) *Annual percentage rate.* The annual percentage rate.

(3) *Regular payment; minimum periodic payment example; balloon payment.* (i) For a closed-end credit transaction, the amount of the regular monthly (or other periodic) payment and the amount of any balloon payment provided in the credit contract, if permitted under paragraph (d)(1) of this section. The regular payment disclosed under this paragraph shall be treated as accurate if it is based on an amount borrowed that is deemed accurate and is disclosed under paragraph (c)(5) of this section.

(ii) For an open-end credit plan:

(A) An example showing the first minimum periodic payment for the draw period, the first minimum periodic payment for any repayment period, and the balance outstanding at the beginning of any repayment period. The example must be based on the following assumptions:

(*1*) The consumer borrows the full credit line, as disclosed in paragraph (c)(5) of this section, at account opening and does not obtain any additional extensions of credit;

(*2*) The consumer makes only minimum periodic payments during the draw period and any repayment period; and

(*3*) The annual percentage rate used to calculate the example payments remains the same during the draw period and any repayment period. The creditor must provide the minimum periodic payment example based on the annual percentage rate for the plan, as described in paragraph (c)(2) of this section, except that if an introductory annual percentage rate applies, the creditor must use the rate that will apply to the plan after the introductory rate expires.

(B) If the credit contract provides for a balloon payment under the plan as permitted under paragraph (d)(1) of this section, a disclosure of that fact and an example showing the amount of the balloon payment based on the assumptions described in paragraph (c)(3)(ii)(A) of this section.

(C) A statement that the example payments show the first minimum periodic payments at the current annual percentage rate if the consumer borrows the maximum credit available when the account is opened and does not obtain any additional extensions of credit, or a substantially similar statement.

(D) A statement that the example payments are not the consumer's actual payments and that the actual minimum periodic payments will depend on the amount the consumer borrows, the interest rate applicable to that period, and whether the consumer pays more than the required minimum periodic payment, or a substantially similar statement.

(4) *Variable-rate*. For variable-rate transactions, a statement that the interest rate and monthly payment may increase, and the amount of the single maximum monthly payment, based on the maximum interest rate required to be included in the contract by §1026.30.

(5) *Amount borrowed; credit limit*. (i) For a closed-end credit transaction, the total amount the consumer will borrow, as reflected by the face amount of the note. Where the amount borrowed includes financed charges that are not prohibited under §1026.34(a)(10), that fact shall be stated, grouped together with the disclosure of the amount borrowed. The disclosure of the amount borrowed shall be treated as accurate if it is not more than $100 above or below the amount required to be disclosed.

(ii) For an open-end credit plan, the credit limit for the plan when the account is opened.

(d) *Limitations*. A high-cost mortgage shall not include the following terms:

(1)(i) *Balloon payment*. Except as provided by paragraphs (d)(1)(ii) and (iii) of this section, a payment schedule with a payment that is more than two times a regular periodic payment.

(ii) *Exceptions*. The limitations in paragraph (d)(1)(i) of this section do not apply to:

(A) A mortgage transaction with a payment schedule that is adjusted to the seasonal or irregular income of the consumer;

(B) A loan with maturity of 12 months or less, if the purpose of the loan is a ''bridge'' loan connected with the acquisition or construction of a dwelling intended to become the consumer's principal dwelling; or

(C) A loan that meets the criteria set forth in §§1026.43(f)(1)(i) through (vi) and 1026.43(f)(2), or the conditions set forth in §1026.43(e)(6).

(iii) *Open-end credit plans*. If the terms of an open-end credit plan provide for a repayment period during which no further draws may be taken, the limitations in paragraph (d)(1)(i) of this section do not apply to any adjustment in the regular periodic payment that results solely from the credit plan's transition from the draw period to the repayment period. If the terms of an open-end credit plan do not provide for any repayment period, the limitations in paragraph (d)(1)(i) of this section apply to all periods of the credit plan.

(2) *Negative amortization*. A payment schedule with regular periodic payments that cause the principal balance to increase.

(3) *Advance payments*. A payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds.

(4) *Increased interest rate*. An increase in the interest rate after default.

(5) *Rebates*. A refund calculated by a method less favorable than the actuarial method (as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d)), for rebates of interest arising from a loan acceleration due to default.

(6) *Prepayment penalties*. A prepayment penalty, as defined in paragraph (b)(6) of this section.

(7) [Reserved]

(8) *Acceleration of debt*. A demand feature that permits the creditor to accelerate the indebtedness by terminating the high-cost mortgage in advance of the original maturity date and to demand repayment of the entire outstanding balance, except in the following circumstances:

(i) There is fraud or material misrepresentation by the consumer in connection with the loan or open-end credit agreement;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance that results in a default in payment under the loan; or

(iii) 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.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 6583, Jan. 30, 2013; 78 FR 6962, Jan. 31, 2013; 78 FR 35502, June 12, 2013; 78 FR 60440, Oct. 1, 2013]

§ 1026.33 Requirements for reverse mortgages.

(a) *Definition.* For purposes of this subpart, *reverse mortgage transaction* means a nonrecourse consumer credit obligation in which:

(1) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the consumer's principal dwelling; and

(2) Any principal, interest, or shared appreciation or equity is due and payable (other than in the case of default) only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a principal dwelling.

(b) *Content of disclosures.* In addition to other disclosures required by this part, in a reverse mortgage transaction the creditor shall provide the following disclosures in a form substantially similar to the model form found in paragraph (d) of appendix K of this part:

(1) *Notice.* A statement that the consumer is not obligated to complete the reverse mortgage transaction merely because the consumer has received the disclosures required by this section or has signed an application for a reverse mortgage loan.

(2) *Total annual loan cost rates.* A good-faith projection of the total cost of the credit, determined in accordance with paragraph (c) of this section and expressed as a table of "total annual loan cost rates," using that term, in accordance with appendix K of this part.

(3) *Itemization of pertinent information.* An itemization of loan terms, charges, the age of the youngest borrower and the appraised property value.

(4) *Explanation of table.* An explanation of the table of total annual loan cost rates as provided in the model form found in paragraph (d) of appendix K of this part.

(c) *Projected total cost of credit.* The projected total cost of credit shall reflect the following factors, as applicable:

(1) *Costs to consumer.* All costs and charges to the consumer, including the costs of any annuity the consumer purchases as part of the reverse mortgage transaction.

(2) *Payments to consumer.* All advances to and for the benefit of the consumer, including annuity payments that the consumer will receive from an annuity that the consumer purchases as part of the reverse mortgage transaction.

(3) *Additional creditor compensation.* Any shared appreciation or equity in the dwelling that the creditor is entitled by contract to receive.

(4) *Limitations on consumer liability.* Any limitation on the consumer's liability (such as nonrecourse limits and equity conservation agreements).

(5) *Assumed annual appreciation rates.* Each of the following assumed annual appreciation rates for the dwelling:

(i) 0 percent.

(ii) 4 percent.

(iii) 8 percent.

(6) *Assumed loan period.* (i) Each of the following assumed loan periods, as provided in appendix L of this part:

(A) Two years.

(B) The actuarial life expectancy of the consumer to become obligated on the reverse mortgage transaction (as of that consumer's most recent birthday). In the case of multiple consumers, the period shall be the actuarial life expectancy of the youngest consumer (as of that consumer's most recent birthday).

(C) The actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of 1.4 and rounded to the nearest full year.

(ii) At the creditor's option, the actuarial life expectancy specified by paragraph (c)(6)(i)(B) of this section, multiplied by a factor of .5 and rounded to the nearest full year.

§ 1026.34 Prohibited acts or practices in connection with high-cost mortgages.

(a) *Prohibited acts or practices for high-cost mortgages*—(1) *Home improvement contracts.* A creditor shall not pay a contractor under a home improvement contract from the proceeds of a high-cost mortgage, other than:

(i) By an instrument payable to the consumer or jointly to the consumer and the contractor; or

(ii) 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 prior to the disbursement.

(2) *Notice to assignee.* A creditor may not sell or otherwise assign a high-cost mortgage 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 consumer could assert against the creditor.''

(3) *Refinancings within one-year period.* Within one year of having extended a high-cost mortgage, a creditor shall not refinance any high-cost mortgage to the same consumer into another high-cost mortgage, unless the refinancing is in the consumer's interest. An assignee holding or servicing a high-cost mortgage shall not, for the remainder of the one-year period following the date of origination of the credit, refinance any high-cost mortgage to the same consumer into another high-cost mortgage, unless the refinancing is in the consumer'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.

(4) *Repayment ability for high-cost mortgages.* In connection with an open-end, high-cost mortgage, a creditor shall not open a plan for a consumer where credit is or will be extended without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, employment, assets other than the collateral, and current obligations including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction. The requirements set forth in §1026.34(a)(4)(i) through (iv) apply to open-end high-cost mortgages, but do not apply to closed-end high-cost mortgages. In connection with a closed-end, high-cost mortgage, a creditor must comply with the repayment ability requirements set forth in §1026.43. Temporary or ''bridge'' loans with terms 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, are exempt from this repayment ability requirement.

(i) *Mortgage-related obligations.* For purposes of this paragraph (a)(4), mortgage-related obligations are property taxes; premiums and similar charges identified in §1026.4(b)(5), (7), (8), and (10) that are required by the creditor; fees and special assessments imposed by a condominium, cooperative, or homeowners association; ground rent; and leasehold payments.

(ii) *Basis for determination of repayment ability.* Under this paragraph (a)(4) a creditor must determine the consumer's repayment ability in connection with an open-end, high cost mortgage as follows:

(A) A creditor must verify amounts of income or assets that it relies on to determine repayment ability, including expected income or assets, by the consumer's Internal Revenue Service Form W–2, tax returns, payroll receipts, financial institution records, or other third-party documents that provide reasonably reliable evidence of the consumer's income or assets.

(B) A creditor must verify the consumer's current obligations, including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction.

(iii) *Presumption of compliance.* For an open-end, high cost mortgage, a creditor is presumed to have complied with this paragraph (a)(4) with respect to a transaction if the creditor:

(A) Determines the consumer's repayment ability as provided in paragraph (a)(4)(ii);

(B) Determines the consumer's repayment ability taking into account current obligations and mortgage-related obligations as defined in paragraph (a)(4)(i) of this section, and using the largest required minimum periodic payment based on the following assumptions:

(*1*) The consumer borrows the full credit line at account opening with no additional extensions of credit;

(*2*) The consumer makes only required minimum periodic payments during the draw period and any repayment period;

(*3*) If the annual percentage rate may increase during the plan, the maximum annual percentage rate that is included in the contract, as required by § 1026.30, applies to the plan at account opening and will apply during the draw period and any repayment period.

(C) Assesses the consumer's repayment ability taking into account at least one of the following: The ratio of total current obligations, including any mortgage-related obligations that are required by another credit obligation undertaken prior to or at account opening, and are secured by the same dwelling that secures the high-cost mortgage transaction, to income, or the income the consumer will have after paying current obligations.

(iv) *Exclusions from presumption of compliance.* Notwithstanding the previous paragraph, no presumption of compliance is available for an open-end, high-cost mortgage transaction for which the regular periodic payments when aggregated do not fully amortize the outstanding principal balance except as otherwise provided by § 1026.32(d)(1)(ii).

(5) *Pre-loan counseling*—(i) *Certification of counseling required.* A creditor shall not extend a high-cost mortgage to a consumer unless the creditor receives written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor that is approved to provide such counseling by the Secretary of the U.S. Department of Housing and Urban Development or, if permitted by the Secretary, by a State housing finance authority.

(ii) *Timing of counseling.* The counseling required under this paragraph (a)(5) must occur after:

(A) The consumer receives either the disclosure required by section 5(c) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(c)) or the disclosures required by § 1026.40; or

(B) The consumer receives the disclosures required by § 1026.32(c), for transactions in which neither of the disclosures listed in paragraph (a)(5)(ii)(A) of this section are provided.

(iii) *Affiliation prohibited.* The counseling required under this paragraph (a)(5) shall not be provided by a counselor who is employed by or affiliated with the creditor.

(iv) *Content of certification.* The certification of counseling required under paragraph (a)(5)(i) must include:

(A) The name(s) of the consumer(s) who obtained counseling;

(B) The date(s) of counseling;

(C) The name and address of the counselor;

(D) A statement that the consumer(s) received counseling on the advisability of the high-cost mortgage based on the terms provided in either the disclosure required by section 5(c) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604(c)) or the disclosures required by § 1026.40.

(E) For transactions for which neither of the disclosures listed in paragraph (a)(5)(ii)(A) of this section are provided, a statement that the consumer(s) received counseling on the advisability of the high-cost mortgage based on the terms provided in the disclosures required by § 1026.32(c); and

(F) A statement that the counselor has verified that the consumer(s) received the disclosures required by either § 1026.32(c) or the Real Estate Settlement Procedures Act of 1974 (12

U.S.C. 2601 *et seq.*) with respect to the transaction.

(v) *Counseling fees.* A creditor may pay the fees of a counselor or counseling organization for providing counseling required under this paragraph (a)(5) but may not condition the payment of such fees on the consummation or account-opening 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 required by paragraph (a)(5)(i) of this section. A creditor may, however, confirm that a counselor has provided counseling to the consumer pursuant to this paragraph (a)(5) prior to paying the fee of a counselor or counseling organization.

(vi) *Steering prohibited.* A creditor that extends a high-cost mortgage shall not steer or otherwise direct a consumer to choose a particular counselor or counseling organization for the counseling required under this paragraph (a)(5).

(6) *Recommended default.* A creditor or mortgage broker, as defined in section 1026.36(a)(2), may not recommend or encourage default on an existing loan or other debt prior to and in connection with the consummation or account opening of a high-cost mortgage that refinances all or any portion of such existing loan or debt.

(7) *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.

(8) *Late fees*—(i) *General.* Any late payment charge imposed in connection with a high-cost mortgage must be specifically permitted by the terms of the loan contract or open-end credit agreement 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.

(ii) *Timing.* A late payment charge may be imposed in connection with a high-cost mortgage only if the payment is not received by the end of the 15-day period beginning on the date the payment is due or, in the case of a high-cost mortgage on which interest on each installment is paid in advance, the end of the 30-day period beginning on the date the payment is due.

(iii) *Multiple late charges assessed on payment subsequently paid.* A late payment charge may not be imposed in connection with a high-cost mortgage payment if any delinquency is attributable only to a late payment charge imposed on an earlier payment, and the payment otherwise is a full payment for the applicable period and is paid by the due date or within any applicable grace period.

(iv) *Failure to make required payment.* The terms of a high-cost mortgage agreement may provide that any payment shall first be applied to any past due balance. If the consumer fails to make a timely payment by the due date and subsequently resumes making payments but has not paid all past due payments, the creditor may impose a separate late payment charge for any payment(s) outstanding (without deduction due to late fees or related fees) until the default is cured.

(9) *Payoff statements*—(i) *Fee prohibition.* In general, a creditor or servicer (as defined in 12 CFR 1024.2(b)) may not charge a fee for providing to a consumer, or a person authorized by the consumer to obtain such information, a statement of the amount due to pay off the outstanding balance of a high-cost mortgage.

(ii) *Processing fee.* A creditor or servicer may charge a processing fee to cover the cost of providing a payoff statement, as described in paragraph (a)(9)(i) of this section, by fax or courier, provided that such fee may not exceed an amount that is comparable to fees imposed for similar services provided in connection with consumer credit transactions that are secured by the consumer's principal dwelling and are not high-cost mortgages. A creditor or servicer shall make a payoff statement available to a consumer, or a person authorized by the consumer to obtain such information, by a method other than by fax or courier and without charge pursuant to paragraph (a)(9)(i) of this section.

(iii) *Processing fee disclosure.* Prior to charging a processing fee for provision of a payoff statement by fax or courier, as permitted pursuant to paragraph (a)(9)(ii) of this section, a creditor or servicer shall disclose to a consumer or a person authorized by the consumer to obtain the consumer's payoff statement that payoff statements, as described in paragraph (a)(9)(i) of this section, are available by a method other than by fax or courier without charge.

(iv) *Fees permitted after multiple requests.* A creditor or servicer that has provided a payoff statement, as described in paragraph (a)(9)(i) of this section, to a consumer, or a person authorized by the consumer to obtain such information, without charge, other than the processing fee permitted under paragraph (a)(9)(ii) of this section, four times during a calendar year, may thereafter charge a reasonable fee for providing such statements during the remainder of the calendar year. Fees for payoff statements provided to a consumer, or a person authorized by the consumer to obtain such information, in a subsequent calendar year are subject to the requirements of this section.

(v) *Timing of delivery of payoff statements.* A payoff statement, as described in paragraph (a)(9)(i) of this section, for a high-cost mortgage shall 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 statement.

(10) *Financing of points and fees.* A creditor that extends credit under a high-cost mortgage may not finance charges that are required to be included in the calculation of points and fees, as that term is defined in §1026.32(b)(1) and (2). Credit insurance premiums or debt cancellation or suspension fees that are required to be included in points and fees under §1026.32(b)(1)(iv) or (2)(iv) shall not be considered financed by the creditor when they are calculated and paid in full on a monthly basis.

(b) *Prohibited acts or practices for dwelling-secured loans; structuring loans to evade high-cost mortgage requirements.* A creditor shall not structure any transaction that is otherwise a high-cost mortgage in a form, for the purpose, and with the intent to evade the requirements of a high-cost mortgage subject to this subpart, including by dividing any loan transaction into separate parts.

[78 FR 6964, Jan. 31, 2013, as amended at 78 FR 30745, May 23, 2013; 78 FR 63005, Oct. 23, 2013]

§ 1026.35 Requirements for higher-priced mortgage loans.

(a) *Definitions.* For purposes of this section:

(1) ''Higher-priced mortgage loan'' means a closed-end 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:

(i) 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 eligible for purchase by Freddie Mac;

(ii) 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

(iii) By 3.5 or more percentage points for loans secured by a subordinate lien.

(2) ''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 Bureau 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 Bureau uses to derive these rates.

(3) ''Insured credit union'' has the meaning given in Section 101 of the Federal Credit Union Act (12 U.S.C. 1752).

(4) ''Insured depository institution'' has the meaning given in Section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(b) *Escrow accounts*—(1) *Requirement to escrow for property taxes and insurance*. Except as provided in paragraph (b)(2) of this section, a creditor may not extend a higher-priced mortgage loan secured by a first lien on a consumer's 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. For purposes of this paragraph (b), the term ''escrow account'' has the same meaning as under Regulation X (12 CFR 1024.17(b)), as amended.

(2) *Exemptions*. Notwithstanding paragraph (b)(1) of this section:

(i) An escrow account need not be established for:

(A) A transaction secured by shares in a cooperative;

(B) A transaction to finance the initial construction of a dwelling;

(C) A temporary or ''bridge'' loan with a loan 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; or

(D) A reverse mortgage transaction subject to §1026.33.

(ii) Insurance premiums described in paragraph (b)(1) of this section need not be included in escrow accounts for loans secured by dwellings in condominiums, planned unit developments, or other common interest communities in which dwelling ownership requires participation in a governing association, where the governing association has an obligation to the dwelling owners to maintain a master policy insuring all dwellings.

(iii) Except as provided in paragraph (b)(2)(v) of this section, an escrow account need not be established for a transaction if, at the time of consummation:

(A) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor extended a covered transaction, as defined by §1026.43(b)(1), secured by a first lien on a property that is located in an area that is either ''rural'' or ''underserved,'' as set forth in paragraph (b)(2)(iv) of this section;

(B) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor and its affiliates together extended no more than 2,000 covered transactions, as defined by §1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person;

(C) As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended covered transactions, as defined by §1026.43(b)(1), secured by first liens, together, had total assets of less than $2,000,000,000; this asset threshold shall adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars (see comment 35(b)(2)(iii)–1.iii for the applicable threshold); and

(D) Neither the creditor nor its affiliate maintains an escrow account of the type described in paragraph (b)(1) of this section for any extension of consumer credit secured by real property or a dwelling that the creditor or its affiliate currently services, other than:

(*1*) Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before June 17, 2021; or

(*2*) Escrow accounts established after consummation as an accommodation to distressed consumers to assist such consumers in avoiding default or foreclosure.

(iv) For purposes of paragraph (b)(2)(iii)(A) of this section:

(A) An area is ''rural'' during a calendar year if it is:

(*1*) A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget and as they are applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS); or

(*2*) A census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States.

(B) An area is ''underserved'' during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in §1026.43(b)(1), secured by first liens on properties in the county five or more times.

(C) A property shall be deemed to be in an area that is rural or underserved in a particular calendar year if the property is:

(*1*) Located in a county that appears on the lists published by the Bureau of counties that are rural or underserved, as defined by §1026.35(b)(2)(iv)(A)(*1*) or §1026.35(b)(2)(iv)(B), for that calendar year,

(*2*) Designated as rural or underserved for that calendar year by any automated tool that the Bureau provides on its public Web site, or

(*3*) Not designated as located in an urban area, as defined by the most recent delineation of urban areas announced by the Census Bureau, by any automated address search tool that the U.S. Census Bureau provides on its public Web site for that purpose and that specifically indicates the urban or rural designations of properties.

(v) Notwithstanding paragraphs (b)(2)(iii) and (vi) of this section, an escrow account must be established pursuant to paragraph (b)(1) of this section for any first-lien higher-priced mortgage loan that, at consummation, is subject to a commitment to be acquired by a person that does not satisfy the conditions in paragraph (b)(2)(iii) or (vi) of this section, unless otherwise exempted by this paragraph (b)(2).

(vi) Except as provided in paragraph (b)(2)(v) of this section, an escrow account need not be established for a transaction made by a creditor that is an insured depository institution or insured credit union if, at the time of consummation:

(A) As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the insured depository institution or insured credit union had assets of $10,000,000,000 or less, adjusted annually for inflation using the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November (see comment 35(b)(2)(vi)(A)–1 for the applicable threshold);

(B) During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor and its affiliates, as defined in §1026.32(b)(5), together extended no more than 1,000 covered transactions secured by a first lien on a principal dwelling; and

(C) The transaction satisfies the criteria in paragraphs (b)(2)(iii)(A) and (D) of this section.

(3) *Cancellation*—(i) *General*. Except as provided in paragraph (b)(3)(ii) of this section, a creditor or servicer may cancel an escrow account required in paragraph (b)(1) of this section only upon the earlier of:

(A) Termination of the underlying debt obligation; or

(B) Receipt no earlier than five years after consummation of a consumer's request to cancel the escrow account.

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

(A) The unpaid principal balance is less than 80 percent of the original value of the property securing the underlying debt obligation; and

(B) The consumer currently is not delinquent or in default on the underlying debt obligation.

(c) *Appraisals*—(1) *Definitions.* For purposes of this section:

(i) *Certified or licensed appraiser* means a person who is certified or licensed by the State agency in the State in which the property that secures the transaction is located, and who performs the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements applicable to appraisers in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 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.

(ii) *Credit risk* means the financial risk that a consumer will default on a loan.

(iii) *Manufactured home* has the same meaning as in 24 CFR 3280.2.

(iv) *Manufacturer's invoice* means a document issued by a manufacturer and provided with a manufactured home to a retail dealer that separately details the wholesale (base) prices at the factory for specific models or series of manufactured homes and itemized options (large appliances, built-in items and equipment), plus actual itemized charges for freight from the factory to the dealer's lot or the homesite (including any rental of wheels and axles) and for any sales taxes to be paid by the dealer. The invoice may recite such prices and charges on an itemized basis or by stating an aggregate price or charge, as appropriate, for each category.

(v) *National Registry* means the database of information about State certified and licensed appraisers maintained by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

(vi) *New manufactured home* means a manufactured home that has not been previously occupied.

(vii) *State agency* means a "State appraiser certifying and licensing agency" recognized in accordance with section 1118(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347(b)) and any implementing regulations.

(2) *Exemptions.* Unless otherwise specified, the requirements in paragraph (c)(3) through (6) of this section do not apply to the following types of transactions:

(i) A loan that satisfies the criteria of a qualified mortgage as defined pursuant to 15 U.S.C. 1639c;

(ii) An extension of credit for which the amount of credit extended is equal to or less than the applicable threshold amount, which is adjusted every year to reflect increases in the Consumer Price Index for Urban Wage Earners and Clerical Workers, as applicable, and published in the official staff commentary to this paragraph (c)(2)(ii);

(iii) A transaction secured by a mobile home, boat, or trailer.

(iv) A transaction to finance the initial construction of a dwelling.

(v) A loan with a maturity of 12 months or less, if the purpose of the loan is a "bridge" loan connected with the acquisition of a dwelling intended to become the consumer's principal dwelling.

(vi) A reverse-mortgage transaction subject to 12 CFR 1026.33(a).

(vii) An extension of credit that is a refinancing secured by a first lien, with refinancing defined as in §1026.20(a) (except that the creditor need not be the original creditor or a holder or servicer of the original obligation), provided that the refinancing meets the following criteria:

(A) Either—

(*1*) The credit risk of the refinancing is retained by the person that held the credit risk of the existing obligation and there is no commitment, at consummation, to transfer the credit risk to another person; or

(*2*) The refinancing is insured or guaranteed by the same Federal government agency that insured or guaranteed the existing obligation;

(B) The regular periodic payments under the refinance loan do not—

(*1*) Cause the principal balance to increase;

(*2*) Allow the consumer to defer repayment of principal; or

(*3*) Result in a balloon payment, as defined in §1026.18(s)(5)(i); and

(C) The proceeds from the refinancing are used solely to satisfy the existing obligation and amounts attributed solely to the costs of the refinancing; and

(viii) A transaction secured by:

(A) A new manufactured home and land, but the exemption shall only apply to the requirement in paragraph (c)(3)(i) of this section that the appraiser conduct a physical visit of the interior of the new manufactured home; or

(B) A manufactured home and not land, for which the creditor obtains one of the following and provides a copy to the consumer no later than three business days prior to consummation of the transaction—

(*1*) For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the consumer's application for credit;

(*2*) A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider; or

(*3*) A valuation, as defined in §1026.42(b)(3), of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes.

(3) *Appraisals required*—(i) *In general.* Except as provided in paragraph (c)(2) of this section, a creditor shall not extend a higher-priced mortgage loan 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 secure the transaction.

(ii) *Safe harbor.* A creditor obtains a written appraisal that meets the requirements for an appraisal required under paragraph (c)(3)(i) of this section if the creditor:

(A) Orders that the appraiser perform the appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, 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;

(B) 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;

(C) Confirms that the elements set forth in appendix N to this part are addressed in the written appraisal; and

(D) Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

(4) *Additional appraisal for certain higher-priced mortgage loans*—(i) *In general.* Except as provided in paragraphs (c)(2) and (c)(4)(vii) of this section, a creditor shall not extend a higher-priced mortgage loan to a consumer to finance the acquisition of the consumer's principal dwelling without obtaining, prior to consummation, two written appraisals, if:

(A) 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

(B) 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.

(ii) *Different certified or licensed appraisers.* The two appraisals required under paragraph (c)(4)(i) of this section may not be performed by the same certified or licensed appraiser.

(iii) *Relationship to general appraisal requirements.* If two appraisals must be obtained under paragraph (c)(4)(i) of this section, each appraisal shall meet the requirements of paragraph (c)(3)(i) of this section.

(iv) *Required analysis in the additional appraisal.* One of the two required appraisals must include an analysis of:

(A) 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;

(B) 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

(C) 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.

(v) *No charge for the additional appraisal.* If the creditor must obtain two appraisals under paragraph (c)(4)(i) of this section, the creditor may charge the consumer for only one of the appraisals.

(vi) *Creditor's determination of prior sale date and price*—(A) *Reasonable diligence.* A creditor must obtain two written appraisals under paragraph (c)(4)(i) of this section unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals does not apply. A creditor acts with reasonable diligence if the creditor bases its determination on information contained in written source documents, such as the documents listed in appendix O to this part.

(B) *Inability to determine prior sale date or price—modified requirements for additional appraisal.* If, after exercising reasonable diligence, a creditor cannot determine whether the conditions in paragraphs (c)(4)(i)(A) and (c)(4)(i)(B) are present and therefore must obtain two written appraisals in accordance with paragraphs (c)(4)(i) through (v) of this section, one of the two appraisals shall include an analysis of the factors in paragraph (c)(4)(iv) of this section only to the extent that the information necessary for the appraiser to perform the analysis can be determined.

(vii) *Exemptions from the additional appraisal requirement.* The additional appraisal required under paragraph (c)(4)(i) of this section shall not apply to extensions of credit that finance a consumer's acquisition of property:

(A) From a local, State or Federal government agency;

(B) From a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan;

(C) From a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure;

(D) From a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party;

(E) From an employer or relocation agency in connection with the relocation of an employee;

(F) From a servicemember, as defined in 50 U.S.C. App. 511(1), who received a deployment or permanent change of station order after the servicemember purchased the property;

(G) Located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area; or

(H) Located in a rural county, as defined in 12 CFR 1026.35(b)(2)(iv)(A).

(5) *Required disclosure*—(i) *In general.* Except as provided in paragraph (c)(2) of this section, 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 disclosure requirement in Regulation B, 12 CFR 1002.14(a)(2), satisfies the requirements of this paragraph.

(ii) *Timing of disclosure.* The disclosure required by paragraph (c)(5)(i) of this section shall be delivered or placed in the mail no later than the third business day after the creditor receives the consumer's application for a higher-priced mortgage loan subject to paragraph (c) of this section. In the case of a loan that is not a higher-priced mortgage loan subject to paragraph (c) of this section at the time of application, but becomes a higher-priced mortgage loan subject to paragraph (c) of this section after application, the disclosure shall 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 subject to paragraph (c) of this section.

(6) *Copy of appraisals*—(i) *In general.* Except as provided in paragraph (c)(2) of this section, a creditor shall provide to the consumer a copy of any written appraisal performed in connection with a higher-priced mortgage loan pursuant to paragraphs (c)(3) and (c)(4) of this section.

(ii) *Timing.* A creditor shall provide to the consumer a copy of each written appraisal pursuant to paragraph (c)(6)(i) of this section:

(A) No later than three business days prior to consummation of the loan; or

(B) In the case of a loan that is not consummated, no later than 30 days after the creditor determines that the loan will not be consummated.

(iii) *Form of copy.* Any copy of a written appraisal required by paragraph (c)(6)(i) of this section may be provided to the applicant 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.*).

(iv) *No charge for copy of appraisal.* A creditor shall not charge the consumer for a copy of a written appraisal required to be provided to the consumer pursuant to paragraph (c)(6)(i) of this section.

(7) *Relation to other rules.* The rules in this paragraph (c) were adopted jointly by the Federal Reserve Board (Board), the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Federal Housing Finance Agency, and the Bureau. These rules are substantively identical to the Board's and the OCC's higher-priced mortgage loan appraisal rules published separately in 12 CFR 226.43 (for the Board) and in 12 CFR part 34, subpart G and 12 CFR part 164, subpart B (for the OCC).

(d) *Evasion; open-end credit.* 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.

[78 FR 4753, Jan. 22, 2013, as amended at 78 FR 10442, Feb. 13, 2013; 78 FR 30745, May 23, 2013; 78 FR 44718, July 24, 2013; 78 FR 60441, Oct. 1, 2013; 78 FR 78585, 78586, Dec. 26, 2013; 80 FR 59967, Oct. 2, 2015; 81 FR 16082, Mar. 25, 2016; 86 FR 9852, Feb. 17, 2021]

§ 1026.36 Prohibited acts or practices and certain requirements for credit secured by a dwelling.

(a) *Definitions*—(1) *Loan originator.* (i) For purposes of this section, the term ''loan originator'' means a person who, in expectation of direct or indirect compensation or other monetary gain or for direct or indirect compensation or other monetary gain, performs any of the following activities: takes an application, offers, arranges, assists a consumer in obtaining or applying to obtain, negotiates, or otherwise obtains or makes an extension of consumer credit for another person; or through advertising or other means of communication represents to the public that such person can or will perform any of these activities. The term ''loan originator'' includes an employee, agent, or contractor of the creditor or loan originator organization if the employee, agent, or contractor meets this definition. The term ''loan originator'' includes a creditor that engages in loan origination activities if the creditor does not finance the transaction at consummation out of the creditor's own resources, including by drawing on a *bona fide* warehouse line of credit or out of deposits held by the creditor. All creditors that engage in any of the foregoing loan origination activities are loan originators for purposes of paragraphs (f) and (g) of this section. The term does not include:

(A) A person who does not take a consumer credit application or offer or negotiate credit terms available from a creditor, but who performs purely administrative or clerical tasks on behalf of a person who does engage in such activities.

(B) An employee of a manufactured home retailer who does not take a consumer credit application, offer or negotiate credit terms available from a creditor, or advise a consumer on credit terms (including rates, fees, and other costs) available from a creditor.

(C) A person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable State law, unless such person is compensated by a creditor or loan originator or by any agent of such creditor or loan originator for a particular consumer credit transaction subject to this section.

(D) A seller financer that meets the criteria in paragraph (a)(4) or (a)(5) of this section, as applicable.

(E) A servicer or servicer's employees, agents, and contractors who offer or negotiate terms for purposes of renegotiating, modifying, replacing, or subordinating principal of existing mortgages where consumers are behind in their payments, in default, or have a reasonable likelihood of defaulting or falling behind. This exception does not apply, however, to a servicer or servicer's employees, agents, and contractors who offer or negotiate a transaction that constitutes a refinancing under §1026.20(a) or obligates a different consumer on the existing debt.

(ii) An ''individual loan originator'' is a natural person who meets the definition of ''loan originator'' in paragraph (a)(1)(i) of this section.

(iii) A ''loan originator organization'' is any loan originator, as defined in paragraph (a)(1)(i) of this section, that is not an individual loan originator.

(2) *Mortgage broker.* 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.

(3) *Compensation.* The term ''compensation'' includes salaries, commissions, and any financial or similar incentive.

(4) *Seller financers; three properties.* A person (as defined in §1026.2(a)(22)) that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

(i) The person provides seller financing for the sale of three or fewer properties in any 12-month period to purchasers of such properties, each of which is owned by the person and serves as security for the financing.

(ii) The person has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person.

(iii) The person provides seller financing that meets the following requirements:

(A) The financing is fully amortizing.

(B) The financing is one that the person determines in good faith the consumer has a reasonable ability to repay.

(C) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR.

(5) *Seller financers; one property.* A natural person, estate, or trust that meets all of the following criteria is not a loan originator under paragraph (a)(1) of this section:

(i) The natural person, estate, or trust provides seller financing for the sale of only one property in any 12-month period to purchasers of such property, which is owned by the natural person, estate, or trust and serves as security for the financing.

(ii) The natural person, estate, or trust has not constructed, or acted as a contractor for the construction of, a residence on the property in the ordinary course of business of the person.

(iii) The natural person, estate, or trust provides seller financing that meets the following requirements:

(A) The financing has a repayment schedule that does not result in negative amortization.

(B) The financing has a fixed rate or an adjustable rate that is adjustable after five or more years, subject to reasonable annual and lifetime limitations on interest rate increases. If the financing agreement has an adjustable rate, the rate is determined by the addition of a margin to an index rate and is subject to reasonable rate adjustment limitations. The index the adjustable rate is based on is a widely available index such as indices for U.S. Treasury securities or LIBOR.

(6) *Credit terms.* For purposes of this section, the term ''credit terms'' includes rates, fees, and other costs. Credit terms are selected based on the consumer's financial characteristics when those terms are selected based on any factors that may influence a credit decision, such as debts, income, assets, or credit history.

(b) *Scope.* Paragraphs (c)(1) and (2) of this section apply to closed-end consumer credit transactions secured by a consumer's principal dwelling. Paragraph (c)(3) of this section applies to a consumer credit transaction secured by a dwelling. Paragraphs (d) through (i) of this section apply to closed-end consumer credit transactions secured by a dwelling. This section does not apply to a home equity line of credit subject to §1026.40, except that paragraphs (h) and (i) of this section apply to such credit when secured by the consumer's principal dwelling and paragraph (c)(3) applies to such credit when secured by a dwelling. Paragraphs (d) through (i) of this section do not apply to a loan that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D).

(c) *Servicing practices.* For purposes of this paragraph (c), the terms ''servicer'' and ''servicing'' have the same meanings as provided in 12 CFR 1024.2(b).

(1) *Payment processing.* In connection with a closed-end consumer credit transaction secured by a consumer's principal dwelling:

(i) *Periodic payments.* No servicer shall fail to credit a periodic 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. A periodic payment, as used in this paragraph (c), is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle. A payment qualifies as a periodic payment even if it does not include amounts required to cover late fees, other fees, or non-escrow payments a servicer has advanced on a consumer's behalf.

(ii) *Partial payments.* Any servicer that retains a partial payment, meaning any payment less than a periodic payment, in a suspense or unapplied funds account shall:

(A) Disclose to the consumer the total amount of funds held in such suspense or unapplied funds account on the periodic statement as required by §1026.41(d)(3), if a periodic statement is required; and

(B) On accumulation of sufficient funds to cover a periodic payment in any suspense or unapplied funds account, treat such funds as a periodic payment received in accordance with paragraph (c)(1)(i) of this section.

(iii) *Non-conforming payments.* 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 five days after receipt.

(2) *No pyramiding of late fees.* In connection with a closed-end consumer credit transaction secured by a consumer's principal dwelling, a servicer shall not impose any late fee or delinquency charge for a payment if:

(i) Such a fee or charge is attributable solely to failure of the consumer to pay a late fee or delinquency charge on an earlier payment; and

(ii) The payment is otherwise a periodic payment received on the due date, or within any applicable courtesy period.

(3) *Payoff statements.* In connection with a consumer credit transaction secured by a consumer's dwelling, a creditor, assignee or servicer, as applicable, must provide an accurate statement of

the total outstanding balance that would be required to pay the consumer's obligation in full as of a specified date. The statement shall be sent within a reasonable time, but in no case more than seven business days, after receiving a written request from the consumer or any person acting on behalf of the consumer. When a creditor, assignee, or servicer, as applicable, is not able to provide the statement within seven business days of such a request because a loan is in bankruptcy or foreclosure, because the loan is a reverse mortgage or shared appreciation mortgage, or because of natural disasters or other similar circumstances, the payoff statement must be provided within a reasonable time. A creditor or assignee that does not currently own the mortgage loan or the mortgage servicing rights is not subject to the requirement in this paragraph (c)(3) to provide a payoff statement.

(d) *Prohibited payments to loan originators*—(1) *Payments based on a term of a transaction.* (i) Except as provided in paragraph (d)(1)(iii) or (iv) of this section, 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 a term of a transaction, the terms of multiple transactions by an individual loan originator, or the terms of multiple transactions by multiple individual loan originators. If a loan originator's compensation is based in whole or in part on a factor that is a proxy for a term of a transaction, the loan originator's compensation is based on a term of a transaction. A factor that is not itself a term of a transaction is a proxy for a term of the transaction if the factor consistently varies with that term over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor in originating the transaction.

(ii) For purposes of this paragraph (d)(1) only, a "term of a transaction" is any right or obligation of the parties to a credit transaction. The amount of credit extended is not a term of a transaction or a proxy for a term of a transaction, provided that compensation received by or paid to a loan originator, directly or indirectly, is based on a fixed percentage of the amount of credit extended; however, such compensation may be subject to a minimum or maximum dollar amount.

(iii) An individual loan originator may receive, and a person may pay to an individual loan originator, compensation in the form of a contribution to a defined contribution plan that is a designated tax-advantaged plan or a benefit under a defined benefit plan that is a designated tax-advantaged plan. In the case of a contribution to a defined contribution plan, the contribution shall not be directly or indirectly based on the terms of that individual loan originator's transactions. As used in this paragraph (d)(1)(iii), "designated tax-advantaged plan" means any plan that meets the requirements of Internal Revenue Code section 401(a), 26 U.S.C. 401(a); employee annuity plan described in Internal Revenue Code section 403(a), 26 U.S.C. 403(a); simple retirement account, as defined in Internal Revenue Code section 408(p), 26 U.S.C. 408(p); simplified employee pension described in Internal Revenue Code section 408(k), 26 U.S.C. 408(k); annuity contract described in Internal Revenue Code section 403(b), 26 U.S.C. 403(b); or eligible deferred compensation plan, as defined in Internal Revenue Code section 457(b), 26 U.S.C. 457(b).

(iv) An individual loan originator may receive, and a person may pay to an individual loan originator, compensation under a non-deferred profits-based compensation plan (*i.e.*, any arrangement for the payment of non-deferred compensation that is determined with reference to the profits of the person from mortgage-related business), provided that:

(A) The compensation paid to an individual loan originator pursuant to this paragraph (d)(1)(iv) is not directly or indirectly based on the terms of that individual loan originator's transactions that are subject to this paragraph (d); and

(B) At least one of the following conditions is satisfied:

(*1*) The compensation paid to an individual loan originator pursuant to this paragraph (d)(1)(iv) does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which the compensation under the non-deferred profits-based compensation plan is paid; or

(*2*) The individual loan originator was a loan originator for ten or fewer transactions subject to this paragraph (d) consummated during the 12-month period preceding the date of the compensation determination.

(2) *Payments by persons other than consumer*—(i) *Dual compensation*. (A) Except as provided in paragraph (d)(2)(i)(C) of this section, if any loan originator receives compensation directly from a consumer in a consumer credit transaction secured by a dwelling:

(*1*) No loan originator shall receive compensation, directly or indirectly, from any person other than the consumer in connection with the transaction; and

(*2*) 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.

(B) Compensation received directly from a consumer includes payments to a loan originator made pursuant to an agreement between the consumer and a person other than the creditor or its affiliates, under which such other person agrees to provide funds toward the consumer's costs of the transaction (including loan originator compensation).

(C) If a loan originator organization receives compensation directly from a consumer in connection with a transaction, the loan originator organization may pay compensation to an individual loan originator, and the individual loan originator may receive compensation from the loan originator organization, subject to paragraph (d)(1) of this section.

(ii) *Exemption*. A payment to a loan originator that is otherwise prohibited by section 129B(c)(2)(A) of the Truth in Lending Act is nevertheless permitted pursuant to section 129B(c)(2)(B) of the Act, regardless of whether the consumer makes any upfront payment of discount points, origination points, or fees, as described in section 129B(c)(2)(B)(ii) of the Act, as long as the loan originator does not receive any compensation directly from the consumer as described in section 129B(c)(2)(B)(i) of the Act.

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

(e) *Prohibition on steering*—(1) *General*. 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.

(2) *Permissible transactions*. 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:

(i) A loan has an annual percentage rate that cannot increase after consummation;

(ii) A loan has an annual percentage rate that may increase after consummation; or

(iii) A loan is a reverse mortgage.

(3) *Loan options presented*. 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:

(i) 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:

(A) The loan with the lowest interest rate;

(B) 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

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

(ii) 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.

(iii) 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.

(4) *Number of loan options presented.* 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.

(f) *Loan originator qualification requirements.* A loan originator for a consumer credit transaction secured by a dwelling must, when required by applicable State or Federal law, be registered and licensed in accordance with those laws, including the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act, 12 U.S.C. 5102 *et seq.*), its implementing regulations (12 CFR part 1007 or part 1008), and State SAFE Act implementing law. To comply with this paragraph (f), a loan originator organization that is not a government agency or State housing finance agency must:

(1) Comply with all applicable State law requirements for legal existence and foreign qualification;

(2) Ensure that each individual loan originator who works for the loan originator organization is licensed or registered to the extent the individual is required to be licensed or registered under the SAFE Act, its implementing regulations, and State SAFE Act implementing law before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling; and

(3) For each of its individual loan originator employees who is not required to be licensed and is not licensed as a loan originator pursuant to §1008.103 of this chapter or State SAFE Act implementing law:

(i) Obtain for any individual whom the loan originator organization 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) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under §1026.36(f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling:

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

(B) A credit report from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act (15 U.S.C. 1681a(p)) secured, where applicable, in compliance with the requirements of section 604(b) of the Fair Credit Reporting Act, 15 U.S.C. 1681b(b); and

(C) Information from the NMLSR about any administrative, civil, or criminal findings by any government jurisdiction or, in the case of an individual loan originator who is not a registered loan originator under the NMLSR, such information from the individual loan originator;

(ii) Determine on the basis of the information obtained pursuant to paragraph (f)(3)(i) of this section and any other information reasonably available to the loan originator organization, for any individual whom the loan originator organization 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) and for any individual regardless of when hired who, based on reliable information known to the loan originator organization, likely does not meet the standards under this paragraph (f)(3)(ii), before the individual acts as a loan originator in a consumer credit transaction secured by a dwelling, that the individual loan originator:

(A)(*1*) Has not been convicted of, or pleaded guilty or *nolo contendere* to, a felony in a domestic or military court during the preceding seven-year period or, in the case of a felony involving an act of fraud, dishonesty, a breach of trust, or money laundering, at any time;

(*2*) For purposes of this paragraph (f)(3)(ii)(A):

(*i*) A crime is a felony only if at the time of conviction it was classified as a felony under the law of the jurisdiction under which the individual was convicted;

(*ii*) Expunged convictions and pardoned convictions do not render an individual unqualified; and

(*iii*) A conviction or plea of guilty or *nolo contendere* does not render an individual unqualified under this § 1026.36(f) if the loan originator organization has obtained consent to employ the individual from the Federal Deposit Insurance Corporation (or the Board of Governors of the Federal Reserve System, as applicable) pursuant to section 19 of the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1829, the National Credit Union Administration pursuant to section 205 of the Federal Credit Union Act (FCUA), 12 U.S.C. 1785(d), or the Farm Credit Administration pursuant to section 5.65(d) of the Farm Credit Act of 1971 (FCA), 12 U.S.C. 227a–14(d), notwithstanding the bars posed with respect to that conviction or plea by the FDIA, FCUA, and FCA, as applicable; and

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

(iii) Provide periodic training covering Federal and State law requirements that apply to the individual loan originator's loan origination activities.

(g) *Name and NMLSR ID on loan documents.* (1) For a consumer credit transaction secured by a dwelling, a loan originator organization must include on the loan documents described in paragraph (g)(2) of this section, whenever each such loan document is provided to a consumer or presented to a consumer for signature, as applicable:

(i) Its name and NMLSR ID, if the NMLSR has provided it an NMLSR ID; and

(ii) The name of the individual loan originator (as the name appears in the NMLSR) with primary responsibility for the origination and, if the NMLSR has provided such person an NMLSR ID, that NMLSR ID.

(2) The loan documents that must include the names and NMLSR IDs pursuant to paragraph (g)(1) of this section are:

(i) The credit application;

(ii) The disclosures required by § 1026.19 (e) and (f);

(iii) The note or loan contract; and

(iv) The security instrument.

(3) For purposes of this section, NMLSR ID means a number assigned by the Nationwide Mortgage Licensing System and Registry to facilitate electronic tracking and uniform identification of loan originators and public access to the employment history of, and the publicly adjudicated disciplinary and enforcement actions against, loan originators.

(h) *Prohibition on mandatory arbitration clauses and waivers of certain consumer rights*—(1) *Arbitration.* A contract or other agreement for a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not include terms that require arbitration or any other non-judicial procedure to resolve any controversy or settle any claims arising out of the transaction. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

(2) *No waivers of Federal statutory causes of action.* A contract or other agreement relating to a consumer credit transaction secured by a dwelling (including a home equity line of credit secured by the consumer's principal dwelling) may not be applied or interpreted to bar a consumer from bringing a claim in court pursuant to any provision of law for damages or other relief in connection with any alleged violation of any Federal law. This prohibition does not limit a consumer and creditor or any assignee from agreeing, after a dispute or claim under the transaction arises, to settle or use arbitration or other non-judicial procedure to resolve that dispute or claim.

(i) *Prohibition on financing credit insurance.* (1) 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 (including a home equity line of credit secured by the consumer's principal dwelling). This prohibition does not apply to credit insurance for which premiums or fees are calculated and paid in full on a monthly basis.

(2) For purposes of this paragraph (i):

(i) "Credit insurance":

(A) Means credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, but

(B) Excludes credit unemployment insurance for which the unemployment insurance premiums are reasonable, the creditor receives no direct or indirect compensation in connection with the unemployment insurance premiums, and the unemployment insurance premiums are paid pursuant to a separate insurance contract and are not paid to an affiliate of the creditor;

(ii) A creditor finances premiums or fees for credit insurance if it provides a consumer the right to defer payment of a credit insurance premium or fee owed by the consumer beyond the monthly period in which the premium or fee is due; and

(iii) Credit insurance premiums or fees are calculated on a monthly basis if they are determined mathematically by multiplying a rate by the actual monthly outstanding balance.

(j) *Policies and procedures to ensure and monitor compliance.* (1) 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, its subsidiaries, and its subsidiaries' employees with the requirements of paragraphs (d), (e), (f), and (g) of this section. These written policies and procedures must be appropriate to the nature, size, complexity, and scope of the mortgage lending activities of the depository institution and its subsidiaries.

(2) For purposes of this paragraph (j), "depository institution" has the meaning in section 1503(3) of the SAFE Act, 12 U.S.C. 5102(3). For purposes of this paragraph (j), "subsidiary" has the meaning in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

(k) *Negative amortization counseling.* (1) *Counseling required.* 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 transaction subject to §1026.33 or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), that may result in negative amortization, unless the creditor receives documentation that the consumer has obtained homeownership counseling from a counseling organization or counselor certified or approved by the U.S. Department of Housing and Urban Development to provide such counseling.

(2) *Definitions.* For the purposes of this paragraph (k), the following definitions apply:

(i) A "first-time borrower" means a consumer who has not previously received a closed-end credit transaction or open-end credit plan secured by a dwelling.

(ii) ''Negative amortization'' means a payment schedule with regular periodic payments that cause the principal balance to increase.

(3) *Steering prohibited.* A creditor that extends credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling, other than a reverse mortgage transaction subject to § 1026.33 or a transaction secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53D), that may result in negative amortization shall not steer or otherwise direct a consumer to choose a particular counselor or counseling organization for the counseling required under this paragraph (k).

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 6966, Jan. 31, 2013; 78 FR 11006, Feb. 14, 2013; 78 FR 11410, Feb. 15, 2013; 78 FR 60441, Oct. 1, 2013; 80 FR 8776, Feb. 19, 2015; 81 FR 72388, Oct. 19, 2016]

EFFECTIVE DATE NOTE: At 86 FR 69781, Dec. 8, 2021, § 1026.36 was amended by removing ''LIBOR'' and adding in its place ''SOFR'' in paragraphs (a)(4)(iii)(C) and (a)(5)(iii)(B), effective Apr. 1, 2022.

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

For each transaction subject to § 1026.19(e), the creditor shall disclose the information in this section:

(a) *General information*—(1) *Form title.* The title of the form, ''Loan Estimate,'' using that term.

(2) *Form purpose.* The statement, ''Save this Loan Estimate to compare with your Closing Disclosure.''

(3) *Creditor.* The name and address of the creditor making the disclosures.

(4) *Date issued.* The date the disclosures are mailed or delivered to the consumer by the creditor, labeled ''Date Issued.''

(5) *Applicants.* The name and mailing address of the consumer(s) applying for the credit, labeled ''Applicants.''

(6) *Property.* The address including the zip code of the property that secures or will secure the transaction, or if the address is unavailable, the location of such property including a zip code, labeled ''Property.''

(7) *Sale price.* (i) For transactions that involve a seller, the contract sale price of the property identified in paragraph (a)(6) of this section, labeled ''Sale Price.''

(ii) For transactions that do not involve a seller, the estimated value of the property identified in paragraph (a)(6), labeled ''Prop. Value.''

(8) *Loan term.* The term to maturity of the credit transaction, stated in years or months, or both, as applicable, labeled ''Loan Term.''

(9) *Purpose.* The consumer's intended use for the credit, labeled ''Purpose,'' using one of the following terms:

(i) *Purchase.* If the credit is to finance the acquisition of the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for a ''Purchase.''

(ii) *Refinance.* If the credit is not for the purpose described in paragraph (a)(9)(i) of this section, and if the credit will be used to refinance an existing obligation, as defined in § 1026.20(a) (but without regard to whether the creditor is the original creditor or a holder or servicer of the original obligation), that is secured by the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for a ''Refinance.''

(iii) *Construction.* If the credit is not for one of the purposes described in paragraphs (a)(9)(i) or (ii) of this section and the credit will be used to finance the initial construction of a dwelling on the property identified in paragraph (a)(6) of this section, the creditor shall disclose that the loan is for ''Construction.''

(iv) *Home equity loan.* If the credit is not for one of the purposes described in paragraphs (a)(9)(i) through (iii) of this section, the creditor shall disclose that the loan is a ''Home Equity Loan.''

(10) *Product.* A description of the loan product, labeled ''Product.''

(i) The description of the loan product shall include one of the following terms:

(A) *Adjustable rate.* If the interest rate may increase after consummation, but the rates that will apply or the periods for which they will apply are not known at consummation, the creditor shall disclose the loan product as an ''Adjustable Rate.''

(B) *Step rate.* If the interest rate will change after consummation, and the rates that will apply and the periods for which they will apply are known at consummation, the creditor shall disclose the loan product as a ''Step Rate.''

(C) *Fixed rate.* If the loan product is not an Adjustable Rate or a Step Rate, as described in paragraphs (a)(10)(i)(A) and (B) of this section, respectively, the creditor shall disclose the loan product as a ''Fixed Rate.''

(ii) The description of the loan product shall include the features that may change the periodic payment using the following terms, subject to paragraph (a)(10)(iii) of this section, as applicable:

(A) *Negative amortization.* If the principal balance may increase due to the addition of accrued interest to the principal balance, the creditor shall disclose that the loan product has a ''Negative Amortization'' feature.

(B) *Interest only.* If one or more regular periodic payments may be applied only to interest accrued and not to the loan principal, the creditor shall disclose that the loan product has an ''Interest Only'' feature.

(C) *Step payment.* If scheduled variations in regular periodic payment amounts occur that are not caused by changes to the interest rate during the loan term, the creditor shall disclose that the loan product has a ''Step Payment'' feature.

(D) *Balloon payment.* If the terms of the legal obligation include a ''balloon payment,'' as that term is defined in paragraph (b)(5) of this section, the creditor shall disclose that the loan has a ''Balloon Payment'' feature.

(E) *Seasonal payment.* If the terms of the legal obligation expressly provide that regular periodic payments are not scheduled between specified unit-periods on a regular basis, the creditor shall disclose that the loan product has a ''Seasonal Payment'' feature.

(iii) The disclosure of a loan feature under paragraph (a)(10)(ii) of this section shall precede the disclosure of the loan product under paragraph (a)(10)(i) of this section. If a transaction has more than one of the loan features described in paragraph (a)(10)(ii) of this section, the creditor shall disclose only the first applicable feature in the order the features are listed in paragraph (a)(10)(ii) of this section.

(iv) The disclosures required by paragraphs (a)(10)(i)(A) and (B), and (a)(10)(ii)(A) through (D) of this section must each be preceded by the duration of any introductory rate or payment period, and the first adjustment period, as applicable.

(11) *Loan type.* The type of loan, labeled ''Loan Type,'' offered to the consumer using one of the following terms, as applicable:

(i) *Conventional.* If the loan is not guaranteed or insured by a Federal or State government agency, the creditor shall disclose that the loan is a ''Conventional.''

(ii) *FHA.* If the loan is insured by the Federal Housing Administration, the creditor shall disclose that the loan is an ''FHA.''

(iii) *VA.* If the loan is guaranteed by the U.S. Department of Veterans Affairs, the creditor shall disclose that the loan is a ''VA.''

(iv) *Other.* For federally-insured or guaranteed loans other than those described in paragraphs (a)(11)(ii) and (iii) of this section, and for loans insured or guaranteed by a State agency, the creditor shall disclose the loan type as ''Other,'' and provide a brief description of the loan type.

(12) *Loan identification number (Loan ID #).* A number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled ''Loan ID #.''

(13) *Rate lock.* A statement of whether the interest rate disclosed pursuant to paragraph (b)(2) of this section is locked for a specific period of time, labeled ''Rate Lock.''

(i) For transactions in which the interest rate is locked for a specific period of time, the creditor must provide the date and time (including the applicable time zone) when that period ends.

(ii) The ''Rate Lock'' statement required by this paragraph (a)(13) shall be accompanied by a statement that the interest rate, any points, and any lender credits may change unless the interest rate has been locked, and the date and time (including the applicable time zone) at which estimated closing costs expire.

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

(1) *Loan amount.* The total amount the consumer will borrow, as reflected by the face amount of the note, labeled ''Loan Amount.''

(2) *Interest rate.* The interest rate that will be applicable to the transaction at consummation, labeled ''Interest Rate.'' For an adjustable rate transaction, if the interest rate at consummation is not known, the rate disclosed shall be the fully-indexed rate, which, for purposes of this paragraph, means the interest rate calculated using the index value and margin at the time of consummation.

(3) *Principal and interest payment.* The initial periodic payment amount that will be due under the terms of the legal obligation, labeled ''Principal & Interest,'' immediately preceded by the applicable unit-period, and a statement referring to the payment amount that includes any mortgage insurance and escrow payments that is required to be disclosed pursuant to paragraph (c) of this section. If the interest rate at consummation is not known, the amount disclosed shall be calculated using the fully-indexed rate disclosed under paragraph (b)(2) of this section.

(4) *Prepayment penalty.* A statement of whether the transaction includes a prepayment penalty, labeled ''Prepayment Penalty.'' For purposes of this paragraph (b)(4), ''prepayment penalty'' means a charge imposed for paying all or part of a transaction's principal before the date on which the principal is due, other than a waived, bona fide third-party charge that the creditor imposes if the consumer prepays all of the transaction's principal sooner than 36 months after consummation.

(5) *Balloon payment.* A statement of whether the transaction includes a balloon payment, labeled ''Balloon Payment.'' For purposes of this paragraph (b)(5), ''balloon payment'' means a payment that is more than two times a regular periodic payment. ''Balloon payment'' includes the payment or payments under a transaction that requires only one or two payments during the loan term.

(6) *Adjustments after consummation.* For each amount required to be disclosed by paragraphs (b)(1) through (3) of this section, a statement of whether the amount may increase after consummation as an affirmative or negative answer to the question, and under such question disclosed as a subheading, ''Can this amount increase after closing?'' and, in the case of an affirmative answer, the following additional information, as applicable:

(i) *Adjustment in loan amount.* The maximum principal balance for the transaction and the due date of the last payment that may cause the principal balance to increase. The disclosure further shall indicate whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation.

(ii) *Adjustment in interest rate.* The frequency of interest rate adjustments, the date when the interest rate may first adjust, the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate, followed by a reference to the disclosure required by paragraph (j) of this section. If the loan term, as defined under paragraph (a)(8) of this section, may increase based on an interest rate adjustment, the disclosure required by this paragraph (b)(6)(ii) shall also state that fact and the maximum possible loan term determined in accordance with paragraph (a)(8) of this section.

(iii) *Increase in periodic payment.* The scheduled frequency of adjustments to the periodic principal and interest payment, the due date of the first adjusted principal and interest payment, the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment. If any adjustments to the principal and interest payment are not the result of a change to the interest rate, a reference to the disclosure required by paragraph (i) of this section. If there is a period during which only interest is required to be paid, the disclosure required by this paragraph (b)(6)(iii) shall also state that fact and the due date of the last periodic payment of such period.

(7) *Details about prepayment penalty and balloon payment.* The information required to be disclosed by paragraphs

(b)(4) and (5) of this section shall be disclosed as an affirmative or negative answer to the question, and under such question disclosed as a subheading, ''Does the loan have these features?'' If an affirmative answer for a prepayment penalty or balloon payment is required to be disclosed, the following information shall be included, as applicable:

(i) The maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates; and

(ii) The maximum amount of the balloon payment and the due date of such payment.

(8) *Timing.* (i) The dates required to be disclosed by paragraph (b)(6)(ii) of this section shall be disclosed as the year in which the event occurs, counting from the date that interest for the first scheduled periodic payment begins to accrue after consummation.

(ii) The dates required to be disclosed by paragraphs (b)(6)(i), (b)(6)(iii) and (b)(7)(ii) of this section shall be disclosed as the year in which the event occurs, counting from the due date of the initial periodic payment.

(iii) The date required to be disclosed by paragraph (b)(7)(i) of this section shall be disclosed as the year in which the event occurs, counting from the date of consummation.

(c) *Projected payments.* In a separate table under the heading ''Projected Payments,'' an itemization of each separate periodic payment or range of payments, together with an estimate of taxes, insurance, and assessments and the payments to be made with escrow account funds.

(1) *Periodic payment or range of payments.* (i) The initial periodic payment or range of payments is a separate periodic payment or range of payments and, except as otherwise provided in paragraph (c)(1)(ii) and (iii) of this section, the following events require the disclosure of additional separate periodic payments or ranges of payments:

(A) The periodic principal and interest payment or range of such payments may change;

(B) A scheduled balloon payment, as defined in paragraph (b)(5) of this section;

(C) The creditor must automatically terminate mortgage insurance or any functional equivalent under applicable law; and

(D) The anniversary of the due date of the initial periodic payment or range of payments that immediately follows the occurrence of multiple events described in paragraph (c)(1)(i)(A) of this section during a single year.

(ii) The table required by this paragraph (c) shall not disclose more than four separate periodic payments or ranges of payments. For all events requiring disclosure of additional separate periodic payments or ranges of payments described in paragraph (c)(1)(i)(A) through (D) of this section occurring after the third separate periodic payment or range of payments disclosed, the separate periodic payments or ranges of payments shall be disclosed as a single range of payments, subject to the following exceptions:

(A) A balloon payment that is scheduled as a final payment under the terms of the legal obligation shall always be disclosed as a separate periodic payment or range of payments, in which case all events requiring disclosure of additional separate periodic payments or ranges of payments described in paragraph (c)(1)(i)(A) through (D) of this section occurring after the second separate periodic payment or range of payments disclosed, other than the balloon payment that is scheduled as a final payment, shall be disclosed as a single range of payments.

(B) The automatic termination of mortgage insurance or any functional equivalent under applicable law shall require disclosure of an additional separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to this paragraph (c)(1) does not exceed three.

(iii) When a range of payments is required to be disclosed under this paragraph (c)(1), the creditor must disclose the minimum and maximum amount for both the principal and interest payment under paragraph (c)(2)(i) of this section and the total periodic payment under paragraph (c)(2)(iv) of this section. A range of payments is required to be disclosed under this paragraph (c)(1) when:

(A) Multiple events described in paragraph (c)(1)(i) of this section are combined in a single range of payments pursuant to paragraph (c)(1)(ii) of this section;

(B) Multiple events described in paragraph (c)(1)(i)(A) of this section occur during a single year or an event described in paragraph (c)(1)(i)(A) of this section occurs during the same year as the initial periodic payment or range of payments, in which case the creditor discloses the range of payments that would apply during the year in which the events occur; or

(C) The periodic principal and interest payment may adjust based on index rates at the time an interest rate adjustment may occur.

(2) *Itemization.* Each separate periodic payment or range of payments disclosed on the table required by this paragraph (c) shall be itemized as follows:

(i) The amount payable for principal and interest, labeled ''Principal & Interest,'' including the term ''only interest'' if the payment or range of payments includes any interest only payment:

(A) In the case of a loan that has an adjustable interest rate, the maximum principal and interest payment amounts are determined by assuming that the interest rate in effect throughout the loan term is the maximum possible interest rate, and the minimum amounts are determined by assuming that the interest rate in effect throughout the loan term is the minimum possible interest rate;

(B) In the case of a loan that has an adjustable interest rate and also contains a negative amortization feature, the maximum principal and interest payment amounts after the end of the period of the loan's term during which the loan's principal balance may increase due to the addition of accrued interest are determined by assuming the maximum principal amount permitted under the terms of the legal obligation at the end of such period, and the minimum amounts are determined pursuant to paragraph (c)(2)(i)(A) of this section;

(ii) The maximum amount payable for mortgage insurance premiums corresponding to the principal and interest payment disclosed pursuant to paragraph (c)(2)(i) of this section, labeled ''Mortgage Insurance'';

(iii) The amount payable into an escrow account to pay some or all of the charges described in paragraph (c)(4)(ii), as applicable, labeled ''Escrow,'' together with a statement that the amount disclosed can increase over time; and

(iv) The total periodic payment, calculated as the sum of the amounts disclosed pursuant to paragraphs (c)(2)(i) through (iii) of this section, labeled ''Total Monthly Payment.''

(3) *Subheadings.* (i) The labels required pursuant to paragraph (c)(2) of this section must be listed under the subheading ''Payment Calculation.''

(ii) Except as provided in paragraph (c)(3)(iii) of this section, each separate periodic payment or range of payments to be disclosed under this paragraph (c) must be disclosed under a subheading that states the years of the loan during which that payment or range of payments will apply. The subheadings must be stated in a sequence of whole years from the due date of the initial periodic payment.

(iii) A balloon payment that is scheduled as a final payment under the terms of the legal obligation must be disclosed under the subheading ''Final Payment.''

(4) *Taxes, insurance, and assessments.* Under the information required by paragraphs (c)(1) through (3) of this section:

(i) The label ''Taxes, Insurance & Assessments'';

(ii) The sum of the charges identified in §1026.43(b)(8), other than amounts identified in §1026.4(b)(5), expressed as a monthly amount, even if no escrow account for the payment of some or any of such charges will be established;

(iii) A statement that the amount disclosed pursuant to paragraph (c)(4)(ii) of this section can increase over time;

(iv) A statement of whether the amount disclosed pursuant to paragraph (c)(4)(ii) of this section includes payments for property taxes, amounts identified in §1026.4(b)(8), and other amounts described in paragraph (c)(4)(ii) of this section, along with a description of any such other amounts, and an indication of whether such amounts will be paid by the creditor using escrow account funds;

(v) A statement that the consumer must pay separately any amounts described in paragraph (c)(4)(ii) of this section that are not paid by the creditor using escrow account funds; and

(vi) A reference to the information disclosed pursuant to paragraph (g)(3) of this section.

(5) *Calculation of taxes and insurance.* For purposes of paragraphs (c)(2)(iii) and (c)(4)(ii) of this section, estimated property taxes and homeowner's insurance shall reflect:

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

(ii) The replacement costs of the property during the initial year after the transaction, for amounts identified in §1026.4(b)(8).

(d) *Costs at closing*—(1) *Costs at closing table.* In a separate table, under the heading ''Costs at Closing'':

(i) Labeled ''Closing Costs,'' the dollar amount disclosed pursuant to paragraph (g)(6) of this section, together with:

(A) A statement that the amount disclosed pursuant to paragraph (d)(1)(i) of this section includes the amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (g)(6)(ii);

(B) The dollar amount disclosed pursuant to paragraph (f)(4) of this section, labeled ''Loan Costs'';

(C) The dollar amount disclosed pursuant to paragraph (g)(5) of this section, labeled ''Other Costs'':

(D) The dollar amount disclosed pursuant to paragraph (g)(6)(ii) of this section, labeled ''Lender Credits''; and

(E) A statement referring the consumer to the tables disclosed pursuant to paragraphs (f) and (g) of this section for details.

(ii) Labeled ''Cash to Close,'' the dollar amount calculated in accordance with paragraph (h)(1)(viii) of this section, together with:

(A) A statement that the amount includes the amount disclosed pursuant to paragraph (d)(1)(i) of this section, and

(B) A statement referring the consumer to the location of the table required pursuant to paragraph (h) of this section for details.

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

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

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

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

(e) *Web site reference.* A statement that the consumer may obtain general information and tools at the Web site of the Bureau, and the link or uniform resource locator address to the Web site: *www.consumerfinance.gov/mortgage-estimate.*

(f) *Closing cost details; loan costs.* Under the master heading ''Closing Cost Details,'' in a table under the heading ''Loan Costs,'' all loan costs associated with the transaction. The table shall contain the items and amounts listed under four subheadings, described in paragraphs (f)(1) through (4) of this section.

(1) *Origination charges.* Under the subheading ''Origination Charges,'' an itemization of each amount, and a subtotal of all such amounts, that the consumer will pay to each creditor and loan originator for originating and extending the credit.

(i) The points paid to the creditor to reduce the interest rate shall be itemized separately, as both a percentage of the amount of credit extended and a dollar amount, and using the label "___% of Loan Amount (Points)." If points to reduce the interest rate are not paid, the disclosure required by this paragraph (f)(1)(i) must be blank.

(ii) The number of items disclosed under this paragraph (f)(1), including the points disclosed under paragraph (f)(1)(i) of this section, shall not exceed 13.

(2) *Services you cannot shop for*. Under the subheading "Services You Cannot Shop For," an itemization of each amount, and a subtotal of all such amounts, the consumer will pay for settlement services for which the consumer cannot shop in accordance with §1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.

(i) For any item that is a component of title insurance or is for conducting the closing, the introductory description "Title —" shall appear at the beginning of the label for that item.

(ii) The number of items disclosed under this paragraph (f)(2) shall not exceed 13.

(3) *Services you can shop for*. Under the subheading "Services You Can Shop For," an itemization of each amount and a subtotal of all such amounts the consumer will pay for settlement services for which the consumer can shop in accordance with §1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker.

(i) For any item that is a component of title insurance or is for conducting the closing, the introductory description "Title —" shall appear at the beginning of the label for that item.

(ii) The number of items disclosed under this paragraph (f)(3) shall not exceed 14.

(4) *Total loan costs*. Under the subheading "Total Loan Costs," the sum of the subtotals disclosed under paragraphs (f)(1) through (3) of this section.

(5) *Item descriptions and ordering*. The items listed as loan costs pursuant to this paragraph (f) shall be labeled using terminology that describes each item, subject to the requirements of paragraphs (f)(1)(i), (f)(2)(i), and (f)(3)(i) of this section.

(i) The item prescribed in paragraph (f)(1)(i) of this section for points shall be the first item listed in the disclosure pursuant to paragraph (f)(1) of this section.

(ii) All other items must be listed in alphabetical order by their labels under the applicable subheading.

(6) *Use of addenda*. (i) An addendum to a form of disclosures prescribed by this section may not be used for items described in paragraph (f)(1) or (2) of this section. If the creditor is not able to itemize every service and every corresponding charge required to be disclosed in the number of lines provided by paragraph (f)(1)(ii) or (f)(2)(ii) of this section, the remaining charges shall be disclosed as an aggregate amount in the last line permitted under paragraph (f)(1)(ii) or (f)(2)(ii), as applicable, labeled "Additional Charges."

(ii) An addendum to a form of disclosures prescribed by this section may be used for items described in paragraph (f)(3) of this section. If the creditor is not able to itemize all of the charges required to be disclosed in the number of lines provided by paragraph (f)(3)(ii), the remaining charges shall be disclosed as follows:

(A) Label the last line permitted under paragraph (f)(3)(ii) with an appropriate reference to an addendum and list the remaining items on the addendum in accordance with the requirements in paragraphs (f)(3) and (5) of this section; or

(B) Disclose the remaining charges as an aggregate amount in the last line permitted under paragraph (f)(3)(ii), labeled "Additional Charges."

(g) *Closing cost details; other costs*. Under the master heading "Closing Cost Details," in a table under the heading "Other Costs," all costs associated with the transaction that are in addition to the costs disclosed under paragraph (f) of this section. The table shall contain the items and amounts listed under six subheadings, described in paragraphs (g)(1) through (6) of this section.

(1) *Taxes and other government fees*. Under the subheading "Taxes and Other Government Fees," the amounts to be paid to State and local governments for taxes and other government

fees, and the subtotal of all such amounts, as follows:

(i) On the first line, the sum of all recording fees and other government fees and taxes, except for transfer taxes paid by the consumer and disclosed pursuant to paragraph (g)(1)(ii) of this section, labeled ''Recording Fees and Other Taxes.''

(ii) On the second line, the sum of all transfer taxes paid by the consumer, labeled ''Transfer Taxes.''

(iii) If an amount required to be disclosed by this paragraph (g)(1) is not charged to the consumer, the amount disclosed on the applicable line required by this paragraph (g)(1) must be blank.

(2) *Prepaids.* Under the subheading ''Prepaids,'' an itemization of the amounts to be paid by the consumer in advance of the first scheduled payment, and the subtotal of all such amounts, as follows:

(i) On the first line, the number of months for which homeowner's insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such premiums, labeled ''Homeowner's Insurance Premium (____ months).''

(ii) On the second line, the number of months for which mortgage insurance premiums are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such premiums, labeled ''Mortgage Insurance Premium (____ months).''

(iii) On the third line, the amount of prepaid interest to be paid per day, the number of days for which prepaid interest will be collected, the interest rate, and the total dollar amount to be paid by the consumer at consummation for such interest, labeled ''Prepaid Interest (______ per day for ____ days @____ %).''

(iv) On the fourth line, the number of months for which property taxes are to be paid by the consumer at consummation and the total dollar amount to be paid by the consumer at consummation for such taxes, labeled ''Property Taxes (____ months).''

(v) If an amount is not charged to the consumer for any item for which this paragraph (g)(2) prescribes a label, each of the amounts required to be disclosed on that line must be blank.

(vi) A maximum of three additional items may be disclosed under this paragraph (g)(2), and each additional item must be identified and include the applicable time period covered by the amount to be paid by the consumer at consummation and the total amount to be paid.

(3) *Initial escrow payment at closing.* Under the subheading ''Initial Escrow Payment at Closing,'' an itemization of the amounts that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic charges, and the subtotal of all such amounts, as follows:

(i) On the first line, the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer at consummation for homeowner's insurance premiums, labeled ''Homeowner's Insurance ____ per month for ____ mo.''

(ii) On the second line, the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer at consummation for mortgage insurance premiums, labeled ''Mortgage Insurance ____ per month for ____ mo.''

(iii) On the third line, the amount escrowed per month, the number of months covered by an escrowed amount collected at consummation, and the total amount to be paid into the escrow account by the consumer at consummation for property taxes, labeled ''Property Taxes ____ per month for ____ mo.''

(iv) If an amount is not charged to the consumer for any item for which this paragraph (g)(3) prescribes a label, each of the amounts required to be disclosed on that line must be blank.

(v) A maximum of five items may be disclosed pursuant to this paragraph (g)(3) in addition to the items described in paragraph (g)(3)(i) through (iii) of this section, and each such additional item must be identified with a descriptive label and include the applicable amount per month, the number of months collected at consummation, and the total amount to be paid.

(4) *Other*. Under the subheading ''Other,'' an itemization of any other amounts in connection with the transaction that the consumer is likely to pay or has contracted with a person other than the creditor or loan originator to pay at closing and of which the creditor is aware at the time of issuing the Loan Estimate, a descriptive label of each such amount, and the subtotal of all such amounts.

(i) For any item that is a component of title insurance, the introductory description ''Title —'' shall appear at the beginning of the label for that item.

(ii) The parenthetical description ''(optional)'' shall appear at the end of the label for items disclosing any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

(iii) The number of items disclosed under this paragraph (g)(4) shall not exceed five.

(5) *Total other costs*. Under the subheading ''Total Other Costs,'' the sum of the subtotals disclosed pursuant to paragraphs (g)(1) through (4) of this section.

(6) *Total closing costs*. Under the subheading ''Total Closing Costs,'' the component amounts and their sum, as follows:

(i) The sum of the amounts disclosed as loan costs and other costs under paragraphs (f)(4) and (g)(5) of this section, labeled ''D + I''; and

(ii) The amount of any lender credits, disclosed as a negative number with the label ''Lender Credits'' provided that, if no such amount is disclosed, the amount must be blank.

(7) *Item descriptions and ordering*. The items listed as other costs pursuant to this paragraph (g) shall be labeled using terminology that describes each item.

(i) The items prescribed in paragraphs (g)(1)(i) and (ii), (g)(2)(i) through (iv), and (g)(3)(i) through (iii) of this section must be listed in the order prescribed as the initial items under the applicable subheading, with any additional items to follow.

(ii) All additional items must be listed in alphabetical order under the applicable subheading.

(8) *Use of addenda*. An addendum to a form of disclosures prescribed by this section may not be used for items required to be disclosed by this paragraph (g). If the creditor is not able to itemize all of the charges described in this paragraph (g) in the number of lines provided by paragraphs (g)(2)(vi), (3)(v), or (4)(iii) of this section, the remaining charges shall be disclosed as an aggregate amount in the last line permitted under paragraphs (g)(2)(vi), (g)(3)(v), or (g)(4)(iii), as applicable, using the label ''Additional Charges.''

(h) *Calculating cash to close*—(1) *For all transactions*. Under the master heading ''Closing Cost Details,'' under the heading ''Calculating Cash to Close,'' the total amount of cash or other funds that must be provided by the consumer at consummation, with an itemization of that amount into the following component amounts:

(i) *Total closing costs*. The amount disclosed under paragraph (g)(6) of this section, labeled ''Total Closing Costs'';

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

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

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

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

(B) In all transactions not subject to paragraph (h)(1)(iii)(A) of this section, the amount of estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section;

(iv) *Deposit.* (A) In a purchase transaction as defined in paragraph (a)(9)(i) of this section, the amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, disclosed as a negative number, labeled ''Deposit'';

(B) In all transactions other than purchase transactions as defined in paragraph (a)(9)(i) of this section, the amount of $0, labeled ''Deposit'';

(v) *Funds for borrower.* The amount of funds for the consumer, labeled ''Funds for Borrower.'' The amount of the down payment and other funds from the consumer disclosed under paragraph (h)(1)(iii)(A)(*2*) or (h)(1)(iii)(B) of this section, as applicable, and of funds for the consumer disclosed under this paragraph (h)(1)(v), are determined by subtracting the sum of the loan amount disclosed under paragraph (b)(1) of this section and any amount of existing loans assumed or taken subject to that will be disclosed under §1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under paragraph (h)(1)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction;

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

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

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

(vi) *Seller credits.* The total amount that the seller will pay for total loan costs as determined by paragraph (f)(4) of this section and total other costs as determined by paragraph (g)(5) of this section, to the extent known, disclosed as a negative number, labeled ''Seller Credits'';

(vii) *Adjustments and other credits.* The amount of all loan costs determined under paragraph (f) of this section and other costs determined under paragraph (g) of this section that are paid by persons other than the loan originator, creditor, consumer, or seller, together with any other amounts not otherwise disclosed under paragraph (f) or (g) of this section that are required to be paid by the consumer at closing in a transaction disclosed under paragraph (h)(1)(iii)(A)(*1*) of this section or pursuant to a purchase and sale contract, labeled ''Adjustments and Other Credits''; and

(viii) *Estimated Cash to Close.* The sum of the amounts disclosed under paragraphs (h)(1)(i) through (vii) of this section labeled ''Cash to Close.''

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

(i) *Loan amount.* The amount disclosed under paragraph (b)(1) of this section, labeled ''Loan Amount'';

(ii) *Total closing costs.* The amount disclosed under paragraph (g)(6) of this section, disclosed as a negative number if the amount disclosed under paragraph (g)(6) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (g)(6) of this section is a negative number, labeled ''Total Closing Costs'';

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

(iv) *Cash to or from consumer.* The amount of cash or other funds due from or to the consumer and a statement of whether the disclosed estimated amount is due from or to the consumer, calculated by the sum of the amounts disclosed under paragraphs (h)(2)(i) through (iii) of this section, labeled ''Cash to Close''; and

(v) *Closing costs financed.* The sum of the amounts disclosed under paragraphs (h)(2)(i) and (iii) of this section, but only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under paragraph (g)(6) of this section, labeled ''Closing Costs Financed (Paid from your Loan Amount).''

(i) *Adjustable payment table.* If the periodic principal and interest payment may change after consummation but not based on an adjustment to the interest rate, or if the transaction is a seasonal payment product as described in paragraph (a)(10)(ii)(E) of this section, a separate table under the master heading ''Closing Cost Details'' required by paragraph (f) of this section and under the heading ''Adjustable Payment (AP) Table'' that contains the following information and satisfies the following requirements:

(1) *Interest only payments.* Whether the transaction is an interest only product pursuant to paragraph (a)(10)(ii)(B) of this section as an affirmative or negative answer to the question ''Interest Only Payments?'' and, if an affirmative answer is disclosed, the period during which interest only periodic payments are scheduled.

(2) *Optional payments.* Whether the terms of the legal obligation expressly provide that the consumer may elect to pay a specified periodic principal and interest payment in an amount other than the scheduled amount of the payment, as an affirmative or negative answer to the question ''Optional Payments?'' and, if an affirmative answer is disclosed, the period during which the consumer may elect to make such payments.

(3) *Step payments.* Whether the transaction is a step payment product pursuant to paragraph (a)(10)(ii)(C) of this section as an affirmative or negative answer to the question ''Step Payments?'' and, if an affirmative answer is disclosed, the period during which the regular periodic payments are scheduled to increase.

(4) *Seasonal payments.* Whether the transaction is a seasonal payment product pursuant to paragraph (a)(10)(ii)(E) of this section as an affirmative or negative answer to the question ''Seasonal Payments?'' and, if an affirmative answer is disclosed, the period during which periodic payments are not scheduled.

(5) *Principal and interest payments.* Under the subheading ''Principal and Interest Payments,'' which subheading is immediately preceded by the applicable unit-period, the following information:

(i) The number of the payment of the first periodic principal and interest payment that may change under the terms of the legal obligation disclosed under this paragraph (i), counting from the first periodic payment due after consummation, and the amount or range of the periodic principal and interest payment for such payment, labeled ''First Change/Amount'';

(ii) The frequency of subsequent changes to the periodic principal and interest payment, labeled ''Subsequent Changes''; and

(iii) The maximum periodic principal and interest payment that may occur during the term of the transaction, and the first periodic principal and interest payment that can reach such maximum, counting from the first periodic payment due after consummation, labeled ''Maximum Payment.''

(j) *Adjustable interest rate table.* If the interest rate may increase after consummation, a separate table under the master heading ''Closing Cost Details'' required by paragraph (f) of this section and under the heading ''Adjustable

Interest Rate (AIR) Table'' that contains the following information and satisfies the following requirements:

(1) *Index and margin.* If the interest rate may adjust and the product type is not a ''Step Rate'' under paragraph (a)(10)(i)(B) of this section, the index upon which the adjustments to the interest rate are based and the margin that is added to the index to determine the interest rate, if any, labeled ''Index + Margin.''

(2) *Increases in interest rate.* If the product type is a ''Step Rate'' and not also an ''Adjustable Rate'' under paragraph (a)(10)(i)(A) of this section, the maximum amount of any adjustments to the interest rate that are scheduled and pre-determined, labeled ''Interest Rate Adjustments.''

(3) *Initial interest rate.* The interest rate at consummation of the loan transaction, labeled ''Initial Interest Rate.''

(4) *Minimum and maximum interest rate.* The minimum and maximum interest rates for the loan, after any introductory period expires, labeled ''Minimum/Maximum Interest Rate.''

(5) *Frequency of adjustments.* The following information, under the subheading ''Change Frequency'':

(i) The month when the interest rate after consummation may first change, calculated from the date interest for the first scheduled periodic payment begins to accrue, labeled ''First Change''; and

(ii) The frequency of interest rate adjustments after the initial adjustment to the interest rate, labeled, ''Subsequent Changes.''

(6) *Limits on interest rate changes.* The following information, under the subheading ''Limits on Interest Rate Changes'':

(i) The maximum possible change for the first adjustment of the interest rate after consummation, labeled ''First Change''; and

(ii) The maximum possible change for subsequent adjustments of the interest rate after consummation, labeled ''Subsequent Changes.''

(k) *Contact information.* Under the master heading, ''Additional Information About This Loan,'' the following information:

(1) The name and Nationwide Mortgage Licensing System and Registry identification number (NMLSR ID) (labeled ''NMLS ID/License ID'') for the creditor (labeled ''Lender'') and the mortgage broker (labeled ''Mortgage Broker''), if any. In the event the creditor or the mortgage broker has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the creditor or mortgage broker is licensed and/or registered shall be disclosed, with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, if any;

(2) The name and NMLSR ID of the individual loan officer (labeled ''Loan Officer'' and ''NMLS ID/License ID,'' respectively) of the creditor and the mortgage broker, if any, who is the primary contact for the consumer. In the event the individual loan officer has not been assigned an NMLSR ID, the license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the loan officer is licensed and/or registered shall be disclosed with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, if any; and

(3) The email address and telephone number of the loan officer (labeled ''Email'' and ''Phone,'' respectively).

(l) *Comparisons.* Under the master heading, ''Additional Information About This Loan'' required by paragraph (k) of this section, in a separate table under the heading ''Comparisons'' along with the statement ''Use these measures to compare this loan with other loans'':

(1) *In five years.* Using the label ''In 5 Years'':

(i) The total principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement ''Total you will have paid in principal, interest, mortgage insurance, and loan costs''; and

(ii) The principal scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, expressed as a dollar amount, along with the statement ''Principal you will have paid off.''

(2) *Annual percentage rate.* The ''Annual Percentage Rate,'' using that term and the abbreviation ''APR'' and expressed as a percentage, and the following statement: ''Your costs over the loan term expressed as a rate. This is not your interest rate.''

(3) *Total interest percentage.* The total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term ''Total Interest Percentage,'' the abbreviation ''TIP,'' and the statement ''The total amount of interest that you will pay over the loan term as a percentage of your loan amount.''

(m) *Other considerations.* Under the master heading ''Additional Information About This Loan'' required by paragraph (k) of this section and under the heading ''Other Considerations'':

(1) *Appraisal.* For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, a statement, labeled ''Appraisal,'' that:

(i) The creditor may order an appraisal to determine the value of the property identified in paragraph (a)(6) of this section and may charge the consumer for that appraisal;

(ii) The creditor will promptly provide the consumer a copy of any appraisal, even if the transaction is not consummated; and

(iii) The consumer may choose to pay for an additional appraisal of the property for the consumer's use.

(2) *Assumption.* A statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms, labeled ''Assumption.''

(3) *Homeowner's insurance.* At the option of the creditor, a statement that homeowner's insurance is required on the property and that the consumer may choose the insurance provider, labeled ''Homeowner's Insurance.''

(4) *Late payment.* A statement detailing any charge that may be imposed for a late payment, stated as a dollar amount or percentage charge of the late payment amount, and the number of days that a payment must be late to trigger the late payment fee, labeled ''Late Payment.''

(5) *Refinance.* The following statement, labeled ''Refinance'': ''Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.''

(6) *Servicing.* A statement of whether the creditor intends to service the loan or transfer the loan to another servicer, labeled ''Servicing.''

(7) *Liability after foreclosure.* If the purpose of the credit transaction is to refinance an extension of credit as described in paragraph (a)(9)(ii) of this section, a brief statement that certain State law protections against liability for any deficiency after foreclosure may be lost, the potential consequences of the loss of such protections, and a statement that the consumer should consult an attorney for additional information, labeled ''Liability after Foreclosure.''

(8) *Construction loans.* In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the provision of the loan estimate, at the creditor's option, a clear and conspicuous statement that the creditor may issue a revised disclosure any time prior to 60 days before consummation, pursuant to § 1026.19(e)(3)(iv)(F).

(n) *Signature statement.* (1) At the creditor's option, under the master heading required by paragraph (k) of this section and under the heading ''Confirm Receipt,'' a line for the signatures of the consumers in the transaction. If the creditor includes a line for the consumer's signature, the creditor must disclose the following above the signature line: ''By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.''

(2) If the creditor does not include a line for the consumer's signature, the creditor must disclose the following statement under the heading ''Other Considerations'' required by paragraph (m) of this section, labeled ''Loan Acceptance'': ''You do not have to accept

this loan because you have received this form or signed a loan application.''

(o) *Form of disclosures*—(1) *General requirements*. (i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall be grouped together and segregated from everything else.

(ii) Except as provided in paragraph (o)(5) of this section, the disclosures shall contain only the information required by paragraphs (a) through (n) of this section and shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H–24, set forth in appendix H to this part.

(2) *Headings and labels*. If a master heading, heading, subheading, label, or similar designation contains the word ''estimated'' or a capital letter designation in form H–24, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word ''estimated'' and the applicable capital letter designation.

(3) *Form*. Except as provided in paragraph (o)(5) of this section:

(i) For a transaction subject to §1026.19(e) that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H–24, set forth in appendix H to this part.

(ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H–24, set forth in appendix H to this part.

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

(4) *Rounding*—(i) *Nearest dollar*. (A) The dollar amounts required to be disclosed by paragraphs (b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar, except that the per-diem dollar amount required to be disclosed by paragraph (g)(2)(iii) of this section and the monthly dollar amounts required to be disclosed by paragraphs (g)(3)(i) through (iii) and (g)(3)(v) of this section shall not be rounded.

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

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

(ii) *Percentages*. The percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(2) and (3) of this section shall be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros that occur to the right of the decimal place.

(5) *Exceptions*—(i) *Unit-period*. Wherever the form or this section uses ''monthly'' to describe the frequency of any payments or uses ''month'' to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.

(ii) *Translation*. The form may be translated into languages other than English, and creditors may modify form H–24 of appendix H to this part to the extent that translation prevents the headings, labels, designations, and required disclosure items under this section from fitting in the space provided on form H–24.

(iii) *Logo or slogan*. The creditor providing the form may use a logo for, and include a slogan with, the information required by paragraph (a)(3) of this section in any font size or type, provided that such logo or slogan does not cause the information required by paragraph (a)(3) of this section to exceed the space provided for that information, as illustrated in form H–24 of appendix H to this part. If the creditor does not use a logo for the information required by paragraph (a)(3) of this section, the information shall be disclosed in a similar format as form H–24.

(iv) *Business card.* The creditor may physically attach a business card over the information required to be disclosed by paragraph (a)(3) of this section.

(v) *Administrative information.* The creditor may insert at the bottom of each page under the disclosures required by this section as illustrated by form H–24 of appendix H to this part, any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form, provided that the space provided on form H–24 of appendix H to this part for any of the information required by this section is not altered.

[78 FR 80113, Dec. 31, 2013, as amended at 80 FR 8776, Feb. 19, 2015; 82 FR 37769, Aug. 11, 2017]

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

For each transaction subject to § 1026.19(f), the creditor shall disclose the information in this section:

(a) *General information*—(1) *Form title.* The title of the form, ''Closing Disclosure,'' using that term.

(2) *Form purpose.* The following statement: ''This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.''

(3) *Closing information.* Under the heading ''Closing Information'':

(i) *Date issued.* The date the disclosures required by this section are delivered to the consumer, labeled ''Date Issued.''

(ii) *Closing date.* The date of consummation, labeled ''Closing Date.''

(iii) *Disbursement date.* The date the amount disclosed under paragraph (j)(3)(iii) (cash to close from or to borrower) or (k)(3)(iii) (cash from or to seller) of this section is expected to be paid in a purchase transaction under § 1026.37(a)(9)(i) to the consumer or seller, respectively, as applicable, except as provided in comment 38(a)(3)(iii)–1, or the date some or all of the loan amount disclosed under paragraph (b) of this section is expected to be paid to the consumer or a third party other than a settlement agent in a transaction that is not a purchase transaction under § 1026.37(a)(9)(i), labeled ''Disbursement Date.''

(iv) *Settlement agent.* The name of the settlement agent conducting the closing, labeled ''Settlement Agent.''

(v) *File number.* The number assigned to the transaction by the settlement agent for identification purposes, labeled ''File #.''

(vi) *Property.* The address or location of the property required to be disclosed under § 1026.37(a)(6), labeled ''Property.''

(vii) *Sale price.* (A) In credit transactions where there is a seller, the contract sale price of the property identified in paragraph (a)(3)(vi) of this section, labeled ''Sale Price.''

(B) In credit transactions where there is no seller, the appraised value of the property identified in paragraph (a)(3)(vi) of this section, labeled ''Appraised Prop. Value.''

(4) *Transaction information.* Under the heading ''Transaction Information'':

(i) *Borrower.* The consumer's name and mailing address, labeled ''Borrower.''

(ii) *Seller.* Where applicable, the seller's name and mailing address, labeled ''Seller.''

(iii) *Lender.* The name of the creditor making the disclosure, labeled ''Lender.''

(5) *Loan information.* Under the heading ''Loan Information'':

(i) *Loan term.* The information required to be disclosed under § 1026.37(a)(8), labeled ''Loan Term.''

(ii) *Purpose.* The information required to be disclosed under § 1026.37(a)(9), labeled ''Purpose.''

(iii) *Product.* The information required to be disclosed under § 1026.37(a)(10), labeled ''Product.''

(iv) *Loan type.* The information required to be disclosed under § 1026.37(a)(11), labeled ''Loan Type.''

(v) *Loan identification number.* The information required to be disclosed under § 1026.37(a)(12), labeled ''Loan ID #.''

(vi) *Mortgage insurance case number.* The case number for any mortgage insurance policy, if required by the creditor, labeled ''MIC #.''

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

(c) *Projected payments.* A separate table, under the heading ''Projected Payments,'' that includes and satisfies the following information and requirements:

(1) *Projected payments or range of payments.* The information required to be disclosed pursuant to §1026.37(c)(1) through (4), other than §1026.37(c)(4)(vi). In disclosing estimated escrow payments as described in §1026.37(c)(2)(iii) and (c)(4)(ii), the amount disclosed on the Closing Disclosure:

(i) For transactions subject to RESPA, is determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17;

(ii) For transactions not subject to RESPA, may be determined under the escrow account analysis described in Regulation X, 12 CFR 1024.17 or in the manner set forth in §1026.37(c)(5).

(2) *Estimated taxes, insurance, and assessments.* A reference to the disclosure required by paragraph (l)(7) of this section.

(d) *Costs at closing*—(1) *Costs at closing table.* In a separate table, under the heading ''Costs at Closing'':

(i) Labeled ''Closing Costs,'' the sum of the dollar amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (h)(3) of this section, together with:

(A) A statement that the amount disclosed pursuant to paragraph (d)(1)(i) of this section includes the amounts disclosed pursuant to paragraphs (f)(4), (g)(5), and (h)(3) of this section;

(B) The dollar amount disclosed pursuant to paragraph (f)(4) of this section, labeled ''Loan Costs'';

(C) The dollar amount disclosed pursuant to paragraph (g)(5) of this section, labeled ''Other Costs'';

(D) The dollar amount disclosed pursuant to paragraph (h)(3) of this section, labeled ''Lender Credits''; and

(E) A statement referring the consumer to the tables disclosed pursuant to paragraphs (f) and (g) of this section for details.

(ii) Labeled ''Cash to Close,'' the sum of the dollar amounts calculated in accordance with paragraph (i)(9)(ii) of this section, together with:

(A) A statement that the amount disclosed pursuant to paragraph (d)(1)(ii) of this section includes the amount disclosed pursuant to paragraph (d)(1)(i) of this section; and

(B) A statement referring the consumer to the table required pursuant to paragraph (i) of this section for details.

(2) *Alternative table for transactions without a seller or for simultaneous subordinate financing.* For transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative table under §1026.37(d)(2), the creditor shall disclose, with the label ''Cash to Close,'' instead of the sum of the dollar amounts described in paragraph (d)(1)(ii) of this section:

(i) The amount calculated in accordance with paragraph (e)(5)(ii) of this section;

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

(iii) A statement referring the consumer to the table required pursuant to paragraph (e) of this section for details.

(e) *Alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.* For transactions that do not involve a seller or for simultaneous subordinate financing, if the creditor disclosed the optional alternative table under §1026.37(h)(2), the creditor shall disclose, instead of the table described in paragraph (i) of this section, in a separate table, under the heading ''Calculating Cash to Close,'' together with the statement ''Use this table to see what has changed from your Loan Estimate'':

(1) *Loan amount.* Labeled ''Loan Amount:''

(i) Under the subheading ''Loan Estimate,'' the loan amount disclosed on the Loan Estimate under §1026.37(b)(1);

(ii) Under the subheading ''Final,'' the loan amount disclosed under paragraph (b) of this section;

(iii) Disclosed more prominently than the other disclosures under paragraph (e)(1)(i) and (ii) of this section, under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (e)(1)(ii) of this section is different than the amount disclosed under paragraph (e)(1)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a statement of whether this amount increased or decreased; or

(B) If the amount disclosed under paragraph (e)(1)(i) of this section is equal to the amount disclosed under paragraph (e)(1)(ii) of this section a statement of that fact.

(2) *Total closing costs.* Labeled ''Total Closing Costs'':

(i) Under the subheading ''Loan Estimate,'' the amount disclosed on the Loan Estimate under § 1026.37(h)(2)(ii);

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (h)(1) of this section, disclosed as a negative number if the amount disclosed under paragraph (h)(1) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (h)(1) of this section is a negative number; and

(iii) Disclosed more prominently than the other disclosures under this paragraph (e)(2)(i) and (ii) of this section, under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (e)(2)(ii) of this section is different than the amount disclosed under paragraph (e)(2)(i) of this section (unless the difference is due to rounding):

(*1*) A statement of that fact;

(*2*) If the difference in the amounts disclosed under paragraphs (e)(2)(i) and (e)(2)(ii) is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the total loan costs and total other costs subtotals disclosed under paragraphs (f)(4) and (g)(5) of this section (together with references to such disclosures), as applicable; and

(*3*) If the increase exceeds the limitations on increases in closing costs under § 1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess and, if any refund is provided under § 1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if applicable, a statement directing the consumer to the principal reduction disclosure under paragraph (t)(5)(vii)(B) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

(B) If the amount disclosed under paragraph (e)(2)(i) of this section is equal to the amount disclosed under paragraph (e)(2)(ii) of this section, a statement of that fact.

(3) *Closing costs paid before closing.* Labeled ''Closing Costs Paid Before Closing:''

(i) Under the subheading ''Loan Estimate,'' the amount of $0;

(ii) Under the subheading ''Final,'' any amount designated as borrower-paid before closing under paragraph (h)(2) of this section, disclosed as a positive number; and

(iii) Disclosed more prominently than the other disclosures under this paragraph (e)(3)(i) and (ii) of this section, under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (e)(3)(ii) of this section is different than the amount disclosed under paragraph (e)(3)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer paid such amounts prior to consummation of the transaction; or

(B) If the amount disclosed under paragraph (e)(3)(ii) of this section is equal to the amount disclosed under paragraph (e)(3)(i) of this section, a statement of that fact.

(4) *Payoffs and payments.* Labeled ''Total Payoffs and Payments,''

(i) Under the subheading ''Loan Estimate,'' the total payoffs and payments disclosed on the Loan Estimate under § 1026.37(h)(2)(iii);

(ii) Under the subheading ''Final,'' the total amount of payoffs and payments made to third parties disclosed under paragraph (t)(5)(vii)(B) of this section, to the extent known, disclosed as a negative number if the total amount disclosed under paragraph (t)(5)(vii)(B) of this section is a positive number and disclosed as a positive number if the total amount disclosed under paragraph (t)(5)(vii)(B) of this section is a negative number;

(iii) Disclosed more prominently than the other disclosures under this paragraph (e)(4)(i) and (ii), under the subheading ''Did this change?'':

(A) If the amount disclosed under paragraph (e)(4)(ii) of this section is different than the amount disclosed under paragraph (e)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact along with a reference to the table disclosed under paragraph (t)(5)(vii)(B) of this section; or

(B) If the amount disclosed under paragraph (e)(4)(ii) of this section is equal to the amount disclosed under paragraph (e)(4)(i) of this section, a statement of that fact.

(5) *Cash to or from consumer.* Labeled ''Cash to Close:''

(i) Under the subheading ''Loan Estimate,'' the estimated cash to close on the Loan Estimate together with the statement of whether the estimated amount is due from or to the consumer as disclosed under §1026.37(h)(2)(iv);

(ii) Under the subheading ''Final,'' the amount due from or to the consumer, calculated by the sum of the amounts disclosed under paragraphs (e)(1)(ii), (e)(2)(ii), (e)(3)(ii), and (e)(4)(ii) of this section, disclosed as a positive number, together with a statement of whether the disclosed amount is due from or to the consumer.

(6) *Closing costs financed.* Labeled ''Closing Costs Financed (Paid from your Loan Amount),'' the sum of the amounts disclosed under paragraphs (e)(1)(ii) and (e)(4)(ii) of this section, but only to the extent that the sum is greater than zero and less than or equal to the sum disclosed under paragraph (h)(1) of this section minus the sum disclosed under paragraph (h)(2) of this section designated borrower-paid before closing.

(f) *Closing cost details; loan costs.* Under the master heading ''Closing Cost Details'' with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all loan costs associated with the transaction, listed in a table under the heading ''Loan Costs.'' The table shall contain the items and amounts listed under four subheadings, described in paragraphs (f)(1) through (5) of this section.

(1) *Origination charges.* Under the subheading ''Origination Charges,'' and in the applicable columns as described in paragraph (f) of this section, an itemization of each amount paid for charges described in §1026.37(f)(1), the amount of compensation paid by the creditor to a third-party loan originator along with the name of the loan originator ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(2) *Services borrower did not shop for.* Under the subheading ''Services Borrower Did Not Shop For'' and in the applicable columns as described in paragraph (f) of this section, an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer did not shop in accordance with §1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, and the total of all such itemized amounts that are designated borrower-paid at or before closing. Items that were disclosed pursuant to §1026.37(f)(3) must be disclosed under this paragraph (f)(2) if the consumer was provided a written list of settlement service providers under §1026.19(e)(1)(vi)(C) and the consumer selected a settlement service provider contained on that written list.

(3) *Services borrower did shop for.* Under the subheading ''Services Borrower Did Shop For'' and in the applicable column as described in paragraph (f) of this section, an itemization of the services and corresponding costs for each of the settlement services required by the creditor for which the consumer shopped in accordance with §1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, and the total of all such itemized costs that are

designated borrower-paid at or before closing. Items that were disclosed pursuant to § 1026.37(f)(3) must be disclosed under this paragraph (f)(3) if the consumer was provided a written list of settlement service providers under § 1026.19(e)(1)(vi)(C) and the consumer did not select a settlement service provider contained on that written list.

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

(5) *Subtotal of loan costs.* The sum of loan costs, calculated by totaling the amounts described in paragraphs (f)(1) through (3) of this section for costs designated borrower-paid at or before closing, labeled "Loan Costs Subtotals."

(g) *Closing cost details; other costs.* Under the master heading "Closing Cost Details" disclosed pursuant to paragraph (f) of this section, with columns stating whether the charge was borrower-paid at or before closing, seller-paid at or before closing, or paid by others, all costs in connection with the transaction, other than those disclosed under paragraph (f) of this section, listed in a table with a heading disclosed as "Other Costs." The table shall contain the items and amounts listed under five subheadings, described in paragraphs (g)(1) through (6) of this section.

(1) *Taxes and other government fees.* Under the subheading "Taxes and Other Government Fees," an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees and the total of all such itemized amounts that are designated borrower-paid at or before closing, as follows:

(i) On the first line:

(A) Before the columns described in paragraph (g) of this section, the total amount of fees for recording deeds and, separately, the total amount of fees for recording security instruments; and

(B) In the applicable column as described in paragraph (g) of this section, the total amounts paid for recording fees (including, but not limited to, the amounts in paragraph (g)(1)(i)(A) of this section); and

(ii) On subsequent lines, in the applicable column as described in paragraph (g) of this section, an itemization of transfer taxes, with the name of the government entity assessing the transfer tax.

(2) *Prepaids.* Under the subheading "Prepaids" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in § 1026.37(g)(2), the name of the person ultimately receiving the payment or government entity assessing the property tax, provided that the person ultimately receiving the payment need not be disclosed for the disclosure required by § 1026.37(g)(2)(iii) when disclosed pursuant to this paragraph, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(3) *Initial escrow payment at closing.* Under the subheading "Initial escrow payment at closing" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges described in § 1026.37(g)(3), the applicable aggregate adjustment pursuant to 12 CFR 1024.17(d)(2) along with the label "aggregate adjustment," and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(4) *Other.* Under the subheading "Other" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges in connection with the transaction that are in addition to the charges disclosed under paragraphs (f) and (g)(1) through (3) for services that are required or obtained in the real estate closing by the consumer, the seller, or other party, the name of the person ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing.

(i) For any cost that is a component of title insurance services, the introductory description "Title —" shall appear at the beginning of the label for that actual cost.

(ii) The parenthetical description "(optional)" shall appear at the end of the label for costs designated borrower-paid at or before closing for any premiums paid for separate insurance, warranty, guarantee, or event-coverage products.

(5) *Total other costs.* Under the subheading ''Total Other Costs (Borrower-Paid),'' the sum of the amounts disclosed as borrower-paid pursuant to paragraph (g)(6) of this section.

(6) *Subtotal of costs.* The sum of other costs, calculated by totaling the costs disclosed in paragraphs (g)(1) through (4) of this section designated borrower-paid at or before closing, labeled ''Other Costs Subtotals.''

(h) *Closing cost totals.* (1) The sum of the costs disclosed as borrower-paid pursuant to paragraph (h)(2) of this section and the amount disclosed in paragraph (h)(3) of this section, under the subheading ''Total Closing Costs (Borrower-Paid).''

(2) The sum of the amounts disclosed in paragraphs (f)(5) and (g)(6) of this section, designated borrower-paid at or before closing, and the sum of the costs designated seller-paid at or before closing or paid by others disclosed pursuant to paragraphs (f) and (g) of this section, labeled ''Closing Costs Subtotals.''

(3) The amount of lender credits as a negative number, labeled ''Lender Credits'' and designated borrower-paid at closing, and if a refund is provided pursuant to §1026.19(f)(2)(v), a statement that this amount includes a credit for an amount that exceeds the limitations on increases in closing costs under §1026.19(e)(3), and the amount of such credit under §1026.19(f)(2)(v).

(4) The services and costs disclosed pursuant to paragraphs (f) and (g) of this section on the Closing Disclosure shall be labeled using terminology that describes the item disclosed, in a manner that is consistent with the descriptions or prescribed labels, as applicable, used for such items on the Loan Estimate pursuant to §1026.37. The creditor must also list the items on the Closing Disclosure in the same sequential order as on the Loan Estimate pursuant to §1026.37.

(i) *Calculating cash to close.* In a separate table, under the heading ''Calculating Cash to Close,'' together with the statement ''Use this table to see what has changed from your Loan Estimate'':

(1) *Total closing costs.* (i) Under the subheading ''Loan Estimate,'' the ''Total Closing Costs'' disclosed on the Loan Estimate under §1026.37(h)(1)(i), labeled using that term.

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (h)(1) of this section.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(1):

(A) If the amount disclosed under paragraph (i)(1)(ii) of this section is different than the amount disclosed under paragraph (i)(1)(i) of this section (unless the difference is due to rounding):

(*1*) A statement of that fact;

(*2*) If the difference in the ''Total Closing Costs'' is attributable to differences in itemized charges that are included in either or both subtotals, a statement that the consumer should see the total loan costs and total other costs subtotals disclosed under paragraphs (f)(4) and (g)(5) of this section (together with references to such disclosures), as applicable; and

(*3*) If the increase exceeds the limitations on increases in closing costs under §1026.19(e)(3), a statement that such increase exceeds the legal limits by the dollar amount of the excess, and if any refund is provided under §1026.19(f)(2)(v), a statement directing the consumer to the disclosure required under paragraph (h)(3) of this section or, if a principal reduction is used to provide the refund, a statement directing the consumer to the principal reduction disclosure under paragraph (j)(1)(v) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under §1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under §1026.19(e)(3)(i) and (ii).

(B) If the amount disclosed under paragraph (i)(1)(ii) of this section is equal to the amount disclosed under paragraph (i)(1)(i) of this section, a statement of that fact.

(2) *Closing costs paid before closing.* (i) Under the subheading ''Loan Estimate,'' the dollar amount ''$0,'' labeled ''Closing Costs Paid Before Closing.''

(ii) Under the subheading ''Final,'' the amount of ''Total Closing Costs'' disclosed under paragraph (h)(2) of this section and designated as borrower-paid before closing, stated as a negative number.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(2):

(A) If the amount disclosed under paragraph (i)(2)(ii) of this section is different than the amount disclosed under paragraph (i)(2)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer paid such amounts prior to consummation of the transaction; or

(B) If the amount disclosed under paragraph (i)(2)(ii) of this section is equal to the amount disclosed under paragraph (i)(2)(i) of this section, a statement of that fact.

(3) *Closing costs financed.* (i) Under the subheading ''Loan Estimate,'' the amount disclosed under §1026.37(h)(1)(ii), labeled ''Closing Costs Financed (Paid from your Loan Amount).''

(ii) Under the subheading ''Final,'' the actual amount of the closing costs that are to be paid out of loan proceeds, if any, stated as a negative number.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(3):

(A) If the amount disclosed under paragraph (i)(3)(ii) of this section is different than the amount disclosed under paragraph (i)(3)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer included the closing costs in the loan amount, which increased the loan amount; or

(B) If the amount disclosed under paragraph (i)(3)(ii) of this section is equal to the amount disclosed under paragraph (i)(3)(i) of this section, a statement of that fact.

(4) *Down payment/funds from borrower.* (i) Under the subheading ''Loan Estimate,'' the amount disclosed under §1026.37(h)(1)(iii), labeled ''Down Payment/Funds from Borrower.''

(ii) Under the subheading ''Final'':

(A)(*1*) In a purchase transaction as defined in §1026.37(a)(9)(i), the amount determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount of existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section from the sale price of the property disclosed under paragraph (a)(3)(vii)(A) of this section, labeled ''Down Payment/Funds from Borrower,'' except as required by paragraph (i)(4)(ii)(A)(*2*) of this section;

(*2*) In a purchase transaction as defined in §1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under paragraph (b) of this section and any amount of existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section exceeds the sale price disclosed under paragraph (a)(3)(vii)(A) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section labeled ''Down Payment/Funds from Borrower;'' or

(B) In all transactions not subject to paragraph (i)(4)(ii)(A) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section, labeled ''Down Payment/Funds from Borrower.''

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(4):

(A) If the amount disclosed under paragraph (i)(4)(ii) of this section is different than the amount disclosed under paragraph (i)(4)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment and that the consumer should see the details disclosed under paragraph (j)(1) or (j)(2) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(4)(ii) of this section is equal to the amount disclosed under paragraph (i)(4)(i) of this section, a statement of that fact.

(5) *Deposit.* (i) Under the subheading ''Loan Estimate,'' the amount disclosed under §1026.37(h)(1)(iv), labeled ''Deposit.''

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (j)(2)(ii) of this section, stated as a negative number.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(5):

(A) If the amount disclosed under paragraph (i)(5)(ii) of this section is different than the amount disclosed under paragraph (i)(5)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer increased or decreased this payment, as applicable, and that the consumer should see the details disclosed under paragraph (j)(2)(ii) of this section; or

(B) If the amount disclosed under paragraph (i)(5)(ii) of this section is equal to the amount disclosed under paragraph (i)(5)(i) of this section, a statement of that fact.

(6) *Funds for borrower.* (i) Under the subheading ''Loan Estimate,'' the amount disclosed under §1026.37(h)(1)(v), labeled ''Funds for Borrower.''

(ii) Under the subheading ''Final,'' the ''Funds for Borrower,'' labeled using that term, as determined in accordance with paragraph (i)(6)(iv) of this section.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(6):

(A) If the amount disclosed under paragraph (i)(6)(ii) of this section is different than the amount disclosed under paragraph (i)(6)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer's available funds from the loan amount have increased or decreased, as applicable; or

(B) If the amount disclosed under paragraph (i)(6)(ii) of this section is equal to the amount disclosed under paragraph (i)(6)(i) of this section, a statement of that fact.

(iv) The ''Down Payment/Funds from Borrower'' to be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (B) of this section, as applicable, and ''Funds for Borrower'' to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount for existing loans assumed or taken subject to that is disclosed under paragraph (j)(2)(iv) of this section (excluding any closing costs financed disclosed under paragraph (i)(3)(ii) of this section) from the total amount of all existing debt being satisfied in the transaction disclosed under paragraphs (j)(1)(ii), (iii), and (v) of this section.

(A) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a positive number, such amount shall be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (B) of this section, as applicable, and $0 shall be disclosed under paragraph (i)(6)(ii) of this section.

(B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and $0 shall be disclosed under paragraph (i)(4)(ii)(A)(*2*) or (i)(4)(ii)(B) of this section, as applicable.

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

(7) *Seller credits.* (i) Under the subheading ''Loan Estimate,'' the amount disclosed under §1026.37(h)(1)(vi), labeled ''Seller Credits.''

(ii) Under the subheading ''Final,'' the amount disclosed under paragraph (j)(2)(v) of this section, stated as a negative number.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(7):

(A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed:

(*1*) Under paragraph (j)(2)(v) of this section and in the seller-paid column under paragraphs (f) and (g) of this section; or

(*2*) Under either paragraph (j)(2)(v) of this section or in the seller-paid column under paragraphs (f) or (g) of this section, if the details are only disclosed under paragraph (j)(2)(v) or paragraph (f) or (g); or

(B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

(8) *Adjustments and other credits.* (i) Under the subheading ''Loan Estimate,'' the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), labeled ''Adjustments and Other Credits.''

(ii) Under the subheading ''Final,'' the amount equal to the total of the amounts disclosed under paragraphs (j)(1)(iii) and (v) of this section, to the extent amounts in paragraphs (j)(1)(iii) and (v) were not included in the calculation required by paragraph (i)(4) or (6) of this section, and paragraphs (j)(1)(vi) through (x) of this section, reduced by the total of the amounts disclosed under paragraphs (j)(2)(vi) through (xi) of this section.

(iii) Under the subheading ''Did this change?,'' disclosed more prominently than the other disclosures under this paragraph (i)(8):

(A) If the amount disclosed under paragraph (i)(8)(ii) of this section is different than the amount disclosed under paragraph (i)(8)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraphs (j)(1)(iii) and (v) through (x) and (j)(2)(vi) through (xi) of this section, as applicable; or

(B) If the amount disclosed under paragraph (i)(8)(ii) of this section is equal to the amount disclosed under paragraph (i)(8)(i) of this section, a statement of that fact.

(9) *Cash to close.* (i) Under the subheading ''Loan Estimate,'' the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(viii), labeled ''Cash to Close'' and disclosed more prominently than the other disclosures under this paragraph (i).

(ii) Under the subheading ''Final,'' the sum of the amounts disclosed under paragraphs (i)(1) through (i)(8) of this section under the subheading ''Final,'' and disclosed more prominently than the other disclosures under this paragraph (i).

(j) *Summary of borrower's transaction.* Under the heading ''Summaries of Transactions,'' with a statement to ''Use this table to see a summary of your transaction,'' two separate tables are disclosed. The first table shall include, under the subheading ''Borrower's Transaction,'' the following information and shall satisfy the following requirements:

(1) *Itemization of amounts due from borrower.* (i) The total amount due from the consumer at closing, calculated as the sum of items required to be disclosed by paragraph (j)(1)(ii) through (x) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled ''Due from Borrower at Closing'';

(ii) The amount of the contract sales price of the property being sold in a purchase real estate transaction, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled ''Sale Price of Property'';

(iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (j)(1)(ii) of this section, labeled ''Sale Price of Any Personal Property Included in Sale'';

(iv) The total amount of closing costs disclosed that are designated borrower-paid at closing, as the sum of the amounts calculated pursuant to paragraphs (h)(2) and (3) of this section, labeled ''Closing Costs Paid at Closing'';

(v) A description and the amount of any additional items that the seller has paid prior to the real estate closing, but reimbursed by the consumer at the real estate closing, and a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to paragraph (f), (g), or (j) of this section;

(vi) The description ''Adjustments for Items Paid by Seller in Advance'';

(vii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled ''City/Town Taxes'';

(viii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled ''County Taxes'';

(ix) The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled ''Assessments''; and

(x) A description and the amount of any additional items paid by the seller prior to the real estate closing that are due from the consumer at the real estate closing.

(2) *Itemization of amounts already paid by or on behalf of borrower.* (i) The sum of the amounts disclosed in this paragraphs (j)(2)(ii) through (xi) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled ''Paid Already by or on Behalf of Borrower at Closing'';

(ii) Any amount that is paid to the seller or held in trust or escrow by an attorney or other party under the terms of the agreement for the sale of the property, labeled ''Deposit'';

(iii) The amount of the consumer's new loan amount or first user loan as disclosed pursuant to paragraph (b) of this section, labeled ''Loan Amount'';

(iv) The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is taking title to the property, labeled ''Existing Loan(s) Assumed or Taken Subject to'';

(v) The total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled ''Seller Credit'';

(vi) Descriptions and amounts of other items paid by or on behalf of the consumer and not otherwise disclosed under paragraphs (f), (g), (h), and (j)(2) of this section, labeled ''Other Credits,'' and descriptions and the amounts of any additional amounts owed the consumer but payable to the seller before the real estate closing, under the heading ''Adjustments'';

(vii) The description ''Adjustments for Items Unpaid by Seller'';

(viii) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''City/Town Taxes'';

(ix) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''County Taxes'';

(x) The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''Assessments''; and

(xi) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

(3) *Calculation of borrower's transaction.* Under the label ''Calculation'':

(i) The amount disclosed pursuant to paragraph (j)(1)(i) of this section, labeled ''Total Due from Borrower at Closing'';

(ii) The amount disclosed pursuant to paragraph (j)(2)(i) of this section, if any, disclosed as a negative number, labeled ''Total Paid Already by or on Behalf of Borrower at Closing''; and

(iii) A statement that the disclosed amount is due from or to the consumer, and the amount due from or to the consumer at the real estate closing, calculated by the sum of the amounts disclosed under paragraphs (j)(3)(i) and (ii) of this section, labeled ''Cash to Close.''

(4) *Items paid outside of closing funds.* (i) Costs that are not paid from closing

funds but that would otherwise be disclosed in the table required pursuant to paragraph (j) of this section, should be marked with the phrase "Paid Outside of Closing" or the abbreviation "P.O.C." and include the name of the party making the payment.

(ii) For purposes of this paragraph (j), "closing funds" means funds collected and disbursed at real estate closing.

(k) *Summary of seller's transaction.* Under the heading "Summaries of Transactions" required by paragraph (j) of this section, a separate table under the subheading "Seller's Transaction," that includes the following information and satisfies the following requirements:

(1) *Itemization of amounts due to seller.* (i) The total amount due to the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraphs (k)(1)(ii) through (ix) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled "Due to Seller at Closing";

(ii) The amount of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items, labeled "Sale Price of Property";

(iii) The amount of the sales price of any tangible personal property excluded from the contract sales price pursuant to paragraph (k)(1)(ii) of this section, labeled "Sale Price of Any Personal Property Included in Sale";

(iv) A description and the amount of other items paid to the seller by the consumer pursuant to the contract of sale or other agreement, such as charges that were not disclosed pursuant to § 1026.37 on the Loan Estimate or items paid by the seller prior to the real estate closing but reimbursed by the consumer at the real estate closing;

(v) The description "Adjustments for Items Paid by Seller in Advance";

(vi) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled "City/Town Taxes";

(vii) The prorated amount of any prepaid taxes due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled "County Taxes";

(viii) The prorated amount of any prepaid assessments due from the consumer to reimburse the seller at the real estate closing, and the time period corresponding to that amount, labeled "Assessments"; and

(ix) A description and the amount of additional items paid by the seller prior to the real estate closing that are reimbursed by the consumer at the real estate closing.

(2) *Itemization of amounts due from seller.* (i) The total amount due from the seller at the real estate closing, calculated as the sum of items required to be disclosed pursuant to paragraphs (k)(2)(ii) through (xiii) of this section, excluding items paid from funds other than closing funds as described in paragraph (k)(4)(i) of this section, labeled "Due from Seller at Closing";

(ii) The amount of any excess deposit disbursed to the seller prior to the real estate closing, labeled "Excess Deposit";

(iii) The amount of closing costs designated seller-paid at closing disclosed pursuant to paragraph (h)(2) of this section, labeled "Closing Costs Paid at Closing";

(iv) The amount of any existing loans that the consumer is assuming, or any loans subject to which the consumer is taking title to the property, labeled "Existing Loan(s) Assumed or Taken Subject to";

(v) The amount of any loan secured by a first lien on the property that will be paid off as part of the real estate closing, labeled "Payoff of First Mortgage Loan";

(vi) The amount of any loan secured by a second lien on the property that will be paid off as part of the real estate closing, labeled "Payoff of Second Mortgage Loan";

(vii) The total amount of money that the seller will provide at the real estate closing as a lump sum not otherwise itemized to pay for loan costs as determined by paragraph (f) of this section and other costs as determined by paragraph (g) of this section and any other obligations of the seller to be paid directly to the consumer, labeled ''Seller Credit'';

(viii) A description and amount of any and all other obligations required to be paid by the seller at the real estate closing, including any lien-related payoffs, fees, or obligations;

(ix) The description ''Adjustments for Items Unpaid by Seller'';

(x) The prorated amount of any unpaid taxes due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''City/Town Taxes'';

(xi) The prorated amount of any unpaid taxes due from the seller to the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''County Taxes'';

(xii) The prorated amount of any unpaid assessments due from the seller to reimburse the consumer at the real estate closing, and the time period corresponding to that amount, labeled ''Assessments''; and

(xiii) A description and the amount of any additional items which have not yet been paid and which the consumer is expected to pay after the real estate closing, but which are attributable in part to a period of time prior to the real estate closing.

(3) *Calculation of seller's transaction.* Under the label ''Calculation'':

(i) The amount described in paragraph (k)(1)(i) of this section, labeled ''Total Due to Seller at Closing'';

(ii) The amount described in paragraph (k)(2)(i) of this section, disclosed as a negative number, labeled ''Total Due from Seller at Closing''; and

(iii) A statement that the disclosed amount is due from or to the seller, and the amount due from or to the seller at closing, calculated by the sum of the amounts disclosed pursuant to paragraphs (k)(3)(i) and (ii) of this section, labeled ''Cash.''

(4) *Items paid outside of closing funds.* (i) Charges that are not paid from closing funds but that would otherwise be disclosed in the table described in paragraph (k) of this section, should be marked with the phrase ''Paid Outside of Closing'' or the acronym ''P.O.C.'' and include a statement of the party making the payment.

(ii) For purposes of this paragraph (k), ''closing funds'' are defined as funds collected and disbursed at real estate closing.

(l) *Loan disclosures.* Under the master heading ''Additional Information About This Loan'' and under the heading ''Loan Disclosures'':

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

(2) *Demand feature.* Under the subheading ''Demand Feature,'' a statement of whether the legal obligation permits the creditor to demand early repayment of the loan and, if the statement is affirmative, a reference to the note or other loan contract for details.

(3) *Late payment.* Under the subheading ''Late Payment,'' the information required by §1026.37(m)(4).

(4) *Negative amortization.* Under the subheading ''Negative Amortization (Increase in Loan Amount),'' a statement of whether the regular periodic payments may cause the principal balance to increase.

(i) If the regular periodic payments do not cover all of the interest due, the creditor must provide a statement that the principal balance will increase, such balance will likely become larger than the original loan amount, and increases in such balance lower the consumer's equity in the property.

(ii) If the consumer may make regular periodic payments that do not cover all of the interest due, the creditor must provide a statement that, if the consumer chooses a monthly payment option that does not cover all of the interest due, the principal balance may become larger than the original loan amount and the increases in the principal balance lower the consumer's equity in the property.

(5) *Partial payment policy.* Under the subheading ''Partial Payments'':

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

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

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

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

(6) *Security interest.* Under the subheading "Security Interest," a statement that the consumer is granting a security interest in the property securing the transaction, the property address including a zip code, and a statement that the consumer may lose the property if the consumer does not make the required payments or satisfy other requirements under the legal obligation.

(7) *Escrow account.* Under the subheading "Escrow Account":

(i) Under the reference "For now," a statement that an escrow account may also be called an impound or trust account, a statement of whether the creditor has established or will establish (at or before consummation) an escrow account in connection with the transaction, and the information required under paragraphs (l)(7)(i)(A) and (B) of this section:

(A) A statement that the creditor may be liable for penalties and interest if it fails to make a payment for any cost for which the escrow account is established, a statement that the consumer would have to pay such costs directly in the absence of the escrow account, and a table, titled "Escrow," that contains, if an escrow account is or will be established, an itemization of the amounts listed in paragraphs (l)(7)(i)(A)(*1*) through (*4*) of this section;

(*1*) The total amount the consumer will be required to pay into an escrow account over the first year after consummation, labeled "Escrowed Property Costs over Year 1," together with a descriptive name of each charge to be paid (in whole or in part) from the escrow account, calculated as the amount disclosed under paragraph (l)(7)(i)(A)(*4*) of this section multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation;

(*2*) The estimated amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in § 1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds, labeled "Non-Escrowed Property Costs over Year 1," together with a descriptive name of each such charge and a statement that the consumer may have to pay other costs that are not listed;

(*3*) The total amount disclosed under paragraph (g)(3) of this section, a statement that the payment is a cushion for the escrow account, labeled "Initial Escrow Payment," and a reference to the information disclosed under paragraph (g)(3) of this section;

(*4*) The amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation, labeled "Monthly Escrow Payment."

(*5*) A creditor complies with the requirements of paragraphs (l)(7)(i)(A)(*1*) and (*4*) of this section if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17.

(B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and a table, titled "No Escrow," that contains, if an escrow account will not be established, an itemization of the following:

(*1*) The estimated total amount the consumer will pay directly for the mortgage-related obligations described in § 1026.43(b)(8) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled ''Property Costs over Year 1''; and

(*2*) The amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled ''Escrow Waiver Fee.''

(ii) Under the reference ''In the future'':

(A) A statement that the consumer's property costs may change and that, as a result, the consumer's escrow payment may change;

(B) A statement that the consumer may be able to cancel any escrow account that has been established, but that the consumer is responsible for directly paying all property costs in the absence of an escrow account; and

(C) A description of the consequences if the consumer fails to pay property costs, including the actions that a State or local government may take if property taxes are not paid and the actions the creditor may take if the consumer does not pay some or all property costs, such as adding amounts to the loan balance, adding an escrow account to the loan, or purchasing a property insurance policy on the consumer's behalf that may be more expensive and provide fewer benefits than what the consumer could obtain directly.

(m) *Adjustable payment table.* Under the master heading ''Additional Information About This Loan'' required by paragraph (l) of this section, and under the heading ''Adjustable Payment (AP) Table,'' the table required to be disclosed by § 1026.37(i).

(n) *Adjustable interest rate table.* Under the master heading ''Additional Information About This Loan'' required by paragraph (l) of this section, and under the heading ''Adjustable Interest Rate (AIR) Table,'' the table required to be disclosed by § 1026.37(j).

(o) *Loan calculations.* In a separate table under the heading ''Loan Calculations'':

(1) *Total of payments.* The ''Total of Payments,'' using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. The disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments:

(i) Is understated by no more than $100; or

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

(2) *Finance charge.* The ''Finance Charge,'' using that term and expressed as a dollar amount, and the following statement: ''The dollar amount the loan will cost you.'' The disclosed finance charge and other disclosures affected by the disclosed financed charge (including the amount financed and the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:

(i) Is understated by no more than $100; or

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

(3) *Amount financed.* The ''Amount Financed,'' using that term and expressed as a dollar amount, and the following statement: ''The loan amount available after paying your upfront finance charge.''

(4) *Annual percentage rate.* The ''Annual Percentage Rate,'' using that term and the abbreviation ''APR'' and expressed as a percentage, and the following statement: ''Your costs over the loan term expressed as a rate. This is not your interest rate.''

(5) *Total interest percentage.* The ''Total Interest Percentage,'' using that term and the abbreviation ''TIP'' and expressed as a percentage, and the following statement: ''The total amount of interest that you will pay over the loan term as a percentage of your loan amount.''

(p) *Other disclosures.* Under the heading ''Other Disclosures'':

(1) *Appraisal.* For transactions subject to 15 U.S.C. 1639h or 1691(e), as implemented in this part or Regulation B, 12 CFR part 1002, respectively, under the subheading ''Appraisal,'' that:

(i) If there was an appraisal of the property in connection with the loan, the creditor is required to provide the consumer with a copy at no additional cost to the consumer at least three days prior to consummation; and

(ii) If the consumer has not yet received a copy of the appraisal, the consumer should contact the creditor using the information disclosed pursuant to paragraph (r) of this section.

(2) *Contract details*. A statement that the consumer should refer to the appropriate loan document and security instrument for information about nonpayment, what constitutes a default under the legal obligation, circumstances under which the creditor may accelerate the maturity of the obligation, and prepayment rebates and penalties, under the subheading ''Contract Details.''

(3) *Liability after foreclosure*. A brief statement of whether, and the conditions under which, the consumer may remain responsible for any deficiency after foreclosure under applicable State law, a brief statement that certain protections may be lost if the consumer refinances or incurs additional debt on the property, and a statement that the consumer should consult an attorney for additional information, under the subheading ''Liability after Foreclosure.''

(4) *Refinanc*e. Under the subheading ''Refinance,'' the statement required by §1026.37(m)(5).

(5) *Tax deductions*. Under the subheading ''Tax Deductions,'' a statement that, if the extension of credit exceeds the fair market value of the property, the interest on the portion of the credit extension that is greater than the fair market value of the property is not tax deductible for Federal income tax purposes and a statement that the consumer should consult a tax adviser for further information.

(q) *Questions notice*. In a separate notice labeled ''Questions?'':

(1) A statement directing the consumer to use the contact information disclosed under paragraph (r) of this section if the consumer has any questions about the disclosures required pursuant to §1026.19(f);

(2) A reference to the Bureau's Web site to obtain more information or to submit a complaint; and the link or uniform resource locator address to the Web site: *www.consumerfinance.gov/mortgage-closing*; and

(3) A prominent question mark.

(r) *Contact information*. In a separate table, under the heading ''Contact Information,'' the following information for each creditor (under the subheading ''Lender''), mortgage broker (under the subheading ''Mortgage Broker''), consumer's real estate broker (under the subheading ''Real Estate Broker (B)''), seller's real estate broker (under the subheading ''Real Estate Broker (S)''), and settlement agent (under the subheading ''Settlement Agent'') participating in the transaction:

(1) Name of the person, labeled ''Name'';

(2) Address, using that label;

(3) Nationwide Mortgage Licensing System & Registry (NMLSR ID) identification number, labeled ''NMLS ID,'' or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, labeled ''License ID,'' with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, for the persons identified in paragraph (r)(1) of this section;

(4) Name of the natural person who is the primary contact for the consumer with the person identified in paragraph (r)(1) of this section, labeled ''Contact'';

(5) NMLSR ID, labeled ''Contact NMLS ID,'' or, if none, license number or other unique identifier issued by the applicable jurisdiction or regulating body with which the person is licensed and/or registered, labeled ''Contact License ID,'' with the abbreviation for the State of the applicable jurisdiction or regulatory body stated before the word ''License'' in the label, for the natural person identified in paragraph (r)(4) of this section,

(6) Email address for the person identified in paragraph (r)(4) of this section, labeled ''Email''; and

(7) Telephone number for the person identified in paragraph (r)(4) of this section, labeled ''Phone.''

(s) *Signature statement*. (1) At the creditor's option, under the heading ''Confirm Receipt,'' a line for the signatures of the consumers in the transaction. If the creditor provides a line for the consumer's signature, the creditor must disclose above the signature line the statement required to be disclosed under §1026.37(n)(1).

(2) If the creditor does not provide a line for the consumer's signature, the

statement required to be disclosed under § 1026.37(n)(2) under the heading ''Other Disclosures'' required by paragraph (p) of this section.

(t) *Form of disclosures*—(1) *General requirements.* (i) The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep. The disclosures also shall be grouped together and segregated from everything else.

(ii) Except as provided in paragraph (t)(5), the disclosures shall contain only the information required by paragraphs (a) through (s) of this section and shall be made in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H–25, set forth in appendix H to this part.

(2) *Headings and labels.* If a master heading, heading, subheading, label, or similar designation contains the word ''estimated'' or a capital letter designation in form H–25, set forth in appendix H to this part, that heading, label, or similar designation shall contain the word ''estimated'' and the applicable capital letter designation.

(3) *Form.* Except as provided in paragraph (t)(5) of this section:

(i) For a transaction subject to § 1026.19(f) that is a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2, the disclosures must be made using form H–25, set forth in appendix H to this part.

(ii) For any other transaction subject to this section, the disclosures must be made with headings, content, and format substantially similar to form H–25, set forth in appendix H to this part.

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

(4) *Rounding*—(i) *Nearest dollar.* The following dollar amounts are required to be rounded to the nearest whole dollar:

(A) The dollar amounts required to be disclosed by paragraph (b) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(b)(6) and (7);

(B) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(A) when disclosed under § 1026.37(c)(1)(iii);

(C) The dollar amounts required to be disclosed by paragraphs (e) and (i) of this section under the subheading ''Loan Estimate'';

(D) The dollar amounts required to be disclosed by paragraph (m) of this section; and

(E) The dollar amounts required to be disclosed by paragraph (c) of this section that are required to be rounded by § 1026.37(o)(4)(i)(C) when disclosed under § 1026.37(c)(2)(iv).

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b), (f)(1), (n), and (o)(4) and (5) of this section shall be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point.

(iii) *Loan amount.* The dollar amount required to be disclosed by paragraph (b) of this section as required by § 1026.37(b)(1) shall be disclosed as an unrounded number, except that if the amount is a whole number then the amount disclosed shall be truncated at the decimal point.

(5) *Exceptions*—(i) *Unit-period.* Wherever the form or this section uses ''monthly'' to describe the frequency of any payments or uses ''month'' to describe the applicable unit-period, the creditor shall substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments.

(ii) *Lender credits.* The amount required to be disclosed by paragraph (d)(1)(i)(D) of this section may be omitted from the form if the amount is zero.

(iii) *Administrative information.* The creditor may insert at the bottom of each page under the disclosures required by this section as illustrated by form H–25 of appendix H to this part, any administrative information, text, or codes that assist in identification of the form or the information disclosed on the form, provided that the space provided on form H–25 for any of the information required by this section is not altered.

(iv) *Closing cost details*—(A) *Additional line numbers.* Line numbers provided on form H–25 of appendix H to this part for the disclosure of the information required by paragraphs (f)(1) through (3) and (g)(1) through (4) of this section that are not used may be deleted and the deleted line numbers added to the space provided for any other of those paragraphs as necessary to accommodate the disclosure of additional items.

(B) *Two pages.* To the extent that adding or deleting line numbers provided on form H–25 of appendix H to this part, as permitted by paragraph (t)(5)(iv)(A) of this section, does not accommodate an itemization of all information required to be disclosed by paragraphs (f) through (h) on one page, the information required to be disclosed by paragraphs (f) through (h) of this section may be disclosed on two pages, provided that the information required by paragraph (f) is disclosed on a page separate from the information required by paragraph (g). The information required by paragraph (g), if disclosed on a page separate from paragraph (f), shall be disclosed on the same page as the information required by paragraph (h).

(v) *Separation of consumer and seller information.* The creditor or settlement agent preparing the form may use form H–25 of appendix H to this part for the disclosure provided to both the consumer and the seller, with the following modifications to separate the information of the consumer and seller, as necessary:

(A) The information required to be disclosed by paragraphs (j) and (k) of this section may be disclosed on separate pages to the consumer and the seller, respectively, with the information required by the other paragraph left blank. The information disclosed to the consumer pursuant to paragraph (j) of this section must be disclosed on the same page as the information required by paragraph (i) of this section.

(B) The information required to be disclosed by paragraphs (f) and (g) of this section with respect to costs paid by the consumer may be left blank on the disclosure provided to the seller.

(C) The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (i), (l) through (p), (r) with respect to the creditor and mortgage broker, and (s)(2) of this section may be left blank on the disclosure provided to the seller.

(vi) *Modified version of the form for a seller or third-party.* The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f), and (g) with respect to costs paid by the consumer, (i), (j), (l) through (p), (q)(1), and (r) with respect to the creditor and mortgage broker, and (s) of this section may be deleted from the form provided to the seller or a third-party, as illustrated by form H–25(I) of appendix H to this part.

(vii) *Transaction without a seller or simultaneous subordinate financing transaction.* The following modifications to form H–25 of appendix H to this part may be made for a transaction that does not involve a seller or for simultaneous subordinate financing, and for which the alternative tables are disclosed under paragraphs (d)(2) and (e) of this section, as illustrated by form H–25(J) of appendix H to this part:

(A) The information required by paragraph (a)(4)(ii), and paragraphs (f), (g), and (h) of this section with respect to costs paid by the seller, may be deleted.

(B) A table under the master heading ''Closing Cost Details'' required by paragraph (f) of this section may be added with the heading ''Payoffs and Payments'' that itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction, including designees of the consumer; the payees and a description of the purpose of such disbursements under the subheading ''To''; and the total amount of such payments labeled ''Total Payoffs and Payments.''

(C) The tables required to be disclosed by paragraphs (j) and (k) of this section may be deleted.

(viii) *Translation.* The form may be translated into languages other than English, and creditors may modify form H–25 of appendix H to this part to the extent that translation prevents the headings, labels, designations, and required disclosure items under this section from fitting in the space provided on form H–25.

(ix) *Customary recitals and information.* An additional page may be attached to the form for the purpose of including customary recitals and information used locally in real estate settlements.

[78 FR 80120, Dec. 31, 2013, as amended at 80 FR 8776, Feb. 19, 2015; 80 FR 43920, July 24, 2015; 82 FR 37770, Aug. 11, 2017]

§ 1026.39 Mortgage transfer disclosures.

(a) *Scope.* The disclosure requirements of this section apply to any covered person except as otherwise provided in this section. For purposes of this section:

(1) A ''*covered person*'' means any person, as defined in § 1026.2(a)(22), that becomes the owner of an existing mortgage loan by acquiring legal title to the debt obligation, whether through a purchase, assignment or other transfer, and who acquires more than one mortgage loan in any twelve-month period. For purposes of this section, a servicer of a mortgage loan shall not be treated as the owner of the obligation if the servicer holds title to the loan, or title is assigned to the servicer, solely for the administrative convenience of the servicer in servicing the obligation.

(2) A ''*mortgage loan*'' means:

(i) An open-end consumer credit transaction that is secured by the principal dwelling of a consumer; and

(ii) A closed-end consumer credit transaction secured by a dwelling or real property.

(b) *Disclosure required.* Except as provided in paragraph (c) of this section, each covered person is subject to the requirements of this section and 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.

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

(2) *The date of transfer.* For purposes of this section, the date of transfer to the covered person may, at the covered person's option, be either the date of acquisition recognized in the books and records of the acquiring party, or the date of transfer recognized in the books and records of the transferring party.

(3) *Multiple consumers.* If more than one consumer is liable on the obligation, a covered person may mail or deliver the disclosures to any consumer who is primarily liable.

(4) *Multiple transfers.* If a mortgage loan is acquired by a covered person and subsequently sold, assigned, or otherwise transferred to another covered person, a single disclosure may be provided on behalf of both covered persons if the disclosure satisfies the timing and content requirements applicable to each covered person.

(5) *Multiple covered persons.* If an acquisition involves multiple covered persons who jointly acquire the loan, a single disclosure must be provided on behalf of all covered persons.

(c) *Exceptions.* Notwithstanding paragraph (b) of this section, a covered person is not subject to the requirements of this section with respect to a particular mortgage loan if:

(1) The covered person sells, or otherwise transfers or assigns legal title to the mortgage loan on or before the 30th calendar day following the date that the covered person acquired the mortgage loan which shall be the date of transfer recognized for purposes of paragraph (b)(2) of this section;

(2) The mortgage loan is transferred to the covered person in connection with a repurchase agreement that obligates the transferor to repurchase the loan. However, if the transferor does not repurchase the loan, the covered person 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; or

(3) The covered person 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.

(d) *Content of required disclosures.* The disclosures required by this section shall identify the mortgage loan that was sold, assigned or otherwise transferred, and state the following, except that the information required by paragraph (d)(5) of this section shall be stated only for a mortgage loan that is a closed-end consumer credit transaction secured by a dwelling or real property other than a reverse mortgage transaction subject to §1026.33 of this part:

(1) The name, address, and telephone number of the covered person.

(i) If a single disclosure is provided on behalf of more than one covered person, the information required by this paragraph shall be provided for each of them unless paragraph (d)(1)(ii) of this section applies.

(ii) If a single disclosure is provided on behalf of more than one covered person 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 covered person.

(2) The date of transfer.

(3) 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.

(4) Where transfer of ownership of the debt to the covered person is or may be recorded in public records, or, alternatively, that the transfer of ownership has not been recorded in public records at the time the disclosure is provided.

(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.

(e) *Optional disclosures.* In addition to the information required to be disclosed under paragraph (d) of this section, a covered person may, at its option, provide any other information regarding the transaction.

(f) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, §1024.32(c)(1) of this chapter, the servicer is not required to provide to the confirmed successor in interest any written disclosure required by paragraph (b) of this section unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, §1024.32(c)(1)(iv) of this chapter, that the confirmed successor in interest has not revoked.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80130, Dec. 31, 2013; 81 FR 72388, Oct. 19, 2016]

§ 1026.40 Requirements for home equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under § 1026.14(b).

(a) *Form of disclosures*—(1) *General.* The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees described in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures.

(2) *Precedence of certain disclosures.* The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(3) For an application that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application.

(b) *Time of disclosures.* The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer. The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

(c) *Duties of third parties.* Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section for a creditor's home equity plan, they also shall provide the disclosures at such time. The disclosures and the brochure may be delivered or placed in the mail not later than three business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

(d) *Content of disclosures.* The creditor shall provide the following disclosures, as applicable:

(1) *Retention of information.* A statement that the consumer should make or otherwise retain a copy of the disclosures.

(2) *Conditions for disclosed terms.* (i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

(3) *Security interest and risk to home.* A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(4) *Possible actions by creditor.* (i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.

(5) *Payment terms.* The payment terms of the plan. If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms. The payment terms of the plan include:

(i) The length of the draw period and any repayment period.

(ii) An explanation of how the minimum periodic payment will be determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result. A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

(iii) An example, based on a $10,000 outstanding balance and a recent annual percentage rate, showing the minimum periodic payment, any balloon payment, and the time it would take to repay the $10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit. For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

(6) *Annual percentage rate.* For fixed-rate plans, a recent annual percentage rate imposed under the plan and a statement that the rate does not include costs other than interest. A recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer.

(7) *Fees imposed by creditor.* An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(8) *Fees imposed by third parties to open a plan.* A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

(9) *Negative amortization.* A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(10) *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw requirements, stated as dollar amounts or percentages.

(11) *Tax implications.* A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(12) *Disclosures for variable-rate plans.* For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a $10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a $10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(e) *Brochure.* The home equity brochure entitled ''What You Should Know About Home Equity Lines of Credit'' or a suitable substitute shall be provided.

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise:

(1) Change the annual percentage rate unless:

(i) Such change is based on an index that is not under the creditor's control; and

(ii) Such index is available to the general public.

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term (except for reverse mortgage transactions that are subject to paragraph (f)(4) of this section) unless:

(i) There is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance;

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security; or

(iv) Federal law dealing with credit extended by a depository institution to its executive officers specifically requires that as a condition of the plan the credit shall become due and payable on demand, provided that the creditor includes such a provision in the initial agreement.

(3) Change any term, except that a creditor may:

(i) Provide in the initial agreement that it may prohibit additional extensions of credit or reduce the credit limit during any period in which the maximum annual percentage rate is reached. A creditor also may provide in the initial agreement that specified changes will occur if a specified event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) Make an insignificant change to terms.

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(A) The value of the dwelling that secures the plan declines significantly below the dwelling's appraised value for purposes of the plan;

(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) The consumer is in default of any material obligation under the agreement;

(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line; or

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice.

(4) For reverse mortgage transactions that are subject to §1026.33, terminate a plan and demand repayment of the entire outstanding balance in advance of the original term except:

(i) In the case of default;

(ii) If the consumer transfers title to the property securing the note;

(iii) If the consumer ceases using the property securing the note as the primary dwelling; or

(iv) Upon the consumer's death.

(g) *Refund of fees.* A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(h) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section. If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

EFFECTIVE DATE NOTE: At 86 FR 69781, Dec. 8, 2021, §1026.40 was amended by revising paragraph (f)(3)(ii), effective Apr. 1, 2022. For the convenience of the user, the revised text is set forth as follows:

§ 1026.40 Requirements for home equity plans.

* * * * *

(f) * * *

(3) * * *

(ii)(A) Change the index and margin used under the plan if the original index is no longer available, the replacement index has historical fluctuations substantially similar to that of the original index, and the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce an annual percentage rate substantially similar to the rate in effect when the original index became unavailable; or

(B) If a variable rate on the plan is calculated using a LIBOR index, change the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

§ 1026.41 Periodic statements for residential mortgage loans.

(a) *In general*—(1) *Scope*. This section applies to a closed-end consumer credit transaction secured by a dwelling, unless an exemption in paragraph (e) of this section applies. A closed-end consumer credit transaction secured by a dwelling is referred to as a *mortgage loan* for purposes of this section.

(2) *Periodic statements*. A servicer of a transaction subject to this section shall provide the consumer, for each billing cycle, a periodic statement meeting the requirements of paragraphs (b), (c), and (d) of this section. If a mortgage loan has a billing cycle shorter than a period of 31 days (for example, a bi-weekly billing cycle), a periodic statement covering an entire month may be used. For the purposes of this section, *servicer* includes the creditor, assignee, or servicer, as applicable. A creditor or assignee that does not currently own the mortgage loan or the mortgage servicing rights is not subject to the requirement in this section to provide a periodic statement.

(b) *Timing of the periodic statement*. The periodic statement must be delivered or placed in the mail within a reasonably prompt time after the payment due date or the end of any courtesy period provided for the previous billing cycle.

(c) *Form of the periodic statement*. The servicer must make the disclosures required by this section clearly and conspicuously in writing, or electronically if the consumer agrees, and in a form that the consumer may keep. Sample forms for periodic statements are provided in appendix H–30. Proper use of these forms complies with the requirements of this paragraph (c) and the layout requirements in paragraph (d) of this section.

(d) *Content and layout of the periodic statement*. The periodic statement required by this section shall include:

(1) *Amount due*. Grouped together in close proximity to each other and located at the top of the first page of the statement:

(i) The payment due date;

(ii) The amount of any late payment fee, and the date on which that fee will be imposed if payment has not been received; and

(iii) The amount due, shown more prominently than other disclosures on the page and, if the transaction has multiple payment options, the amount due under each of the payment options.

(2) *Explanation of amount due*. The following items, grouped together in close proximity to each other and located on the first page of the statement:

(i) The monthly payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow and, if a mortgage loan has multiple payment options, a breakdown of each of the payment options along with information on whether the principal balance will increase, decrease, or stay the same for each option listed;

(ii) The total sum of any fees or charges imposed since the last statement; and

(iii) Any payment amount past due.

(3) *Past payment breakdown*. The following items, grouped together in close proximity to each other and located on the first page of the statement:

(i) The total of all payments received since the last statement, including a breakdown showing the amount, if any, that was applied to principal, interest, escrow, fees and charges, and the amount, if any, sent to any suspense or unapplied funds account; and

(ii) The total of all payments received since the beginning of the current calendar year, including a breakdown of that total showing the amount, if any, that was applied to principal, interest, escrow, fees and charges, and the amount, if any, currently held in any suspense or unapplied funds account.

(4) *Transaction activity*. A list of all the transaction activity that occurred since the last statement. For purposes of this paragraph (d)(4), *transaction activity* means any activity that causes a credit or debit to the amount currently due. This list must include the date of the transaction, a brief description of the transaction, and the amount of the transaction for each activity on the list.

(5) *Partial payment information.* If a statement reflects a partial payment that was placed in a suspense or unapplied funds account, information explaining what must be done for the funds to be applied. The information must be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

(6) *Contact information.* A toll-free telephone number and, if applicable, an electronic mailing address that may be used by the consumer to obtain information about the consumer's account, located on the front page of the statement.

(7) *Account information.* The following information:

(i) The amount of the outstanding principal balance;

(ii) The current interest rate in effect for the mortgage loan;

(iii) The date after which the interest rate may next change;

(iv) The existence of any prepayment penalty, as defined in §1026.32(b)(6)(i), that may be charged;

(v) The Web site to access either the Bureau list or the HUD list of homeownership counselors and counseling organizations and the HUD toll-free telephone number to access contact information for homeownership counselors or counseling organizations; and

(8) *Delinquency information.* If the consumer is more than 45 days delinquent, the following items, grouped together in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter:

(i) The length of the consumer's delinquency;

(ii) A notification of possible risks, such as foreclosure, and expenses, that may be incurred if the delinquency is not cured;

(iii) An account history showing, for the previous six months or the period since the last time the account was current, whichever is shorter, the amount remaining past due from each billing cycle or, if any such payment was fully paid, the date on which it was credited as fully paid;

(iv) A notice indicating any loss mitigation program to which the consumer has agreed, if applicable;

(v) A notice of whether the servicer has made the first notice or filing required by applicable law for any judicial or non-judicial foreclosure process, if applicable;

(vi) The total payment amount needed to bring the account current; and

(vii) A reference to the homeownership counselor information disclosed pursuant to paragraph (d)(7)(v) of this section.

(e) *Exemptions*—(1) *Reverse mortgages.* Reverse mortgage transactions, as defined by §1026.33(a), are exempt from the requirements of this section.

(2) *Timeshare plans.* Transactions secured by consumers' interests in timeshare plans, as defined by 11 U.S.C. 101(53D), are exempt from the requirements of this section.

(3) *Coupon books.* The requirements of paragraph (a) of this section do not apply to fixed-rate loans if the servicer:

(i) Provides the consumer with a coupon book that includes on each coupon the information listed in paragraph (d)(1) of this section;

(ii) Provides the consumer with a coupon book that includes anywhere in the coupon book:

(A) The account information listed in paragraph (d)(7) of this section;

(B) The contact information for the servicer, listed in paragraph (d)(6) of this section; and

(C) Information on how the consumer can obtain the information listed in paragraph (e)(3)(iii) of this section;

(iii) Makes available upon request to the consumer by telephone, in writing, in person, or electronically, if the consumer consents, the information listed in paragraph (d)(2) through (5) of this section; and

(iv) Provides the consumer the information listed in paragraph (d)(8) of this section in writing, for any billing cycle during which the consumer is more than 45 days delinquent.

(4) *Small servicers*—(i) *Exemption.* A creditor, assignee, or servicer is exempt from the requirements of this section for mortgage loans serviced by a small servicer.

(ii) *Small servicer defined.* A small servicer is a servicer that:

(A) Services, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee;

(B) Is a Housing Finance Agency, as defined in 24 CFR 266.5; or

(C) Is a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. For purposes of this paragraph (e)(4)(ii)(C), the following definitions apply:

(*1*) The term ''nonprofit entity'' means an entity having a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)–1), and;

(*2*) The term ''associated nonprofit entities'' means nonprofit entities that by agreement operate using a common name, trademark, or servicemark to further and support a common charitable mission or purpose.

(iii) *Small servicer determination.* In determining whether a servicer satisfies paragraph (e)(4)(ii)(A) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer and any affiliates as of January 1 and for the remainder of the calendar year. In determining whether a servicer satisfies paragraph (e)(4)(ii)(C) of this section, the servicer is evaluated based on the mortgage loans serviced by the servicer as of January 1 and for the remainder of the calendar year. A servicer that ceases to qualify as a small servicer will have six months from the time it ceases to qualify or until the next January 1, whichever is later, to comply with any requirements from which the servicer is no longer exempt as a small servicer. The following mortgage loans are not considered in determining whether a servicer qualifies as a small servicer:

(A) Mortgage loans voluntarily serviced by the servicer for a non-affiliate of the servicer and for which the servicer does not receive any compensation or fees.

(B) Reverse mortgage transactions.

(C) Mortgage loans secured by consumers' interests in timeshare plans.

(D) Transactions serviced by the servicer for a seller financer that meets all of the criteria identified in §1026.36(a)(5).

(5) *Certain consumers in bankruptcy*—(i) *Exemption.* Except as provided in paragraph (e)(5)(ii) of this section, a servicer is exempt from the requirements of this section with regard to a mortgage loan if:

(A) Any consumer on the mortgage loan is a debtor in bankruptcy under title 11 of the United States Code or has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328; and

(B) With regard to any consumer on the mortgage loan:

(*1*) The consumer requests in writing that the servicer cease providing a periodic statement or coupon book;

(*2*) The consumer's bankruptcy plan provides that the consumer will surrender the dwelling securing the mortgage loan, provides for the avoidance of the lien securing the mortgage loan, or otherwise does not provide for, as applicable, the payment of pre-bankruptcy arrearage or the maintenance of payments due under the mortgage loan;

(*3*) A court enters an order in the bankruptcy case providing for the avoidance of the lien securing the mortgage loan, lifting the automatic stay pursuant to 11 U.S.C. 362 with regard to the dwelling securing the mortgage loan, or requiring the servicer to cease providing a periodic statement or coupon book; or

(*4*) The consumer files with the court overseeing the bankruptcy case a statement of intention pursuant to 11 U.S.C. 521(a) identifying an intent to surrender the dwelling securing the mortgage loan and a consumer has not made any partial or periodic payment on the mortgage loan after the commencement of the consumer's bankruptcy case.

(ii) *Reaffirmation or consumer request to receive statement or coupon book.* A servicer ceases to qualify for an exemption pursuant to paragraph (e)(5)(i) of this section with respect to a mortgage loan if the consumer reaffirms personal liability for the loan or any consumer on the loan requests in writing that the servicer provide a periodic statement or coupon book, unless a court enters an order in the bankruptcy case requiring the servicer to cease providing a periodic statement or coupon book.

(iii) *Exclusive address.* A servicer may establish an address that a consumer must use to submit a written request under paragraph (e)(5)(i)(B)(*1*) or (e)(5)(ii) of this section, provided that the servicer notifies the consumer of the address in a manner that is reasonably designed to inform the consumer of the address. If a servicer designates a specific address for requests under paragraph (e)(5)(i)(B)(*1*) or (e)(5)(ii) of this section, the servicer shall designate the same address for purposes of both paragraphs (e)(5)(i)(B)(*1*) and (e)(5)(ii) of this section.

(iv) *Timing of compliance following transition*—(A) *Triggering events for transitioning to modified and unmodified periodic statements.* A servicer transitions to providing a periodic statement or coupon book with the modifications set forth in paragraph (f) of this section or to providing a periodic statement or coupon book without such modifications when one of the following three events occurs:

(*1*) A mortgage loan becomes subject to the requirements of paragraph (f) of this section;

(*2*) A mortgage loan ceases to be subject to the requirements of paragraph (f) of this section; or

(*3*) A servicer ceases to qualify for an exemption pursuant to paragraph (e)(5)(i) of this section with respect to a mortgage loan.

(B) *Single-statement exemption.* As of the date on which one of the events listed in paragraph (e)(5)(iv)(A) of this section occurs, a servicer is exempt from the requirements of this section with respect to the next periodic statement or coupon book that would otherwise be required but thereafter must provide modified or unmodified periodic statements or coupon books that comply with the requirements of this section.

(6) *Charged-off loans.* (i) A servicer is exempt from the requirements of this section for a mortgage loan if the servicer:

(A) Has charged off the loan in accordance with loan-loss provisions and will not charge any additional fees or interest on the account; and

(B) Provides, within 30 days of charge-off or the most recent periodic statement, a periodic statement, clearly and conspicuously labeled ''Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records.'' The periodic statement must clearly and conspicuously explain that, as applicable, the mortgage loan has been charged off and the servicer will not charge any additional fees or interest on the account; the servicer will no longer provide the consumer a periodic statement for each billing cycle; the lien on the property remains in place and the consumer remains liable for the mortgage loan obligation and any obligations arising from or related to the property, which may include property taxes; the consumer may be required to pay the balance on the account in the future, for example, upon sale of the property; the balance on the account is not being canceled or forgiven; and the loan may be purchased, assigned, or transferred.

(ii) *Resuming compliance.* (A) If a servicer fails at any time to treat a mortgage loan that is exempt under paragraph (e)(6)(i) of this section as charged off or charges any additional fees or interest on the account, the obligation to provide a periodic statement pursuant to this section resumes.

(B) *Prohibition on retroactive fees.* A servicer may not retroactively assess fees or interest on the account for the period of time during which the exemption in paragraph (e)(6)(i) of this section applied.

(f) *Modified periodic statements and coupon books for certain consumers in bankruptcy.* While any consumer on a mortgage loan is a debtor in bankruptcy under title 11 of the United States Code, or if such consumer has discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, the requirements of this section are subject to the following modifications with regard to that mortgage loan:

(1) *Requirements not applicable.* The periodic statement may omit the information set forth in paragraphs (d)(1)(ii)

and (d)(8)(i), (ii), and (v) of this section. The requirement in paragraph (d)(1)(iii) of this section that the amount due must be shown more prominently than other disclosures on the page shall not apply.

(2) *Bankruptcy notices.* The periodic statement must include the following:

(i) A statement identifying the consumer's status as a debtor in bankruptcy or the discharged status of the mortgage loan; and

(ii) A statement that the periodic statement is for informational purposes only.

(3) *Chapter 12 and chapter 13 consumers.* In addition to any other provisions of this paragraph (f) that may apply, with regard to a mortgage loan for which any consumer with primary liability is a debtor in a chapter 12 or chapter 13 bankruptcy case, the requirements of this section are subject to the following modifications:

(i) *Requirements not applicable.* In addition to omitting the information set forth in paragraph (f)(1) of this section, the periodic statement may also omit the information set forth in paragraphs (d)(8)(iii), (iv), (vi), and (vii) of this section.

(ii) *Amount due.* The amount due information set forth in paragraph (d)(1) of this section may be limited to the date and amount of the post-petition payments due and any post-petition fees and charges imposed by the servicer.

(iii) *Explanation of amount due.* The explanation of amount due information set forth in paragraph (d)(2) of this section may be limited to:

(A) The monthly post-petition payment amount, including a breakdown showing how much, if any, will be applied to principal, interest, and escrow;

(B) The total sum of any post-petition fees or charges imposed since the last statement; and

(C) Any post-petition payment amount past due.

(iv) *Transaction activity.* The transaction activity information set forth in paragraph (d)(4) of this section must include all payments the servicer has received since the last statement, including all post-petition and pre-petition payments and payments of post-petition fees and charges, and all post-petition fees and charges the servicer has imposed since the last statement. The brief description of the activity need not identify the source of any payments.

(v) *Pre-petition arrearage.* If applicable, a servicer must disclose, grouped in close proximity to each other and located on the first page of the statement or, alternatively, on a separate page enclosed with the periodic statement or in a separate letter:

(A) The total of all pre-petition payments received since the last statement;

(B) The total of all pre-petition payments received since the beginning of the consumer's bankruptcy case; and

(C) The current balance of the consumer's pre-petition arrearage.

(vi) *Additional disclosures.* The periodic statement must include, as applicable:

(A) A statement that the amount due includes only post-petition payments and does not include other payments that may be due under the terms of the consumer's bankruptcy plan;

(B) If the consumer's bankruptcy plan requires the consumer to make the post-petition mortgage payments directly to a bankruptcy trustee, a statement that the consumer should send the payment to the trustee and not to the servicer;

(C) A statement that the information disclosed on the periodic statement may not include payments the consumer has made to the trustee and may not be consistent with the trustee's records;

(D) A statement that encourages the consumer to contact the consumer's attorney or the trustee with questions regarding the application of payments; and

(E) If the consumer is more than 45 days delinquent on post-petition payments, a statement that the servicer has not received all the payments that became due since the consumer filed for bankruptcy.

(4) *Multiple obligors.* If this paragraph (f) applies in connection with a mortgage loan with more than one primary obligor, the servicer may provide the modified statement to any or all of the primary obligors, even if a primary obligor to whom the servicer provides the

modified statement is not a debtor in bankruptcy.

(5) *Coupon books.* A servicer that provides a coupon book instead of a periodic statement under paragraph (e)(3) of this section must include in the coupon book the disclosures set forth in paragraphs (f)(2) and (f)(3)(vi) of this section, as applicable. The servicer may include these disclosures anywhere in the coupon book provided to the consumer or on a separate page enclosed with the coupon book. The servicer must make available upon request to the consumer by telephone, in writing, in person, or electronically, if the consumer consents, the information listed in paragraph (f)(3)(v) of this section, as applicable. The modifications set forth in paragraphs (f)(1) and (f)(3)(i) through (iv) and (vi) of this section apply to a coupon book and other information a servicer provides to the consumer under paragraph (e)(3) of this section.

(g) *Successor in interest.* If, upon confirmation, a servicer provides a confirmed successor in interest who is not liable on the mortgage loan obligation with a written notice and acknowledgment form in accordance with Regulation X, §1024.32(c)(1) of this chapter, the servicer is not required to provide to the confirmed successor in interest any written disclosure required by this section unless and until the confirmed successor in interest either assumes the mortgage loan obligation under State law or has provided the servicer an executed acknowledgment in accordance with Regulation X, §1024.32(c)(1)(iv) of this chapter, that the confirmed successor in interest has not revoked.

[78 FR 11007, Feb. 14, 2013, as amended at 78 FR 44718, July 24, 2013; 78 FR 63005, Oct. 23, 2013; 79 FR 65322, Nov. 3, 2014; 81 FR 72388, Oct. 19, 2016; 83 FR 10559, Mar. 12, 2018]

§1026.42 Valuation independence.

(a) *Scope.* This section applies to any consumer credit transaction secured by the consumer's principal dwelling.

(b) *Definitions.* For purposes of this section:

(1) ''Covered person'' means 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.

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

(3) ''Valuation'' means 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.

(4) ''Valuation management functions'' means:

(i) Recruiting, selecting, or retaining a person to prepare a valuation;

(ii) Contracting with or employing a person to prepare a valuation;

(iii) 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

(iv) Reviewing or verifying the work of a person that prepares valuations.

(c) *Valuation of consumer's principal dwelling*—(1) *Coercion.* 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.

(i) Examples of actions that violate paragraph (c)(1) include:

(A) Seeking to influence a person that prepares a valuation to report a minimum or maximum value for the consumer's principal dwelling;

(B) Withholding or threatening to withhold timely payment to a person that prepares a valuation or performs valuation management functions because the person does not value the consumer's principal dwelling at or above a certain amount;

(C) Implying to a person that prepares valuations that current or future retention of the person depends on the amount at which the person estimates the value of the consumer's principal dwelling;

(D) Excluding a person that prepares a valuation from consideration for future engagement because the person reports a value for the consumer's principal dwelling that does not meet or exceed a predetermined threshold; and

(E) Conditioning the compensation paid to a person that prepares a valuation on consummation of the covered transaction.

(2) *Mischaracterization of value*—(i) *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.

(ii) *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.

(iii) *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.

(3) *Permitted actions.* Examples of actions that do not violate paragraph (c)(1) or (c)(2) include:

(i) Asking a person that prepares a valuation to consider additional, appropriate property information, including information about comparable properties, to make or support a valuation;

(ii) 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;

(iii) Asking a person that prepares a valuation to correct errors in the valuation;

(iv) Obtaining multiple valuations for the consumer's principal dwelling to select the most reliable valuation;

(v) Withholding compensation due to breach of contract or substandard performance of services; and

(vi) Taking action permitted or required by applicable Federal or state statute, regulation, or agency guidance.

(d) *Prohibition on conflicts of interest*—(1)(i) *In general.* 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.

(ii) *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:

(A) Is an employee or affiliate of the creditor; or

(B) 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.

(2) *Employees and affiliates of creditors with assets of more than $250 million for both of the past two calendar years.* 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 paragraph (d)(1)(i) of this section based on the person's employment or affiliate relationship with the creditor if:

(i) The compensation of the person preparing a valuation or performing valuation management functions is not based on the value arrived at in any valuation;

(ii) The person preparing a valuation or performing valuation management functions reports to a person who is not part of the creditor's loan production function, as defined in paragraph (d)(5)(i) of this section, and whose compensation is not based on the closing of the transaction to which the valuation relates; and

(iii) No employee, officer or director in the creditor's loan production function, as defined in paragraph (d)(5)(i) of this section, 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.

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

(i) 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

(ii) 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.

(4) *Providers of multiple settlement services.* 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:

(i) 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

(ii) 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.

(5) *Definitions.* For purposes of this paragraph (d), the following definitions apply:

(i) *Loan production function.* The term ''loan production function'' means an employee, officer, director, department, division, or other unit of a creditor with responsibility for generating covered transactions, approving covered transactions, or both.

(ii) *Settlement service.* The term ''settlement service'' has the same meaning as in the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*

(iii) *Affiliate.* The term ''affiliate'' has the same meaning as in Regulation Y of the Board of Governors of the Federal Reserve System, 12 CFR 225.2(a).

(e) *When extension of credit prohibited.* 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 (e), a valuation materially misstates or misrepresents the value of the consumer's principal dwelling if the valuation contains a misstatement or misrepresentation that affects the credit decision or the terms on which credit is extended.

(f) *Customary and reasonable compensation*—(1) *Requirement to provide customary and reasonable compensation to fee appraisers.* 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 paragraph (f) of this section, ''agents'' of the creditor do not include any fee appraiser as defined in paragraph (f)(4)(i) of this section.

(2) *Presumption of compliance.* A creditor and its agents shall be presumed to comply with paragraph (f)(1) of this section if:

(i) 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:

(A) The type of property,

(B) The scope of work,

(C) The time in which the appraisal services are required to be performed,

(D) Fee appraiser qualifications,

(E) Fee appraiser experience and professional record, and

(F) Fee appraiser work quality; and

(ii) 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:

(A) 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

(B) 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.

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

(i) 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;

(ii) 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

(iii) 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.

(4) *Definitions.* For purposes of this paragraph (f), the following definitions apply:

(i) *Fee appraiser.* The term ''fee appraiser'' means:

(A) 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

(B) 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. 3353).

(ii) *Appraisal services.* The term ''appraisal services'' means 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.

(iii) *Appraisal management company.* The term ''appraisal management company'' means any person authorized to perform one or more of the following actions on behalf of the creditor:

(A) Recruit, select, and retain fee appraisers;(B) Contract with fee appraisers to perform appraisal services;

(C) 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

(D) Review and verify the work of fee appraisers.

(g) *Mandatory reporting*—(1) *Reporting required.* 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. For purposes of this paragraph (g)(1), a failure to comply is material if it is likely to significantly affect the value assigned to the consumer's principal dwelling.

(2) *Timing of reporting.* 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.

(3) *Definition.* For purposes of this paragraph (g), ''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.

(h) The Bureau issued a joint rule to implement the appraisal management company minimum requirements in the Financial Institutions Reform, Recovery, and Enforcement Act, as amended by section 1473 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* 12 CFR part 34.

[76 FR 79772, Dec. 22, 2011, as amended at 80 FR 32687, June 9, 2015]

§ 1026.43 Minimum standards for transactions secured by a dwelling.

(a) *Scope.* This section applies to any consumer credit transaction that is secured by a dwelling, as defined in § 1026.2(a)(19), including any real property attached to a dwelling, other than:

(1) A home equity line of credit subject to § 1026.40;

(2) A mortgage transaction secured by a consumer's interest in a timeshare plan, as defined in 11 U.S.C. 101(53(D)); or

(3) For purposes of paragraphs (c) through (f) of this section:

(i) A reverse mortgage subject to § 1026.33;

(ii) A temporary or ''bridge'' loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling;

(iii) A construction phase of 12 months or less of a construction-to-permanent loan;

(iv) An extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5;

(v) An extension of credit made by:

(A) A creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h);

(B) A creditor designated as a Downpayment Assistance through Secondary Financing Provider, pursuant to 24 CFR 200.194(a), operating in accordance with regulations prescribed by the U.S. Department of Housing and Urban Development applicable to such persons;

(C) A creditor designated as a Community Housing Development Organization provided that the creditor has entered into a commitment with a participating jurisdiction and is undertaking a project under the HOME program, pursuant to the provisions of 24 CFR 92.300(a), and as the terms community housing development organization, commitment, participating jurisdiction, and project are defined under 24 CFR 92.2; or

(D) A creditor with a tax exemption ruling or determination letter from the

Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3); 26 CFR 1.501(c)(3)–1), provided that:

(*1*) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling no more than 200 times, except as provided in paragraph (a)(3)(vii) of this section;

(*2*) During the calendar year preceding receipt of the consumer's application, the creditor extended credit secured by a dwelling only to consumers with income that did not exceed the low- and moderate-income household limit as established pursuant to section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302(a)(20)) and amended from time to time by the U.S. Department of Housing and Urban Development, pursuant to 24 CFR 570.3;

(*3*) The extension of credit is to a consumer with income that does not exceed the household limit specified in paragraph (a)(3)(v)(D)(*2*) of this section; and

(*4*) The creditor determines, in accordance with written procedures, that the consumer has a reasonable ability to repay the extension of credit.

(vi) An extension of credit made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5211; 5219);

(vii) Consumer credit transactions that meet the following criteria are not considered in determining whether a creditor exceeds the credit extension limitation in paragraph (a)(3)(v)(D)(*1*) of this section:

(A) The transaction is secured by a subordinate lien;

(B) The transaction is for the purpose of:

(*1*) Downpayment, closing costs, or other similar home buyer assistance, such as principal or interest subsidies;

(*2*) Property rehabilitation assistance;

(*3*) Energy efficiency assistance; or

(*4*) Foreclosure avoidance or prevention;

(C) The credit contract does not require payment of interest;

(D) The credit contract provides that repayment of the amount of the credit extended is:

(*1*) 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;

(*2*) Deferred for a minimum of 20 years after consummation of the transaction;

(*3*) Deferred until sale of the property securing the transaction; or

(*4*) Deferred until the property securing the transaction is no longer the principal dwelling of the consumer;

(E) The total of costs payable by the consumer in connection with the transaction at consummation is less than 1 percent of the amount of credit extended and includes no charges other than:

(*1*) Fees for recordation of security instruments, deeds, and similar documents;

(*2*) A bona fide and reasonable application fee; and

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

(F) The creditor complies with all other applicable requirements of this part in connection with the transaction.

(b) *Definitions.* For purposes of this section:

(1) *Covered transaction* means a consumer credit transaction that is secured by a dwelling, as defined in §1026.2(a)(19), including any real property attached to a dwelling, other than a transaction exempt from coverage under paragraph (a) of this section.

(2) *Fully amortizing payment* means a periodic payment of principal and interest that will fully repay the loan amount over the loan term.

(3) *Fully indexed rate* means the interest rate calculated using the index or formula that will apply after recast, as determined at the time of consummation, and the maximum margin that can apply at any time during the loan term.

(4) *Higher-priced covered transaction* means a covered transaction 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 a first-lien covered transaction, other than a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; by 3.5 or more percentage points for a first-lien covered transaction that is a qualified mortgage under paragraph (e)(5), (e)(6), or (f) of this section; or by 3.5 or more percentage points for a subordinate-lien covered transaction. For purposes of a qualified mortgage under paragraph (e)(2) of this section, for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, the creditor must determine the annual percentage rate for purposes of this paragraph (b)(4) by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan.

(5) *Loan amount* means the principal amount the consumer will borrow as reflected in the promissory note or loan contract.

(6) *Loan term* means the period of time to repay the obligation in full.

(7) *Maximum loan amount* means the loan amount plus any increase in principal balance that results from negative amortization, as defined in §1026.18(s)(7)(v), based on the terms of the legal obligation assuming:

(i) The consumer makes only the minimum periodic payments for the maximum possible time, until the consumer must begin making fully amortizing payments; and

(ii) The maximum interest rate is reached at the earliest possible time.

(8) *Mortgage-related obligations* mean property taxes; premiums and similar charges identified in §1026.4(b)(5), (7), (8), and (10) that are required by the creditor; fees and special assessments imposed by a condominium, cooperative, or homeowners association; ground rent; and leasehold payments.

(9) *Points and fees* has the same meaning as in §1026.32(b)(1).

(10) *Prepayment penalty* has the same meaning as in §1026.32(b)(6).

(11) *Recast* means:

(i) For an adjustable-rate mortgage, as defined in §1026.18(s)(7)(i), the expiration of the period during which payments based on the introductory fixed interest rate are permitted under the terms of the legal obligation;

(ii) For an interest-only loan, as defined in §1026.18(s)(7)(iv), the expiration of the period during which interest-only payments are permitted under the terms of the legal obligation; and

(iii) For a negative amortization loan, as defined in §1026.18(s)(7)(v), the expiration of the period during which negatively amortizing payments are permitted under the terms of the legal obligation.

(12) *Simultaneous loan* means another covered transaction or home equity line of credit subject to §1026.40 that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction or, if to be made after consummation, will cover closing costs of the first covered transaction.

(13) *Third-party record* means:

(i) A document or other record prepared or reviewed by an appropriate person other than the consumer, the creditor, or the mortgage broker, as defined in §1026.36(a)(2), or an agent of the creditor or mortgage broker;

(ii) A copy of a tax return filed with the Internal Revenue Service or a State taxing authority;

(iii) A record the creditor maintains for an account of the consumer held by the creditor; or

(iv) If the consumer is an employee of the creditor or the mortgage broker, a document or other record maintained by the creditor or mortgage broker regarding the consumer's employment status or employment income.

(c) *Repayment ability*—(1) *General requirement.* A creditor shall not make a loan that is a covered transaction unless the creditor makes a reasonable and good faith determination at or before consummation that the consumer will have a reasonable ability to repay the loan according to its terms.

(2) *Basis for determination.* Except as provided otherwise in paragraphs (d), (e), and (f) of this section, in making the repayment ability determination required under paragraph (c)(1) of this section, a creditor must consider the following:

(i) The consumer's current or reasonably expected income or assets, other than the value of the dwelling, including any real property attached to the dwelling, that secures the loan;

(ii) If the creditor relies on income from the consumer's employment in determining repayment ability, the consumer's current employment status;

(iii) The consumer's monthly payment on the covered transaction, calculated in accordance with paragraph (c)(5) of this section;

(iv) 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 paragraph (c)(6) of this section;

(v) The consumer's monthly payment for mortgage-related obligations;

(vi) The consumer's current debt obligations, alimony, and child support;

(vii) The consumer's monthly debt-to-income ratio or residual income in accordance with paragraph (c)(7) of this section; and

(viii) The consumer's credit history.

(3) *Verification using third-party records.* A creditor must verify the information that the creditor relies on in determining a consumer's repayment ability under §1026.43(c)(2) using reasonably reliable third-party records, except that:

(i) For purposes of paragraph (c)(2)(i) of this section, a creditor must verify a consumer's income or assets that the creditor relies on in accordance with §1026.43(c)(4);

(ii) For purposes of paragraph (c)(2)(ii) of this section, a creditor may verify a consumer's employment status orally if the creditor prepares a record of the information obtained orally; and

(iii) For purposes of paragraph (c)(2)(vi) of this section, if a creditor relies on a consumer's credit report to verify a consumer's current debt obligations and a consumer's application states a current debt obligation not shown in the consumer's credit report, the creditor need not independently verify such an obligation.

(4) *Verification of income or assets.* A creditor must verify the amounts of income or assets that the creditor relies on under §1026.43(c)(2)(i) to determine a consumer's ability to repay a covered transaction using third-party records that provide reasonably reliable evidence of the consumer's income or assets. A creditor may verify the consumer's income using a tax-return transcript issued by the Internal Revenue Service (IRS). Examples of other records the creditor may use to verify the consumer's income or assets include:

(i) Copies of tax returns the consumer filed with the IRS or a State taxing authority;

(ii) IRS Form W–2s or similar IRS forms used for reporting wages or tax withholding;

(iii) Payroll statements, including military Leave and Earnings Statements;

(iv) Financial institution records;

(v) Records from the consumer's employer or a third party that obtained information from the employer;

(vi) Records from a Federal, State, or local government agency stating the consumer's income from benefits or entitlements;

(vii) Receipts from the consumer's use of check cashing services; and

(viii) Receipts from the consumer's use of a funds transfer service.

(5) *Payment calculation*—(i) *General rule.* Except as provided in paragraph (c)(5)(ii) of this section, a creditor must make the consideration required under paragraph (c)(2)(iii) of this section using:

(A) The fully indexed rate or any introductory interest rate, whichever is greater; and

(B) Monthly, fully amortizing payments that are substantially equal.

(ii) *Special rules for loans with a balloon payment, interest-only loans, and negative amortization loans.* A creditor must make the consideration required under paragraph (c)(2)(iii) of this section for:

(A) A loan with a balloon payment, as defined in §1026.18(s)(5)(i), using:

(*1*) The maximum payment scheduled during the first five years after the date on which the first regular periodic payment will be due for a loan that is not a higher-priced covered transaction; or

(*2*) The maximum payment in the payment schedule, including any balloon payment, for a higher-priced covered transaction;

(B) An interest-only loan, as defined in § 1026.18(s)(7)(iv), using:

(*1*) The fully indexed rate or any introductory interest rate, whichever is greater; and

(*2*) 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.

(C) A negative amortization loan, as defined in § 1026.18(s)(7)(v), using:

(*1*) The fully indexed rate or any introductory interest rate, whichever is greater; and

(*2*) Substantially equal, monthly payments of principal and interest that will repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast.

(6) *Payment calculation for simultaneous loans.* For purposes of making the evaluation required under paragraph (c)(2)(iv) of this section, a creditor must consider, taking into account any mortgage-related obligations, a consumer's payment on a simultaneous loan that is:

(i) A covered transaction, by following paragraph (c)(5)of this section; or

(ii) A home equity line of credit subject to § 1026.40, by using the periodic payment required under the terms of the plan and the amount of credit to be drawn at or before consummation of the covered transaction.

(7) *Monthly debt-to-income ratio or residual income*—(i) *Definitions.* For purposes of this paragraph (c)(7), the following definitions apply:

(A) *Total monthly debt obligations.* The term *total monthly debt obligations* means the sum of: the payment on the covered transaction, as required to be calculated by paragraphs (c)(2)(iii) and (c)(5) of this section; simultaneous loans, as required by paragraphs (c)(2)(iv) and (c)(6) of this section; mortgage-related obligations, as required by paragraph (c)(2)(v) of this section; and current debt obligations, alimony, and child support, as required by paragraph (c)(2)(vi) of this section.

(B) *Total monthly income.* The term *total monthly income* means the sum of the consumer's current or reasonably expected income, including any income from assets, as required by paragraphs (c)(2)(i) and (c)(4) of this section.

(ii) *Calculations*—(A) *Monthly debt-to-income ratio.* If a creditor considers the consumer's monthly debt-to-income ratio under paragraph (c)(2)(vii) of this section, the creditor must consider the ratio of the consumer's total monthly debt obligations to the consumer's total monthly income.

(B) *Monthly residual income.* If a creditor considers the consumer's monthly residual income under paragraph (c)(2)(vii) of this section, the creditor must consider the consumer's remaining income after subtracting the consumer's total monthly debt obligations from the consumer's total monthly income.

(d) *Refinancing of non-standard mortgages*—(1) *Definitions.* For purposes of this paragraph (d), the following definitions apply:

(i) *Non-standard mortgage.* The term *non-standard mortgage* means a covered transaction that is:

(A) An adjustable-rate mortgage, as defined in § 1026.18(s)(7)(i), with an introductory fixed interest rate for a period of one year or longer;

(B) An interest-only loan, as defined in § 1026.18(s)(7)(iv); or

(C) A negative amortization loan, as defined in § 1026.18(s)(7)(v).

(ii) *Standard mortgage.* The term *standard mortgage* means a covered transaction:

(A) That provides for regular periodic payments that do not:

(*1*) Cause the principal balance to increase;

(*2*) Allow the consumer to defer repayment of principal; or

(*3*) Result in a balloon payment, as defined in § 1026.18(s)(5)(i);

(B) For which the total points and fees payable in connection with the transaction do not exceed the amounts specified in paragraph (e)(3) of this section;

(C) For which the term does not exceed 40 years;

(D) For which the interest rate is fixed for at least the first five years after consummation; and

(E) For which the proceeds from the loan are used solely for the following purposes:

(*1*) To pay off the outstanding principal balance on the non-standard mortgage; and

(*2*) To pay closing or settlement charges required to be disclosed under the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 *et seq.*

(iii) *Refinancing.* The term *refinancing* has the same meaning as in §1026.20(a).

(2) *Scope.* The provisions of this paragraph (d) apply to the refinancing of a non-standard mortgage into a standard mortgage when the following conditions are met:

(i) The creditor for the standard mortgage is the current holder of the existing non-standard mortgage or the servicer acting on behalf of the current holder;

(ii) The monthly payment for the standard mortgage is materially lower than the monthly payment for the non-standard mortgage, as calculated under paragraph (d)(5) of this section.

(iii) The creditor receives the consumer's written application for the standard mortgage no later than two months after the non-standard mortgage has recast.

(iv) The consumer has made no more than one payment more than 30 days late on the non-standard mortgage during the 12 months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage.

(v) The consumer has made no payments more than 30 days late during the six months immediately preceding the creditor's receipt of the consumer's written application for the standard mortgage; and

(vi) If the non-standard mortgage was consummated on or after January 10, 2014, the non-standard mortgage was made in accordance with paragraph (c) or (e) of this section, as applicable.

(3) *Exemption from repayment ability requirements.* A creditor is not required to comply with the requirements of paragraph (c) of this section if:

(i) The conditions in paragraph (d)(2) of this section are met; and

(ii) The creditor has considered whether the standard mortgage likely will prevent a default by the consumer on the non-standard mortgage once the loan is recast.

(4) *Offer of rate discounts and other favorable terms.* A creditor making a covered transaction under this paragraph (d) may offer to the consumer rate discounts and terms that are the same as, or better than, the rate discounts and terms that the creditor offers to new consumers, consistent with the creditor's documented underwriting practices and to the extent not prohibited by applicable State or Federal law.

(5) *Payment calculations.* For purposes of determining whether the consumer's monthly payment for a standard mortgage will be materially lower than the monthly payment for the non-standard mortgage, the following provisions shall be used:

(i) *Non-standard mortgage.* For purposes of the comparison conducted pursuant to paragraph (d)(2)(ii) of this section, the creditor must calculate the monthly payment for a non-standard mortgage based on substantially equal, monthly, fully amortizing payments of principal and interest using:

(A) The fully indexed rate as of a reasonable period of time before or after the date on which the creditor receives the consumer's written application for the standard mortgage;

(B) The term of the loan remaining as of the date on which the recast occurs, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; and

(C) A remaining loan amount that is:

(*1*) For an adjustable-rate mortgage under paragraph (d)(1)(i)(A) of this section, the outstanding principal balance as of the date of the recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date;

(*2*) For an interest-only loan under paragraph (d)(1)(i)(B) of this section, the outstanding principal balance as of the date of the recast, assuming all scheduled payments have been made up to the recast date and the payment due on the recast date is made and credited as of that date; or

(*3*) For a negative amortization loan under paragraph (d)(1)(i)(C) of this section, the maximum loan amount, determined after adjusting for the outstanding principal balance.

(ii) *Standard mortgage.* For purposes of the comparison conducted pursuant to paragraph (d)(2)(ii) of this section, the monthly payment for a standard mortgage must be based on substantially equal, monthly, fully amortizing payments based on the maximum interest rate that may apply during the first five years after consummation.

(e) *Qualified mortgages*—(1) *Safe harbor and presumption of compliance*—(i) *Safe harbor for loans that are not higher-priced covered transactions and for seasoned loans.* A creditor or assignee of a qualified mortgage complies with the repayment ability requirements of paragraph (c) of this section if:

(A) The loan is a qualified mortgage as defined in paragraph (e)(2), (4), (5), (6), or (f) of this section that is not a higher-priced covered transaction, as defined in paragraph (b)(4) of this section; or

(B) The loan is a qualified mortgage as defined in paragraph (e)(7) of this section, regardless of whether the loan is a higher-priced covered transaction.

(ii) *Presumption of compliance for higher-priced covered transactions.* (A) A creditor or assignee of a qualified mortgage, as defined in paragraph (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, that is a higher-priced covered transaction, as defined in paragraph (b)(4) of this section, is presumed to comply with the repayment ability requirements of paragraph (c) of this section.

(B) To rebut the presumption of compliance described in paragraph (e)(1)(ii)(A) of this section, it must be proven that, despite meeting the prerequisites of paragraph (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, the creditor did not make a reasonable and good faith determination of the consumer's repayment ability at the time of consummation, by showing that the consumer's income, debt obligations, alimony, child support, and the consumer's monthly payment (including mortgage-related obligations) on the covered transaction and on any simultaneous loans of which the creditor was aware at consummation would leave the consumer with insufficient residual income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan with which to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware at the time of consummation.

(2) *Qualified mortgage defined—general.* Except as provided in paragraph (e)(4), (5), (6), (7), or (f) of this section, a qualified mortgage is a covered transaction:

(i) That provides for regular periodic payments that are substantially equal, except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage, that do not:

(A) Result in an increase of the principal balance;

(B) Allow the consumer to defer repayment of principal, except as provided in paragraph (f) of this section; or

(C) Result in a balloon payment, as defined in § 1026.18(s)(5)(i), except as provided in paragraph (f) of this section;

(ii) For which the loan term does not exceed 30 years;

(iii) For which the total points and fees payable in connection with the loan do not exceed the amounts specified in paragraph (e)(3) of this section;

(iv) For which the creditor underwrites the loan, taking into account the monthly payment for mortgage-related obligations, using:

(A) The maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due; and

(B) Periodic payments of principal and interest that will repay either:

(*1*) The outstanding principal balance over the remaining term of the loan as of the date the interest rate adjusts to the maximum interest rate set forth in paragraph (e)(2)(iv)(A) of this section, assuming the consumer will have made all required payments as due prior to that date; or

(*2*) The loan amount over the loan term;

(v) For which the creditor, at or before consummation:

(A) Considers the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income, using the amounts determined from paragraph (e)(2)(v)(B) of this section. For purposes of this paragraph (e)(2)(v)(A), the consumer's monthly debt-to-income ratio or residual income is determined in accordance with paragraph (c)(7) of this section, except that the consumer's monthly payment on the covered transaction, including the monthly payment for mortgage-related obligations, is calculated in accordance with paragraph (e)(2)(iv) of this section.

(B)(*1*) Verifies the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan using third-party records that provide reasonably reliable evidence of the consumer's income or assets, in accordance with paragraph (c)(4) of this section; and

(*2*) Verifies the consumer's current debt obligations, alimony, and child support using reasonably reliable third-party records in accordance with paragraph (c)(3) of this section.

(vi) For which the annual percentage rate does not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the amounts specified in paragraphs (e)(2)(vi)(A) through (F) of this section. The amounts specified here shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) that was reported on the preceding June 1. For purposes of this paragraph (e)(2)(vi), the creditor must determine the annual percentage rate for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due by treating the maximum interest rate that may apply during that five-year period as the interest rate for the full term of the loan. See the official commentary to this paragraph (e)(2)(vi) for the current dollar amounts.

(A) For a first-lien covered transaction with a loan amount greater than or equal to $110,260 (indexed for inflation), 2.25 or more percentage points;

(B) For a first-lien covered transaction with a loan amount greater than or equal to $66,156 (indexed for inflation) but less than $110,260 (indexed for inflation), 3.5 or more percentage points;

(C) For a first-lien covered transaction with a loan amount less than $66,156 (indexed for inflation), 6.5 or more percentage points;

(D) For a first-lien covered transaction secured by a manufactured home with a loan amount less than $110,260 (indexed for inflation), 6.5 or more percentage points;

(E) For a subordinate-lien covered transaction with a loan amount greater than or equal to $66,156 (indexed for inflation), 3.5 or more percentage points;

(F) For a subordinate-lien covered transaction with a loan amount less than $66,156 (indexed for inflation), 6.5 or more percentage points.

(3) *Limits on points and fees for qualified mortgages.* (i) Except as provided in paragraph (e)(3)(iii) of this section, a covered transaction is not a qualified mortgage unless the transaction's total points and fees, as defined in §1026.32(b)(1), do not exceed:

(A) For a loan amount greater than or equal to $100,000 (indexed for inflation): 3 percent of the total loan amount;

(B) For a loan amount greater than or equal to $60,000 (indexed for inflation) but less than $100,000 (indexed for inflation): $3,000 (indexed for inflation);

(C) For a loan amount greater than or equal to $20,000 (indexed for inflation) but less than $60,000 (indexed for inflation): 5 percent of the total loan amount;

(D) For a loan amount greater than or equal to $12,500 (indexed for inflation) but less than $20,000 (indexed for inflation): $1,000 (indexed for inflation);

(E) For a loan amount less than $12,500 (indexed for inflation): 8 percent of the total loan amount.

(ii) The dollar amounts, including the loan amounts, in paragraph (e)(3)(i) of this section shall be adjusted annually on January 1 by the annual percentage change in the Consumer Price Index for All Urban Consumers (CPI–U) that was reported on the preceding June 1. See the official commentary to this paragraph (e)(3)(ii) for the current dollar amounts.

(iii) For covered transactions consummated on or before January 10, 2021, if the creditor or assignee determines after consummation that the transaction's total points and fees exceed the applicable limit under paragraph (e)(3)(i) of this section, the loan is not precluded from being a qualified mortgage, provided:

(A) The loan otherwise meets the requirements of paragraphs (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section, as applicable;

(B) The creditor or assignee pays to the consumer the amount described in paragraph (e)(3)(iv) of this section within 210 days after consummation and prior to the occurrence of any of the following events:

(*1*) The institution of any action by the consumer in connection with the loan;

(*2*) The receipt by the creditor, assignee, or servicer of written notice from the consumer that the transaction's total points and fees exceed the applicable limit under paragraph (e)(3)(i) of this section; or

(*3*) The consumer becoming 60 days past due on the legal obligation; and

(C) The creditor or assignee, as applicable, maintains and follows policies and procedures for post-consummation review of points and fees and for making payments to consumers in accordance with paragraphs (e)(3)(iii)(B) and (e)(3)(iv) of this section.

(iv) For purposes of paragraph (e)(3)(iii) of this section, the creditor or assignee must pay to the consumer an amount that is not less than the sum of the following:

(A) The dollar amount by which the transaction's total points and fees exceeds the applicable limit under paragraph (e)(3)(i) of this section; and

(B) Interest on the dollar amount described in paragraph (e)(3)(iv)(A) of this section, calculated using the contract interest rate applicable during the period from consummation until the payment described in this paragraph (e)(3)(iv) is made to the consumer.

(4) *Qualified mortgage defined—other agencies.* Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction that is defined as a qualified mortgage by the U.S. Department of Housing and Urban Development under 24 CFR 201.7 and 24 CFR 203.19, the U.S. Department of Veterans Affairs under 38 CFR 36.4300 and 38 CFR 36.4500, or the U.S. Department of Agriculture under 7 CFR 3555.109.

(5) *Qualified mortgage defined—small creditor portfolio loans.* (i) Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction:

(A) That satisfies the requirements of paragraph (e)(2) of this section other than the requirements of paragraphs (e)(2)(v) and (vi) of this section;

(B) For which the creditor:

(*1*) Considers and verifies at or before consummation the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with paragraphs (c)(2)(i) and (c)(4) of this section;

(*2*) Considers and verifies at or before consummation the consumer's current debt obligations, alimony, and child support in accordance with paragraphs (c)(2)(vi) and (c)(3) of this section;

(*3*) Considers at or before consummation the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with paragraph (c)(7) of this section, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in paragraph (c)(7)(i)(A) shall be determined in accordance with paragraph (e)(2)(iv) of this section instead of paragraph (c)(5) of this section;

(C) That is not subject, at consummation, to a commitment to be acquired by another person, other than a person that satisfies the requirements of paragraph (e)(5)(i)(D) of this section; and

(D) For which the creditor satisfies the requirements stated in §1026.35(b)(2)(iii)(B) and (C).

(ii) A qualified mortgage extended pursuant to paragraph (e)(5)(i) of this section immediately loses its status as a qualified mortgage under paragraph (e)(5)(i) if legal title to the qualified mortgage is sold, assigned, or otherwise transferred to another person except when:

(A) The qualified mortgage is sold, assigned, or otherwise transferred to another person three years or more after consummation of the qualified mortgage;

(B) The qualified mortgage is sold, assigned, or otherwise transferred to a creditor that satisfies the requirements of paragraph (e)(5)(i)(D) of this section;

(C) The qualified mortgage is sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, actions or instructions of any person acting as conservator, receiver, or bankruptcy trustee, an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency; or

(D) The qualified mortgage is sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor.

(6) *Qualified mortgage defined—temporary balloon-payment qualified mortgage rules.* (i) Notwithstanding paragraph (e)(2) of this section, a qualified mortgage is a covered transaction:

(A) That satisfies the requirements of paragraph (f) of this section other than the requirements of paragraph (f)(1)(vi); and

(B) For which the creditor satisfies the requirements stated in §1026.35(b)(2)(iii)(B) and (C).

(ii) The provisions of this paragraph (e)(6) apply only to covered transactions for which the application was received before April 1, 2016.

(7) *Qualified mortgage defined—seasoned loans*—(i) *General.* Notwithstanding paragraph (e)(2) of this section, and except as provided in paragraph (e)(7)(iv) of this section, a qualified mortgage is a first-lien covered transaction that:

(A) Is a fixed-rate mortgage as defined in §1026.18(s)(7)(iii) with fully amortizing payments as defined in paragraph (b)(2) of this section;

(B) Satisfies the requirements in paragraphs (e)(2)(i) through (v) of this section;

(C) Has met the requirements in paragraph (e)(7)(ii) of this section at the end of the seasoning period as defined in paragraph (e)(7)(iv)(C) of this section;

(D) Satisfies the requirements in paragraph (e)(7)(iii) of this section; and

(E) Is not a high-cost mortgage as defined in §1026.32(a).

(ii) *Performance requirements.* To be a qualified mortgage under this paragraph (e)(7) of this section, the covered transaction must have no more than two delinquencies of 30 or more days and no delinquencies of 60 or more days at the end of the seasoning period.

(iii) *Portfolio requirements.* To be a qualified mortgage under this paragraph (e)(7) of this section, the covered transaction must satisfy the following requirements:

(A) The covered transaction is not subject, at consummation, to a commitment to be acquired by another person, except for a sale, assignment, or transfer permitted by paragraph (e)(7)(iii)(B)(*3*) of this section; and

(B) Legal title to the covered transaction is not sold, assigned, or otherwise transferred to another person before the end of the seasoning period, except that:

(*1*) The covered transaction may be sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, actions or instructions of any person acting as conservator, receiver, or bankruptcy trustee, an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency;

(*2*) The covered transaction may be sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor; or

(*3*) The covered transaction may be sold, assigned, or otherwise transferred once before the end of the seasoning period, provided that the covered transaction is not securitized as part of the sale, assignment, or transfer or at any other time before the end of the seasoning period as defined in § 1026.43(e)(7)(iv)(C).

(iv) *Definitions*. For purposes of paragraph (e)(7) of this section:

(A) *Delinquency* means the failure to make a periodic payment (in one full payment or in two or more partial payments) sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle by the date the periodic payment is due under the terms of the legal obligation. Other amounts, such as any late fees, are not considered for this purpose.

(*1*) A periodic payment is 30 days delinquent when it is not paid before the due date of the following scheduled periodic payment.

(*2*) A periodic payment is 60 days delinquent if the consumer is more than 30 days delinquent on the first of two sequential scheduled periodic payments and does not make both sequential scheduled periodic payments before the due date of the next scheduled periodic payment after the two sequential scheduled periodic payments.

(*3*) For any given billing cycle for which a consumer's payment is less than the periodic payment due, a consumer is not delinquent as defined in this paragraph (e)(7) if:

(*i*) The servicer chooses not to treat the payment as delinquent for purposes of any section of subpart C of Regulation X, 12 CFR part 1024, if applicable;

(*ii*) The payment is deficient by $50 or less; and

(*iii*) There are no more than three such deficient payments treated as not delinquent during the seasoning period.

(*4*) The principal and interest used in determining the date a periodic payment sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle becomes due and unpaid are the principal and interest payment amounts established by the terms and payment schedule of the loan obligation at consummation, except:

(*i*) If a qualifying change as defined in paragraph (e)(7)(iv)(B) of this section is made to the loan obligation, the principal and interest used in determining the date a periodic payment sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle becomes due and unpaid are the principal and interest payment amounts established by the terms and payment schedule of the loan obligation at consummation as modified by the qualifying change.

(*ii*) If, due to reasons related to the timing of delivery, set up, or availability for occupancy of the dwelling securing the obligation, the first payment due date is modified before the first payment due date in the legal obligation at consummation, the modified first payment due date shall be considered in lieu of the first payment due date in the legal obligation at consummation in determining the date a periodic payment sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle becomes due and unpaid.

(*5*) Except for purposes of making up the deficiency amount set forth in paragraph (e)(7)(iv)(A)(*3*)(*ii*) of this section, payments from the following sources are not considered in assessing delinquency under paragraph (e)(7)(iv)(A) of this section:

(*i*) Funds in escrow in connection with the covered transaction; or

(*ii*) Funds paid on behalf of the consumer by the creditor, servicer, or assignee of the covered transaction, or any other person acting on behalf of such creditor, servicer, or assignee.

(B) *Qualifying change* means an agreement that meets the following conditions:

(*1*) The agreement is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency as defined in paragraph (e)(7)(iv)(D) of this section and ends any pre-existing delinquency on the loan obligation upon taking effect;

(*2*) The amount of interest charged over the full term of the loan does not increase as a result of the agreement;

(*3*) The servicer does not charge any fee in connection with the agreement; and

(*4*) Promptly upon the consumer's acceptance of the agreement, the servicer waives all late charges, penalties, stop payment fees, or similar charges incurred during a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, as well as all late charges, penalties, stop payment fees, or similar charges incurred during the delinquency that led to a temporary payment accommodation in connection with a disaster or pandemic-related national emergency.

(C) *Seasoning period* means a period of 36 months beginning on the date on which the first periodic payment is due after consummation of the covered transaction, except that:

(*1*) Notwithstanding any other provision of this section, if there is a delinquency of 30 days or more at the end of the 36th month of the seasoning period, the seasoning period does not end until there is no delinquency; and

(*2*) The seasoning period does not include any period during which the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, provided that during or at the end of the temporary payment accommodation there is a qualifying change as defined in paragraph (e)(7)(iv)(B) of this section or the consumer cures the loan's delinquency under its original terms. If during or at the end of the temporary payment accommodation in connection with a disaster or pandemic-related national emergency there is a qualifying change or the consumer cures the loan's delinquency under its original terms, the seasoning period consists of the period from the date on which the first periodic payment was due after consummation of the covered transaction to the beginning of the temporary payment accommodation and an additional period immediately after the temporary payment accommodation ends, which together must equal at least 36 months.

(D) *Temporary payment accommodation in connection with a disaster or pandemic-related national emergency* means temporary payment relief granted to a consumer due to financial hardship caused directly or indirectly by a presidentially declared emergency or major disaster under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*) or a presidentially declared pandemic-related national emergency under the National Emergencies Act (50 U.S.C. 1601 *et seq.*).

(f) *Balloon-payment qualified mortgages made by certain creditors*—(1) *Exemption.* Notwithstanding paragraph (e)(2) of this section, a qualified mortgage may provide for a balloon payment, provided:

(i) The loan satisfies the requirements for a qualified mortgage in paragraphs (e)(2)(i)(A) and (e)(2)(ii) and (iii) of this section;

(ii) The creditor determines at or before consummation that the consumer can make all of the scheduled payments under the terms of the legal obligation, as described in paragraph (f)(1)(iv) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment, from the consumer's current or reasonably expected income or assets other than the dwelling that secures the loan;

(iii) The creditor:

(A) Considers and verifies at or before consummation the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, in accordance with paragraphs (c)(2)(i) and (c)(4) of this section;

(B) Considers and verifies at or before consummation the consumer's current debt obligations, alimony, and child support in accordance with paragraphs (c)(2)(vi) and (c)(3) of this section;

(C) Considers at or before consummation the consumer's monthly debt-to-income ratio or residual income and verifies the debt obligations and income used to determine that ratio in accordance with paragraph (c)(7) of this section, except that the calculation of the payment on the covered transaction for purposes of determining the consumer's total monthly debt obligations in (c)(7)(i)(A) shall be determined in accordance with paragraph (f)(1)(iv)(A) of this section, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment;

(iv) The legal obligation provides for:

(A) Scheduled payments that are substantially equal, calculated using an amortization period that does not exceed 30 years;

(B) An interest rate that does not increase over the term of the loan; and

(C) A loan term of five years or longer.

(v) The loan is not subject, at consummation, to a commitment to be acquired by another person, other than a person that satisfies the requirements of paragraph (f)(1)(vi) of this section; and

(vi) The creditor satisfies the requirements stated in §1026.35(b)(2)(iii)(A), (B), and (C).

(2) *Post-consummation transfer of balloon-payment qualified mortgage.* A balloon-payment qualified mortgage, extended pursuant to paragraph (f)(1), immediately loses its status as a qualified mortgage under paragraph (f)(1) if legal title to the balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person except when:

(i) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person three years or more after consummation of the balloon-payment qualified mortgage;

(ii) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to a creditor that satisfies the requirements of paragraph (f)(1)(vi) of this section;

(iii) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred to another person pursuant to a capital restoration plan or other action under 12 U.S.C. 1831o, actions or instructions of any person acting as conservator, receiver or bankruptcy trustee, an order of a State or Federal governmental agency with jurisdiction to examine the creditor pursuant to State or Federal law, or an agreement between the creditor and such an agency; or

(iv) The balloon-payment qualified mortgage is sold, assigned, or otherwise transferred pursuant to a merger of the creditor with another person or acquisition of the creditor by another person or of another person by the creditor.

(g) *Prepayment penalties*—(1) *When permitted.* A covered transaction must not include a prepayment penalty unless:

(i) The prepayment penalty is otherwise permitted by law; and

(ii) The transaction:

(A) Has an annual percentage rate that cannot increase after consummation;

(B) Is a qualified mortgage under paragraph (e)(2), (e)(4), (e)(5), (e)(6), or (f) of this section; and

(C) Is not a higher-priced mortgage loan, as defined in §1026.35(a).

(2) *Limits on prepayment penalties.* A prepayment penalty:

(i) Must not apply after the three-year period following consummation; and

(ii) Must not exceed the following percentages of the amount of the outstanding loan balance prepaid:

(A) 2 percent, if incurred during the first two years following consummation; and

(B) 1 percent, if incurred during the third year following consummation.

(3) *Alternative offer required.* A creditor must not offer a consumer a covered transaction with a prepayment penalty unless the creditor also offers the consumer an alternative covered transaction without a prepayment penalty and the alternative covered transaction:

(i) Has an annual percentage rate that cannot increase after consummation and has the same type of interest rate as the covered transaction with a prepayment penalty; for purposes of this paragraph (g), the term ''type of interest rate'' refers to whether a transaction:

(A) Is a fixed-rate mortgage, as defined in §1026.18(s)(7)(iii); or

(B) Is a step-rate mortgage, as defined in §1026.18(s)(7)(ii);

(ii) Has the same loan term as the loan term for the covered transaction with a prepayment penalty;

(iii) Satisfies the periodic payment conditions under paragraph (e)(2)(i) of this section;

(iv) Satisfies the points and fees conditions under paragraph (e)(2)(iii) of this section, based on the information known to the creditor at the time the transaction is offered; and

(v) Is a transaction for which the creditor has a good faith belief that the consumer likely qualifies, based on the information known to the creditor at the time the creditor offers the covered transaction without a prepayment penalty.

(4) *Offer through a mortgage broker.* If the creditor offers a covered transaction with a prepayment penalty to the consumer through a mortgage broker, as defined in §1026.36(a)(2), the creditor must:

(i) Present the mortgage broker an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section; and

(ii) Establish by agreement that the mortgage broker must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section, offered by:

(A) The creditor; or

(B) Another creditor, if the transaction offered by the other creditor has a lower interest rate or a lower total dollar amount of discount points and origination points or fees.

(5) *Creditor that is a loan originator.* If the creditor is a loan originator, as defined in §1026.36(a)(1), and the creditor presents the consumer a covered transaction offered by a person to which the creditor would assign the covered transaction after consummation, the creditor must present the consumer an alternative covered transaction without a prepayment penalty that satisfies the requirements of paragraph (g)(3) of this section, offered by:

(i) The assignee; or

(ii) Another person, if the transaction offered by the other person has a lower interest rate or a lower total dollar amount of origination discount points and points or fees.

(6) *Applicability.* This paragraph (g) applies only if a covered transaction is consummated with a prepayment penalty and is not violated if:

(i) A covered transaction is consummated without a prepayment penalty; or

(ii) The creditor and consumer do not consummate a covered transaction.

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

[78 FR 6584, Jan. 30, 2013, as amended at 78 FR 35502, June 12, 2013; 78 FR 44718, July 24, 2013; 78 FR 60442, Oct. 1, 2013; 78 FR 63005, Oct. 23, 2013; 79 FR 65323, Nov. 3, 2014; 80 FR 59968, Oct. 2, 2015; 85 FR 67958, Oct. 26, 2020; 85 FR 86394, 86452, Dec. 29, 2020; 86 FR 8283, Feb. 5, 2021; 86 FR 60360, Nov. 2, 2021]

§§ 1026.44–1026.45 [Reserved]

Subpart F—Special Rules for Private Education Loans

§ 1026.46 Special disclosure requirements for private education loans.

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

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

(2) [Reserved]

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

(1) *Covered educational institution* means:

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

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

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

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

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

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

(i) Is not made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*);

(ii) Is extended to a consumer expressly, in whole or in part, for postsecondary educational expenses, regardless of whether the loan is provided by the educational institution that the student attends;

(iii) Does not include open-end credit or any loan that is secured by real property or a dwelling; and

(iv) Does not include an extension of credit in which the covered educational institution is the creditor if:

(A) The term of the extension of credit is 90 days or less; or

(B) an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the credit is payable in more than four installments.

(c) *Form of disclosures*—(1) *Clear and conspicuous.* The disclosures required by this subpart shall be made clearly and conspicuously.

(2) *Transaction disclosures.* (i) The disclosures required under §§ 1026.47(b) and (c) shall be made in writing, in a form that the consumer may keep. The disclosures shall be grouped together, shall be segregated from everything else, and shall not contain any information not directly related to the disclosures required under §§ 1026.47(b) and (c), which include the disclosures required under § 1026.18.

(ii) The disclosures may include an acknowledgement of receipt, the date of the transaction, and the consumer's name, address, and account number. The following disclosures may be made together with or separately from other required disclosures: the creditor's identity under § 1026.18(a), insurance or debt cancellation under § 1026.18(n), and certain security interest charges under § 1026.18(o).

(iii) The term ''finance charge'' and corresponding amount, when required to be disclosed under § 1026.18(d), and the interest rate required to be disclosed under §§ 1026.47(b)(1)(i) and (c)(1), shall be more conspicuous than any other disclosure, except the creditor's identity under § 1026.18(a).

(3) *Electronic disclosures.* The disclosures required under §§ 1026.47(b) and (c) may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*). The disclosures required by § 1026.47(a) may be provided to the consumer in electronic form on or with an application or solicitation that is accessed by the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act. The form required to be received under § 1026.48(e) may be accepted by the creditor in electronic form as provided for in that section.

(d) *Timing of disclosures*—(1) *Application or solicitation disclosures.* (i) The disclosures required by § 1026.47(a) shall be provided on or with any application or solicitation. For purposes of this subpart, the term solicitation means an offer of credit that does not require the consumer to complete an application. A ''firm offer of credit'' as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) is a solicitation for purposes of this section.

(ii) The creditor may, at its option, disclose orally the information in §1026.47(a) in a telephone application or solicitation. Alternatively, if the creditor does not disclose orally the information in §1026.47(a), the creditor must provide the disclosures or place them in the mail no later than three business days after the consumer has applied for the credit, except that, if the creditor either denies the consumer's application or provides or places in the mail the disclosures in §1026.47(b) no later than three business days after the consumer requests the credit, the creditor need not also provide the §1026.47(a) disclosures.

(iii) Notwithstanding paragraph (d)(1)(i) of this section, for a loan that the consumer may use for multiple purposes including, but not limited to, postsecondary educational expenses, the creditor need not provide the disclosures required by §1026.47(a).

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

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

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

(e) *Basis of disclosures and use of estimates*—(1) *Legal obligation.* Disclosures shall reflect the terms of the legal obligation between the parties.

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

(f) *Multiple creditors; multiple consumers.* If a transaction involves more than one creditor, only one set of disclosures shall be given and the creditors shall agree among themselves which creditor will comply with the requirements that this part imposes on any or all of them. If there is more than one consumer, the disclosures may be made to any consumer who is primarily liable on the obligation.

(g) *Effect of subsequent events*—(1) *Approval disclosures.* If a disclosure under §1026.47(b) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 1026), although new disclosures may be required under §1026.48(c).

(2) *Final disclosures.* If a disclosure under §1026.47(c) becomes inaccurate because of an event that occurs after the creditor delivers the required disclosures, the inaccuracy is not a violation of Regulation Z (12 CFR part 1026).

§ 1026.47 Content of disclosures.

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

(1) *Interest Rates.* (i) The interest rate or range of interest rates applicable to the loan and actually offered by the creditor at the time of application or solicitation. If the rate will depend, in part, on a later determination of the consumer's creditworthiness or other

factors, a statement that the rate for which the consumer may qualify will depend on the consumer's creditworthiness and other factors, if applicable.

(ii) Whether the interest rates applicable to the loan are fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the interest rate adjustments, or lack thereof; a statement that the consumer's actual rate could be higher or lower than the rates disclosed under paragraph (a)(1)(i) of this section, if applicable; and, if the limitation is determined by applicable law, that fact.

(iv) Whether the applicable interest rates typically will be higher if the loan is not co-signed or guaranteed.

(2) *Fees and default or late payment costs.* (i) An itemization of the fees or range of fees required to obtain the private education loan.

(ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

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

(ii) A description of any payment deferral options, or, if the consumer does not have the option to defer payments, that fact.

(iii) For each payment deferral option applicable while the student is enrolled at a covered educational institution:

(A) Whether interest will accrue during the deferral period; and

(B) If interest accrues, whether payment of interest may be deferred and added to the principal balance.

(iv) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(4) *Cost estimates.* An example of the total cost of the loan calculated as the total of payments over the term of the loan:

(i) Using the highest rate of interest disclosed under paragraph (a)(1) of this section and including all finance charges applicable to loans at that rate;

(ii) Using an amount financed of $10,000, or $5000 if the creditor only offers loans of this type for less than $10,000; and

(iii) Calculated for each payment option.

(5) *Eligibility.* Any age or school enrollment eligibility requirements relating to the consumer or cosigner.

(6) *Alternatives to private education loans.* (i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*) and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(iv) A statement that a covered educational institution may have school-specific education loan benefits and terms not detailed on the disclosure form.

(7) *Rights of the consumer.* A statement that if the loan is approved, the terms of the loan will be available and will not change for 30 days except as a result of adjustments to the interest rate and other changes permitted by law.

(8) *Self-certification information.* A statement that, before the loan may be consummated, the consumer must complete the self-certification form and that the form may be obtained from the institution of higher education that the student attends.

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

(1) *Interest rate.* (i) The interest rate applicable to the loan.

(ii) Whether the interest rate is fixed or variable.

(iii) If the interest rate may increase after consummation of the transaction, any limitations on the rate adjustments, or lack thereof.

(2) *Fees and default or late payment costs.* (i) An itemization of the fees or range of fees required to obtain the private education loan.

(ii) Any fees, changes to the interest rate, and adjustments to principal based on the consumer's defaults or late payments.

(3) *Repayment terms.* (i) The principal amount of the loan for which the consumer has been approved.

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

(iii) A description of the payment deferral option chosen by the consumer, if applicable, and any other payment deferral options that the consumer may elect at a later time.

(iv) Any payments required while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(v) The amount of any unpaid interest that will accrue while the student is enrolled at a covered educational institution, based on the deferral option chosen by the consumer.

(vi) A statement that if the consumer files for bankruptcy, the consumer may still be required to pay back the loan.

(vii) An estimate of the total amount of payments calculated based on:

(A) The interest rate applicable to the loan. Compliance with §1026.18(h) constitutes compliance with this requirement.

(B) The maximum possible rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%.

(C) If a maximum rate cannot be determined, the estimate of the total amount for repayment must include a statement that there is no maximum rate and that the total amount for repayment disclosed under paragraph (b)(3)(vii)(B) of this section is an estimate and will be higher if the applicable interest rate increases.

(viii) The maximum monthly payment based on the maximum rate of interest for the loan or, if a maximum rate cannot be determined, a rate of 25%. If a maximum cannot be determined, a statement that there is no maximum rate and that the monthly payment amount disclosed is an estimate and will be higher if the applicable interest rate increases.

(4) *Alternatives to private education loans.* (i) A statement that the consumer may qualify for Federal student financial assistance through a program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*).

(ii) The interest rates available under each program under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*), and whether the rates are fixed or variable.

(iii) A statement that the consumer may obtain additional information concerning Federal student financial assistance from the institution of higher education that the student attends, or at the Web site of the U.S. Department of Education, including an appropriate Web site address.

(5) *Rights of the consumer.* (i) A statement that the consumer may accept the terms of the loan until the acceptance period under §1026.48(c)(1) has expired. The statement must include the specific date on which the acceptance period expires, based on the date upon which the consumer receives the disclosures required under this subsection for the loan. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

(ii) A statement that, except for changes to the interest rate and other changes permitted by law, the rates and terms of the loan may not be changed by the creditor during the period described in paragraph (b)(5)(i) of this section.

(c) *Final disclosures.* After the consumer has accepted the loan in accordance with §1026.48(c)(1), the creditor shall disclose to the consumer the information required by §1026.18 and the following information:

(1) *Interest rate.* Information required to be disclosed under §1026.47(b)(1).

(2) *Fees and default or late payment costs.* Information required to be disclosed under §1026.47(b)(2).

(3) *Repayment terms.* Information required to be disclosed under §1026.47(b)(3).

(4) *Cancellation right.* A statement that:

(i) The consumer has the right to cancel the loan, without penalty, at any time before the cancellation period under § 1026.48(d) expires, and

(ii) Loan proceeds will not be disbursed until after the cancellation period under § 1026.48(d) expires. The statement must include the specific date on which the cancellation period expires and state that the consumer may cancel by that date. The statement must also specify the method or methods by which the consumer may cancel. If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosures required by this paragraph (c)(4) must be made more conspicuous than any other disclosure required under this section, except for the finance charge, the interest rate, and the creditor's identity, which must be disclosed in accordance with the requirements of § 1026.46(c)(2)(iii).

§ 1026.48 Limitations on private education loans.

(a) *Co-branding prohibited.* (1) Except as provided in paragraph (b) of this section, a creditor, other than the covered educational institution itself, shall not use the name, emblem, mascot, or logo of a covered educational institution, or other words, pictures, or symbols identified with a covered educational institution, in the marketing of private education loans in a way that implies that the covered education institution endorses the creditor's loans.

(2) A creditor's marketing of private education loans does not imply that the covered education institution endorses the creditor's loans if the marketing includes a clear and conspicuous disclosure that is equally prominent and closely proximate to the reference to the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution.

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

(c) *Consumer's right to accept.* (1) The consumer has the right to accept the terms of a private education loan at any time within 30 calendar days following the date on which the consumer receives the disclosures required under § 1026.47(b).

(2) Except for changes permitted under paragraphs (c)(3) and (c)(4), the rate and terms of the private education loan that are required to be disclosed under § 1026.47(b) and (c) may not be changed by the creditor prior to the earlier of:

(i) The date of disbursement of the loan; or

(ii) The expiration of the 30 calendar day period described in paragraph (c)(1) of this section if the consumer has not accepted the loan within that time.

(3) *Exceptions not requiring re-disclosure.* (i) Notwithstanding paragraph (c)(2) of this section, nothing in this section prevents the creditor from:

(A) Withdrawing an offer before consummation of the transaction if the extension of credit would be prohibited by law or if the creditor has reason to believe that the consumer has committed fraud in connection with the loan application;

(B) Changing the interest rate based on adjustments to the index used for a loan;

(C) Changing the interest rate and terms if the change will unequivocally benefit the consumer; or

(D) Reducing the loan amount based upon a certification or other information received from the covered educational institution, or from the consumer, indicating that the student's cost of attendance has decreased or the consumer's other financial aid has increased. A creditor may make corresponding changes to the rate and other terms only to the extent that the consumer would have received the terms if the consumer had applied for the reduced loan amount.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(3), the creditor need not provide the disclosures required under § 1026.47(b) for the new loan terms, nor need the creditor provide an additional 30-day period to the consumer to accept the new terms of the loan under paragraph (c)(1) of this section.

(4) *Exceptions requiring re-disclosure*. (i) Notwithstanding paragraphs (c)(2) or (c)(3) of this section, nothing in this section prevents the creditor, at its option, from changing the rate or terms of the loan to accommodate a specific request by the consumer. For example, if the consumer requests a different repayment option, the creditor may, but need not, offer to provide the requested repayment option and make any other changes to the rate and terms.

(ii) If the creditor changes the rate or terms of the loan under this paragraph (c)(4), the creditor shall provide the disclosures required under § 1026.47(b) and shall provide the consumer the 30-day period to accept the loan under paragraph (c)(1) of this section. The creditor shall not make further changes to the rates and terms of the loan, except as specified in paragraphs (c)(3) and (4) of this section. Except as permitted under § 1026.48(c)(3), unless the consumer accepts the loan offered by the creditor in response to the consumer's request, the creditor may not withdraw or change the rates or terms of the loan for which the consumer was approved prior to the consumer's request for a change in loan terms.

(d) *Consumer's right to cancel*. The consumer may cancel a private education loan, without penalty, until midnight of the third business day following the date on which the consumer receives the disclosures required by § 1026.47(c). No funds may be disbursed for a private education loan until the three-business day period has expired.

(e) *Self-certification form*. For a private education loan intended to be used for the postsecondary educational expenses of a student while the student is attending an institution of higher education, the creditor shall obtain from the consumer or the institution of higher education the form developed by the Secretary of Education under section 155 of the Higher Education Act of 1965, signed by the consumer, in written or electronic form, before consummating the private education loan.

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

Subpart G—Special Rules Applicable to Credit Card Accounts and Open-End Credit Offered to College Students

§ 1026.51 Ability to Pay.

(a) *General rule*—(1)(i) *Consideration of ability to pay*. A card issuer must not open a credit card account for a consumer under an open-end (not home-secured) consumer credit plan, or increase any credit limit applicable to such account, unless the card issuer considers the consumer's ability to make the required minimum periodic payments under the terms of the account based on the consumer's income or assets and the consumer's current obligations.

(ii) *Reasonable policies and procedures*. Card issuers must establish and maintain reasonable written policies and procedures to consider the consumer's ability to make the required minimum payments under the terms of the account based on a consumer's income or assets and a consumer's current obligations. Reasonable policies and procedures include treating any income and assets to which the consumer has a reasonable expectation of access as the consumer's income or assets, or limiting consideration of the consumer's income or assets to the consumer's independent income and assets. Reasonable policies and procedures also include consideration of at least one of the following: The ratio of debt obligations to income; the ratio of debt obligations to assets; or the income the consumer will have after paying debt obligations. It would be unreasonable for a card issuer not to review any information about a consumer's income or assets and current obligations, or to issue a credit card to a consumer who does not have any income or assets.

(2) *Minimum periodic payments*—(i) *Reasonable method.* For purposes of paragraph (a)(1) of this section, a card issuer must use a reasonable method for estimating the minimum periodic payments the consumer would be required to pay under the terms of the account.

(ii) *Safe harbor.* A card issuer complies with paragraph (a)(2)(i) of this section if it estimates required minimum periodic payments using the following method:

(A) The card issuer assumes utilization, from the first day of the billing cycle, of the full credit line that the issuer is considering offering to the consumer; and

(B) The card issuer uses a minimum payment formula employed by the issuer for the product the issuer is considering offering to the consumer or, in the case of an existing account, the minimum payment formula that currently applies to that account, provided that:

(*1*) If the applicable minimum payment formula includes interest charges, the card issuer estimates those charges using an interest rate that the issuer is considering offering to the consumer for purchases or, in the case of an existing account, the interest rate that currently applies to purchases; and

(*2*) If the applicable minimum payment formula includes mandatory fees, the card issuer must assume that such fees have been charged to the account.

(b) *Rules affecting young consumers*—(1) *Applications from young consumers.* A card issuer may not open a credit card account under an open-end (not home-secured) consumer credit plan for a consumer less than 21 years old, unless the consumer has submitted a written application and the card issuer has:

(i) Financial information indicating the consumer has an independent ability to make the required minimum periodic payments on the proposed extension of credit in connection with the account; or

(ii)(A) A signed agreement of a cosigner, guarantor, or joint applicant who is at least 21 years old to be either secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 or jointly liable with the consumer for any debt on the account; and

(B) Financial information indicating such cosigner, guarantor, or joint applicant has the ability to make the required minimum periodic payments on such debts, consistent with paragraph (a) of this section.

(2) *Credit line increases for young consumers.* (i) If a credit card account has been opened pursuant to paragraph (b)(1)(i) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless:

(A) At the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments on the increased limit consistent with paragraph (b)(1)(i) of this section; or

(B) A cosigner, guarantor, or joint applicant who is at least 21 years old agrees in writing to assume liability for any debt incurred on the account, consistent with paragraph (b)(1)(ii) of this section.

(ii) If a credit card account has been opened pursuant to paragraph (b)(1)(ii) of this section, no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless the cosigner, guarantor, or joint accountholder who assumed liability at account opening agrees in writing to assume liability on the increase.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 25837, May 3, 2013]

§ 1026.52 Limitations on fees.

(a) *Limitations during first year after account opening*—(1) *General rule.* Except as provided in paragraph (a)(2) of this section, the total amount of fees a consumer is required to pay with respect to a credit card account under an open-end (not home-secured) consumer credit plan during the first year after account opening must not exceed 25 percent of the credit limit in effect when the account is opened. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

(2) *Fees not subject to limitations.* Paragraph (a) of this section does not apply to:

(i) Late payment fees, over-the-limit fees, and returned-payment fees; or

(ii) Fees that the consumer is not required to pay with respect to the account.

(3) *Rule of construction.* Paragraph (a) of this section does not authorize the imposition or payment of fees or charges otherwise prohibited by law.

(b) *Limitations on penalty fees.* A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan unless the dollar amount of the fee is consistent with paragraphs (b)(1) and (b)(2) of this section.

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, a card issuer may impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan if the dollar amount of the fee is consistent with either paragraph (b)(1)(i) or (b)(1)(ii) of this section.

(i) *Fees based on costs.* A card issuer may impose a fee for violating the terms or other requirements of an account if the card issuer has determined that the dollar amount of the fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation. A card issuer must reevaluate this determination at least once every twelve months. If as a result of the reevaluation the card issuer determines that a lower fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer must begin imposing the lower fee within 45 days after completing the reevaluation. If as a result of the reevaluation the card issuer determines that a higher fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of that type of violation, the card issuer may begin imposing the higher fee after complying with the notice requirements in §1026.9.

(ii) *Safe harbors.* A card issuer may impose a fee for violating the terms or other requirements of an account if the dollar amount of the fee does not exceed, as applicable:

(A) $30;

(B) $41 if the card issuer previously imposed a fee pursuant to paragraph (b)(1)(ii)(A) of this section for a violation of the same type that occurred during the same billing cycle or one of the next six billing cycles; or

(C) Three percent of the delinquent balance on a charge card account that requires payment of outstanding balances in full at the end of each billing cycle if the card issuer has not received the required payment for two or more consecutive billing cycles.

(D) The amounts in paragraphs (b)(1)(ii)(A) and (b)(1)(ii)(B) of this section will be adjusted annually by the Bureau to reflect changes in the Consumer Price Index.

(2) *Prohibited fees*—(i) *Fees that exceed dollar amount associated with violation*—(A) *Generally.* A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan that exceeds the dollar amount associated with the violation.

(B) *No dollar amount associated with violation.* A card issuer must not impose a fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan when there is no dollar amount associated with the violation. For purposes of paragraph (b)(2)(i) of this section, there is no dollar amount associated with the following violations:

(*1*) Transactions that the card issuer declines to authorize;

(*2*) Account inactivity; and

(*3*) The closure or termination of an account.

(ii) *Multiple fees based on a single event or transaction.* A card issuer must not impose more than one fee for violating the terms or other requirements of a credit card account under an open-end (not home-secured) consumer credit plan based on a single event or transaction. A card issuer may, at its option, comply with this prohibition by imposing no more than one fee for violating the terms or other requirements of an account during a billing cycle.

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 18797, Mar. 28, 2013; 78 FR 76035, Dec. 16, 2013; 79 FR 48017, Aug. 15, 2014; 80 FR 56898, Sept. 21, 2015; 81 FR 41421, June 27, 2016; 81 FR 84370, Nov. 22, 2016; 83 FR 43505, Aug. 27, 2018; 84 FR 37567, Aug. 1, 2019; 86 FR 60360, Nov. 2, 2021]

§ 1026.53 Allocation of payments.

(a) *General rule.* Except as provided in paragraph (b) of this section, when a consumer makes a payment in excess of the required minimum periodic payment for a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer must allocate the excess amount first to the balance with the highest annual percentage rate and any remaining portion to the other balances in descending order based on the applicable annual percentage rate.

(b) *Special rules*—(1) *Accounts with balances subject to deferred interest or similar program.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time:

(i) *Last two billing cycles.* The card issuer must allocate any amount paid by the consumer in excess of the required minimum periodic payment consistent with paragraph (a) of this section, except that, during the two billing cycles immediately preceding expiration of the specified period, the excess amount must be allocated first to the balance subject to the deferred interest or similar program and any remaining portion allocated to any other balances consistent with paragraph (a) of this section; or

(ii) *Consumer request.* The card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment among the balances on the account in the manner requested by the consumer.

(2) *Accounts with secured balances.* When a balance on a credit card account under an open-end (not home-secured) consumer credit plan is secured, the card issuer may at its option allocate any amount paid by the consumer in excess of the required minimum periodic payment to that balance if requested by the consumer.

§ 1026.54 Limitations on the imposition of finance charges.

(a) *Limitations on imposing finance charges as a result of the loss of a grace period*—(1) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not impose finance charges as a result of the loss of a grace period on a credit card account under an open-end (not home-secured) consumer credit plan if those finance charges are based on:

(i) Balances for days in billing cycles that precede the most recent billing cycle; or

(ii) Any portion of a balance subject to a grace period that was repaid prior to the expiration of the grace period.

(2) *Definition of grace period.* For purposes of paragraph (a)(1) of this section, ''grace period'' has the same meaning as in § 1026.5(b)(2)(ii)(B)(*3*).

(b) *Exceptions.* Paragraph (a) of this section does not apply to:

(1) Adjustments to finance charges as a result of the resolution of a dispute under § 1026.12 or § 1026.13; or

(2) Adjustments to finance charges as a result of the return of a payment.

§ 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

(a) *General rule.* Except as provided in paragraph (b) of this section, a card issuer must not increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account under an open-end (not home-secured) consumer credit plan.

(b) *Exceptions.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in this paragraph even if that increase would not be permitted under a different exception.

(1) *Temporary rate, fee, or charge exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) upon the expiration of a specified period of six months or longer, provided that:

(i) Prior to the commencement of that period, the card issuer disclosed in writing to the consumer, in a clear and conspicuous manner, the length of the period and the annual percentage rate, fee, or charge that would apply after expiration of the period; and

(ii) Upon expiration of the specified period:

(A) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred prior to the period that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the period;

(B) If the disclosures required by paragraph (b)(1)(i) of this section are provided pursuant to §1026.9(c), the card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred within 14 days after provision of the notice that exceeds the annual percentage rate, fee, or charge that applied to that category of transactions prior to provision of the notice; and

(C) The card issuer must not apply an annual percentage rate, fee, or charge to transactions that occurred during the period that exceeds the increased annual percentage rate, fee, or charge disclosed pursuant to paragraph (b)(1)(i) of this section.

(2) *Variable rate exception.* A card issuer may increase an annual percentage rate when:

(i) The annual percentage rate varies according to an index that is not under the card issuer's control and is available to the general public; and

(ii) The increase in the annual percentage rate is due to an increase in the index.

(3) *Advance notice exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in §1026.9(b), (c), or (g), provided that:

(i) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to §1026.9(b), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to provision of the notice;

(ii) If a card issuer discloses an increased annual percentage rate, fee, or charge pursuant to §1026.9(c) or (g), the card issuer must not apply that rate, fee, or charge to transactions that occurred prior to or within 14 days after provision of the notice; and

(iii) This exception does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (iii), or (xii) during the first year after the account is opened, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. For purposes of this paragraph, an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions.

(4) *Delinquency exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment, provided that:

(i) The card issuer must disclose in a clear and conspicuous manner in the notice of the increase pursuant to §1026.9(c) or (g):

(A) A statement of the reason for the increase; and

(B) That the increased annual percentage rate, fee, or charge will cease to apply if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase; and

(ii) If the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, the card issuer must reduce any annual percentage rate, fee, or charge increased pursuant to this exception to the annual percentage rate, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the § 1026.9(c) or (g) notice.

(5) *Workout and temporary hardship arrangement exception.* A card issuer may increase an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) due to the consumer's completion of a workout or temporary hardship arrangement or the consumer's failure to comply with the terms of such an arrangement, provided that:

(i) Prior to commencement of the arrangement (except as provided in § 1026.9(c)(2)(v)(D)), the card issuer has provided the consumer with a clear and conspicuous written disclosure of the terms of the arrangement (including any increases due to the completion or failure of the arrangement); and

(ii) Upon the completion or failure of the arrangement, the card issuer must not apply to any transactions that occurred prior to commencement of the arrangement an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to commencement of the arrangement.

(6) *Servicemembers Civil Relief Act exception.* If an annual percentage rate or a fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) has been decreased pursuant to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, a card issuer may increase that annual percentage rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies, provided that the card issuer must not apply to any transactions that occurred prior to the decrease an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to the decrease.

(c) *Treatment of protected balances*—(1) *Definition of protected balance.* For purposes of this paragraph, ''protected balance'' means the amount owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) cannot be applied after the annual percentage rate, fee, or charge for that category of transactions has been increased pursuant to paragraph (b)(3) of this section.

(2) *Repayment of protected balance.* The card issuer must not require repayment of the protected balance using a method that is less beneficial to the consumer than one of the following methods:

(i) The method of repayment for the account before the effective date of the increase;

(ii) An amortization period of not less than five years, beginning no earlier than the effective date of the increase; or

(iii) A required minimum periodic payment that includes a percentage of the balance that is equal to no more than twice the percentage required before the effective date of the increase.

(d) *Continuing application.* This section continues to apply to a balance on a credit card account under an open-end (not home-secured) consumer credit plan after:

(1) The account is closed or acquired by another creditor; or

(2) The balance is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary (unless the account to which the balance is transferred is subject to § 1026.40).

(e) *Promotional waivers or rebates of interest, fees, and other charges.* If a card issuer promotes the waiver or rebate of finance charges due to a periodic interest rate or fees or charges required to be disclosed under § 1026.6(b)(2)(ii), (iii), or (xii) and applies the waiver or rebate to a credit card account under an open-end (not home-secured) consumer credit plan, any cessation of the waiver or rebate on that account constitutes an increase in an annual percentage rate, fee, or charge for purposes of this section.

EFFECTIVE DATE NOTE: At 86 FR 69782, Dec. 8, 2021, § 1026.55 was amended by adding paragraph (b)(7), effective Apr. 1, 2022. For the convenience of the user, the added text is set forth as follows:

§ 1026.55 Limitations on increasing annual percentage rates, fees, and charges.

* * * * *

(b) * * *

(7) *Index replacement and margin change exception.* A card issuer may increase an annual percentage rate when:

(i) The card issuer changes the index and margin used to determine the annual percentage rate if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable; or

(ii) If a variable rate on the plan is calculated using a LIBOR index, the card issuer changes the LIBOR index and the margin for calculating the variable rate on or after April 1, 2022, to a replacement index and a replacement margin, as long as historical fluctuations in the LIBOR index and replacement index were substantially similar, and as long as the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is newly established and therefore does not have any rate history, it may be used if the replacement index value in effect on October 18, 2021, and the replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index.

* * * * *

§ 1026.56 Requirements for over-the-limit transactions.

(a) *Definition.* For purposes of this section, the term ''over-the-limit transaction'' means any extension of credit by a card issuer to complete a transaction that causes a consumer's credit card account balance to exceed the credit limit.

(b) *Opt-in requirement*—(1) *General.* A card issuer shall not assess a fee or charge on a consumer's credit card account under an open-end (not home-secured) consumer credit plan for an over-the-limit transaction unless the card issuer:

(i) Provides the consumer with an oral, written or electronic notice, segregated from all other information, describing the consumer's right to affirmatively consent, or opt in, to the card issuer's payment of an over-the-limit transaction;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the card issuer's payment of over-the-limit transactions;

(iii) Obtains the consumer's affirmative consent, or opt-in, to the card issuer's payment of such transactions;

(iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically; and

(v) Provides the consumer notice in writing of the right to revoke that consent following the assessment of an over-the-limit fee or charge.

(2) *Completion of over-the-limit transactions without consumer consent.* Notwithstanding the absence of a consumer's affirmative consent under

paragraph (b)(1)(iii) of this section, a card issuer may pay any over-the-limit transaction on a consumer's account provided that the card issuer does not impose any fee or charge on the account for paying that over-the-limit transaction.

(c) *Method of election.* A card issuer may permit a consumer to consent to the card issuer's payment of any over-the-limit transaction in writing, orally, or electronically, at the card issuer's option. The card issuer must also permit the consumer to revoke his or her consent using the same methods available to the consumer for providing consent.

(d) *Timing and placement of notices*—(1) *Initial notice*—(i) *General.* The notice required by paragraph (b)(1)(i) of this section shall be provided prior to the assessment of any over-the-limit fee or charge on a consumer's account.

(ii) *Oral or electronic consent.* If a consumer consents to the card issuer's payment of any over-the-limit transaction by oral or electronic means, the card issuer must provide the notice required by paragraph (b)(1)(i) of this section immediately prior to obtaining that consent.

(2) *Confirmation of opt-in.* The notice required by paragraph (b)(1)(iv) of this section may be provided no later than the first periodic statement sent after the consumer has consented to the card issuer's payment of over-the-limit transactions.

(3) *Notice of right of revocation.* The notice required by paragraph (b)(1)(v) of this section shall be provided on the front of any page of each periodic statement that reflects the assessment of an over-the-limit fee or charge on a consumer's account.

(e) *Content*—(1) *Initial notice.* The notice required by paragraph (b)(1)(i) of this section shall include all applicable items in this paragraph (e)(1) and may not contain any information not specified in or otherwise permitted by this paragraph.

(i) *Fees.* The dollar amount of any fees or charges assessed by the card issuer on a consumer's account for an over-the-limit transaction;

(ii) *APRs.* Any increased periodic rate(s) (expressed as an annual percentage rate(s)) that may be imposed on the account as a result of an over-the-limit transaction; and

(iii) *Disclosure of opt-in right.* An explanation of the consumer's right to affirmatively consent to the card issuer's payment of over-the-limit transactions, including the method(s) by which the consumer may consent.

(2) *Subsequent notice.* The notice required by paragraph (b)(1)(v) of this section shall describe the consumer's right to revoke any consent provided under paragraph (b)(1)(iii) of this section, including the method(s) by which the consumer may revoke.

(3) *Safe harbor.* Use of Model Forms G–25(A) or G–25(B) of appendix G to this part, or substantially similar notices, constitutes compliance with the notice content requirements of paragraph (e) of this section.

(f) *Joint relationships.* If two or more consumers are jointly liable on a credit card account under an open-end (not home-secured) consumer credit plan, the card issuer shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the card issuer shall treat a revocation of consent by any of the joint consumers as revocation of consent for that account.

(g) *Continuing right to opt in or revoke opt-in.* A consumer may affirmatively consent to the card issuer's payment of over-the-limit transactions at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. Similarly, the consumer may revoke the consent at any time in the manner described in the notice required by paragraph (b)(1)(v) of this section.

(h) *Duration of opt-in.* A consumer's affirmative consent to the card issuer's payment of over-the-limit transactions is effective until revoked by the consumer, or until the card issuer decides for any reason to cease paying over-the-limit transactions for the consumer.

(i) *Time to comply with revocation request.* A card issuer must comply with a consumer's revocation request as soon as reasonably practicable after the card issuer receives it.

(j) *Prohibited practices.* Notwithstanding a consumer's affirmative consent to a card issuer's payment of over-the-limit transactions, a card issuer is prohibited from engaging in the following practices:

(1) *Fees or charges imposed per cycle*—(i) *General rule.* A card issuer may not impose more than one over-the-limit fee or charge on a consumer's credit card account per billing cycle, and, in any event, only if the credit limit was exceeded during the billing cycle. In addition, except as provided in paragraph (j)(1)(ii) of this section, a card issuer may not impose an over-the-limit fee or charge on the consumer's credit card account for more than three billing cycles for the same over-the-limit transaction where the consumer has not reduced the account balance below the credit limit by the payment due date for either of the last two billing cycles.

(ii) *Exception.* The prohibition in paragraph (j)(1)(i) of this section on imposing an over-the-limit fee or charge in more than three billing cycles for the same over-the-limit transaction(s) does not apply if another over-the-limit transaction occurs during either of the last two billing cycles.

(2) *Failure to promptly replenish.* A card issuer may not impose an over-the-limit fee or charge solely because of the card issuer's failure to promptly replenish the consumer's available credit following the crediting of the consumer's payment under §1026.10.

(3) *Conditioning.* A card issuer may not condition the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions if the card issuer assesses a fee or charge for such service.

(4) *Over-the-limit fees attributed to fees or interest.* A card issuer may not impose an over-the-limit fee or charge for a billing cycle if a consumer exceeds a credit limit solely because of fees or interest charged by the card issuer to the consumer's account during that billing cycle. For purposes of this paragraph (j)(4), the relevant fees or interest charges are charges imposed as part of the plan under §1026.6(b)(3).

§ 1026.57 Reporting and marketing rules for college student open-end credit.

(a) *Definitions*—(1) *College student credit card.* The term "college student credit card" as used in this section means a credit card issued under a credit card account under an open-end (not home-secured) consumer credit plan to any college student.

(2) *College student.* The term "college student" as used in this section means a consumer who is a full-time or part-time student of an institution of higher education.

(3) *Institution of higher education.* The term "institution of higher education" as used in this section has the same meaning as in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001 and 1002).

(4) *Affiliated organization.* The term "affiliated organization" as used in this section means an alumni organization or foundation affiliated with or related to an institution of higher education.

(5) *College credit card agreement.* The term "college credit card agreement" as used in this section means any business, marketing or promotional agreement between a card issuer and an institution of higher education or an affiliated organization in connection with which college student credit cards are issued to college students currently enrolled at that institution.

(b) *Public disclosure of agreements.* An institution of higher education shall publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card.

(c) *Prohibited inducements.* No card issuer or creditor may offer a college student any tangible item to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, if such offer is made:

(1) On the campus of an institution of higher education;

(2) Near the campus of an institution of higher education; or

(3) At an event sponsored by or related to an institution of higher education.

(d) *Annual report to the Bureau*—(1) *Requirement to report.* Any card issuer that was a party to one or more college credit card agreements in effect at any time during a calendar year must submit to the Bureau an annual report regarding those agreements in the form and manner prescribed by the Bureau.

(2) *Contents of report.* The annual report to the Bureau must include the following:

(i) Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

(ii) A copy of any college credit card agreement to which the card issuer was a party that was in effect at any time during the period covered by the report;

(iii) A copy of any memorandum of understanding in effect at any time during the period covered by the report between the card issuer and an institution of higher education or affiliated organization that directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities;

(iv) The total dollar amount of any payments pursuant to a college credit card agreement from the card issuer to an institution of higher education or affiliated organization during the period covered by the report, and the method or formula used to determine such amounts;

(v) The total number of credit card accounts opened pursuant to any college credit card agreement during the period covered by the report; and

(vi) The total number of credit card accounts opened pursuant to any such agreement that were open at the end of the period covered by the report.

(3) *Timing of reports.* Except for the initial report described in this paragraph (d)(3), a card issuer must submit its annual report for each calendar year to the Bureau by the first business day on or after March 31 of the following calendar year.

§ 1026.58 Internet posting of credit card agreements.

(a) *Applicability.* The requirements of this section apply to any card issuer that issues credit cards under a credit card account under an open-end (not home-secured) consumer credit plan.

(b) *Definitions*—(1) *Agreement.* For purposes of this section, ''agreement'' or ''credit card agreement'' means the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. ''Agreement'' or ''credit card agreement'' also includes the pricing information, as defined in § 1026.58(b)(7).

(2) *Amends.* For purposes of this section, an issuer ''amends'' an agreement if it makes a substantive change (an ''amendment'') to the agreement. A change is substantive if it alters the rights or obligations of the card issuer or the consumer under the agreement. Any change in the pricing information, as defined in § 1026.58(b)(7), is deemed to be substantive.

(3) *Business day.* For purposes of this section, ''business day'' means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions.

(4) *Card issuer.* For purposes of this section, ''card issuer'' or ''issuer'' means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement.

(5) *Offers.* For purposes of this section, an issuer ''offers'' or ''offers to the public'' an agreement if the issuer is soliciting or accepting applications for accounts that would be subject to that agreement.

(6) *Open account.* For purposes of this section, an account is an ''open account'' or ''open credit card account'' if it is a credit card account under an open-end (not home-secured) consumer credit plan and either:

(i) The cardholder can obtain extensions of credit on the account; or

(ii) There is an outstanding balance on the account that has not been charged off. An account that has been suspended temporarily (for example, due to a report by the cardholder of unauthorized use of the card) is considered an ''open account'' or ''open credit card account.''

(7) *Pricing information.* For purposes of this section, ''pricing information'' means the information listed in § 1026.6(b)(2)(i) through (b)(2)(xii). Pricing information does not include temporary or promotional rates and terms or rates and terms that apply only to protected balances.

(8) *Private label credit card account and private label credit card plan.* For purposes of this section:

(i) ''private label credit card account'' means a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants; and

(ii) ''private label credit card plan'' means all of the private label credit card accounts issued by a particular issuer with credit cards usable at the same single merchant or affiliated group of merchants.

(c) *Submission of agreements to Bureau*—(1) *Quarterly submissions.* A card issuer must make quarterly submissions to the Bureau, in the form and manner specified by the Bureau. Quarterly submissions must be sent to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. Each submission must contain:

(i) Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number);

(ii) The credit card agreements that the card issuer offered to the public as of the last business day of the preceding calendar quarter that the card issuer has not previously submitted to the Bureau;

(iii) Any credit card agreement previously submitted to the Bureau that was amended during the preceding calendar quarter and that the card issuer offered to the public as of the last business day of the preceding calendar quarter, as described in § 1026.58(c)(3); and

(iv) Notification regarding any credit card agreement previously submitted to the Bureau that the issuer is withdrawing, as described in § 1026.58(c)(4), (c)(5), (c)(6), and (c)(7).

(2) [Reserved]

(3) *Amended agreements.* If a credit card agreement has been submitted to the Bureau, the agreement has not been amended and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. If a credit card agreement that previously has been submitted to the Bureau is amended and the card issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective, the card issuer must submit the entire amended agreement to the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective.

(4) *Withdrawal of agreements.* If a card issuer no longer offers to the public a credit card agreement that previously has been submitted to the Bureau, the card issuer must notify the Bureau, in the form and manner specified by the Bureau, by the first quarterly submission deadline after the last day of the calendar quarter in which the issuer ceased to offer the agreement.

(5) *De minimis exception.* (i) A card issuer is not required to submit any credit card agreements to the Bureau if the card issuer had fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter.

(ii) If an issuer that previously qualified for the de minimis exception ceases to qualify, the card issuer must begin making quarterly submissions to the Bureau no later than the first quarterly submission deadline after the date as of which the issuer ceased to qualify.

(iii) If a card issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Bureau until the issuer notifies the Bureau that the card issuer is withdrawing all agreements it previously submitted to the Bureau.

(6) *Private label credit card exception.* (i) A card issuer is not required to submit to the Bureau a credit card agreement if, as of the last business day of the calendar quarter, the agreement:

(A) Is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and

(B) Is not offered to the public other than for accounts under such a plan.

(ii) If an agreement that previously qualified for the private label credit card exception ceases to qualify, the card issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify.

(iii) If an agreement that did not previously qualify for the private label credit card exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

(7) *Product testing exception.* (i) A card issuer is not required to submit to the Bureau a credit card agreement if, as of the last business day of the calendar quarter, the agreement:

(A) Is offered as part of a product test offered to only a limited group of consumers for a limited period of time;

(B) Is used for fewer than 10,000 open accounts; and

(C) Is not offered to the public other than in connection with such a product test.

(ii) If an agreement that previously qualified for the product testing exception ceases to qualify, the card issuer must submit the agreement to the Bureau no later than the first quarterly submission deadline after the date as of which the agreement ceased to qualify.

(iii) If an agreement that did not previously qualify for the product testing exception qualifies for the exception, the card issuer must continue to make quarterly submissions to the Bureau with respect to that agreement until the issuer notifies the Bureau that the agreement is being withdrawn.

(8) *Form and content of agreements submitted to the Bureau*—(i) *Form and content generally.* (A) Each agreement must contain the provisions of the agreement and the pricing information in effect as of the last business day of the preceding calendar quarter.

(B) Agreements must not include any personally identifiable information relating to any cardholder, such as name, address, telephone number, or account number.

(C) The following are not deemed to be part of the agreement for purposes of § 1026.58, and therefore are not required to be included in submissions to the Bureau:

(*1*) Disclosures required by state or Federal law, such as affiliate marketing notices, privacy policies, billing rights notices, or disclosures under the E-Sign Act;

(*2*) Solicitation materials;

(*3*) Periodic statements;

(*4*) Ancillary agreements between the issuer and the consumer, such as debt cancellation contracts or debt suspension agreements;

(*5*) Offers for credit insurance or other optional products and other similar advertisements; and

(*6*) Documents that may be sent to the consumer along with the credit card or credit card agreement such as a cover letter, a validation sticker on the card, or other information about card security.

(D) Agreements must be presented in a clear and legible font.

(ii) *Pricing information.* (A) Pricing information must be set forth in a single addendum to the agreement. The addendum must contain all of the pricing information, as defined by § 1026.58(b)(7). The addendum may, but is not required to, contain any other information listed in § 1026.6(b), provided that information is complete and accurate as of the applicable date under § 1026.58. The addendum may not contain any other information.

(B) Pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed either by setting forth all the possible variations (such as purchase APRs of 13 percent, 15 percent, 17 percent, and 19 percent) or by providing a range of possible variations (such as purchase APRs ranging from 13 percent to 19 percent).

(C) If a rate included in the pricing information is a variable rate, the issuer must identify the index or formula used in setting the rate and the margin. Rates that may vary from one cardholder to another must be disclosed by providing the index and the possible margins (such as the prime rate plus 5 percent, 8 percent, 10 percent, or 12 percent) or range of margins (such as the prime rate plus from 5 to 12 percent). The value of the rate and the value of the index are not required to be disclosed.

(iii) *Optional variable terms addendum.* Provisions of the agreement other than the pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors may be set forth in a single addendum to the agreement separate from the pricing information addendum.

(iv) *Integrated agreement.* Issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders (other than the pricing information addendum and the optional variable terms addendum). Changes in provisions or pricing information must be integrated into the text of the agreement, the pricing information addendum or the optional variable terms addendum, as appropriate.

(d) *Posting of agreements offered to the public.* (1) Except as provided below, a card issuer must post and maintain on its publicly available Web site the credit card agreements that the issuer is required to submit to the Bureau under §1026.58(c). With respect to an agreement offered solely for accounts under one or more private label credit card plans, an issuer may fulfill this requirement by posting and maintaining the agreement in accordance with the requirements of this section on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used.

(2) Except as provided in §1026.58(d), agreements posted pursuant to §1026.58(d) must conform to the form and content requirements for agreements submitted to the Bureau specified in §1026.58(c)(8).

(3) Agreements posted pursuant to §1026.58(d) may be posted in any electronic format that is readily usable by the general public. Agreements must be placed in a location that is prominent and readily accessible by the public and must be accessible without submission of personally identifiable information.

(4) The card issuer must update the agreements posted on its Web site pursuant to §1026.58(d) at least as frequently as the quarterly schedule required for submission of agreements to the Bureau under §1026.58(c). If the issuer chooses to update the agreements on its Web site more frequently, the agreements posted on the issuer's Web site may contain the provisions of the agreement and the pricing information in effect as of a date other than the last business day of the preceding calendar quarter.

(e) *Agreements for all open accounts*—(1) *Availability of individual cardholder's agreement.* With respect to any open credit card account, a card issuer must either:

(i) Post and maintain the cardholder's agreement on its Web site; or

(ii) Promptly provide a copy of the cardholder's agreement to the cardholder upon the cardholder's request. If the card issuer makes an agreement available upon request, the issuer must provide the cardholder with the ability to request a copy of the agreement both by using the issuer's Web site (such as by clicking on a clearly identified box to make the request) and by calling a readily available telephone line the number for which is displayed on the issuer's Web site and clearly identified as to purpose. The card issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request.

(2) *Special rule for issuers without interactive Web sites.* An issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts, instead of complying with §1026.58(e)(1), may make agreements available upon request by providing the cardholder with the ability to request a copy of the agreement by calling a readily available telephone line, the

number for which is displayed on the issuer's Web site and clearly identified as to purpose or included on each periodic statement sent to the cardholder and clearly identified as to purpose. The issuer must send to the cardholder or otherwise make available to the cardholder a copy of the cardholder's agreement in electronic or paper form no later than 30 days after the issuer receives the cardholder's request.

(3) *Form and content of agreements.* (i) Except as provided in § 1026.58(e), agreements posted on the card issuer's Web site pursuant to § 1026.58(e)(1)(i) or made available upon the cardholder's request pursuant to § 1026.58(e)(1)(ii) or (e)(2) must conform to the form and content requirements for agreements submitted to the Bureau specified in § 1026.58(c)(8).

(ii) If the card issuer posts an agreement on its Web site or otherwise provides an agreement to a cardholder electronically under § 1026.58(e), the agreement may be posted or provided in any electronic format that is readily usable by the general public and must be placed in a location that is prominent and readily accessible to the cardholder.

(iii) Agreements posted or otherwise provided pursuant to § 1026.58(e) may contain personally identifiable information relating to the cardholder, such as name, address, telephone number, or account number, provided that the issuer takes appropriate measures to make the agreement accessible only to the cardholder or other authorized persons.

(iv) Agreements posted or otherwise provided pursuant to § 1026.58(e) must set forth the specific provisions and pricing information applicable to the particular cardholder. Provisions and pricing information must be complete and accurate as of a date no more than 60 days prior to:

(A) The date on which the agreement is posted on the card issuer's Web site under § 1026.58(e)(1)(i); or

(B) The date the cardholder's request is received under § 1026.58(e)(1)(ii) or (e)(2).

(v) Agreements provided upon cardholder request pursuant to § 1026.58(e)(1)(ii) or (e)(2) may be provided by the issuer in either electronic or paper form, regardless of the form of the cardholder's request.

(f) *E-Sign Act requirements.* Card issuers may provide credit card agreements in electronic form under § 1026.58(d) and (e) without regard to the consumer notice and consent requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

(g) *Temporary suspension of agreement submission requirement*—(1) *Quarterly submissions.* The quarterly submission requirement in paragraph (c) of this section is suspended for the submissions that would otherwise be due to the Bureau by the first business day on or after April 30, 2015; July 31, 2015; October 31, 2015; and January 31, 2016.

(2) *Posting of agreements offered to the public.* Nothing in paragraph (g)(1) of this section shall affect the agreement posting requirements in paragraph (d) of this section.

[76 FR 79772, Dec. 22, 2011, as amended at 80 FR 21158, Apr. 17, 2015]

§ 1026.59 Reevaluation of rate increases.

(a) *General rule*—(1) *Evaluation of increased rate.* If a card issuer increases an annual percentage rate that applies to a credit card account under an open-end (not home-secured) consumer credit plan, based on the credit risk of the consumer, market conditions, or other factors, or increased such a rate on or after January 1, 2009, and 45 days' advance notice of the rate increase is required pursuant to § 1026.9(c)(2) or (g), the card issuer must:

(i) Evaluate the factors described in paragraph (d) of this section; and

(ii) Based on its review of such factors, reduce the annual percentage rate applicable to the consumer's account, as appropriate.

(2) *Rate reductions*—(i) *Timing.* If a card issuer is required to reduce the rate applicable to an account pursuant to paragraph (a)(1) of this section, the card issuer must reduce the rate not later than 45 days after completion of the evaluation described in paragraph (a)(1).

(ii) *Applicability of rate reduction.* Any reduction in an annual percentage rate required pursuant to paragraph (a)(1) of this section shall apply to:

(A) Any outstanding balances to which the increased rate described in paragraph (a)(1) of this section has been applied; and

(B) New transactions that occur after the effective date of the rate reduction that would otherwise have been subject to the increased rate.

(b) *Policies and procedures.* A card issuer must have reasonable written policies and procedures in place to conduct the review described in paragraph (a) of this section.

(c) *Timing.* A card issuer that is subject to paragraph (a) of this section must conduct the review described in paragraph (a)(1) of this section not less frequently than once every six months after the rate increase.

(d) *Factors*—(1) *In general.* Except as provided in paragraph (d)(2) of this section, a card issuer must review either:

(i) The factors on which the increase in an annual percentage rate was originally based; or

(ii) The factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan.

(2) *Rate increases imposed between January 1, 2009 and February 21, 2010.* For rate increases imposed between January 1, 2009 and February 21, 2010, an issuer must consider the factors described in paragraph (d)(1)(ii) when conducting the first two reviews required under paragraph (a) of this section, unless the rate increase subject to paragraph (a) of this section was based solely upon factors specific to the consumer, such as a decline in the consumer's credit risk, the consumer's delinquency or default, or a violation of the terms of the account.

(e) *Rate increases due to delinquency.* If an issuer increases a rate applicable to a consumer's account pursuant to §1026.55(b)(4) based on the card issuer not receiving the consumer's required minimum periodic payment within 60 days after the due date, the issuer is not required to perform the review described in paragraph (a) of this section prior to the sixth payment due date after the effective date of the increase. However, if the annual percentage rate applicable to the consumer's account is not reduced pursuant to §1026.55(b)(4)(ii), the card issuer must perform the review described in paragraph (a) of this section. The first such review must occur no later than six months after the sixth payment due following the effective date of the rate increase.

(f) *Termination of obligation to review factors.* The obligation to review factors described in paragraph (a) and (d) of this section ceases to apply:

(1) If the issuer reduces the annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan to the rate applicable immediately prior to the increase, or, if the rate applicable immediately prior to the increase was a variable rate, to a variable rate determined by the same formula (index and margin) that was used to calculate the rate applicable immediately prior to the increase; or

(2) If the issuer reduces the annual percentage rate to a rate that is lower than the rate described in paragraph (f)(1) of this section.

(g) *Acquired accounts*—(1) *General.* Except as provided in paragraph (g)(2) of this section, this section applies to credit card accounts that have been acquired by the card issuer from another card issuer. A card issuer that complies with this section by reviewing the factors described in paragraph (d)(1)(i) must review the factors considered by the card issuer from which it acquired the accounts in connection with the rate increase.

(2) *Review of acquired portfolio.* If, not later than six months after the acquisition of such accounts, a card issuer reviews all of the credit card accounts it acquires in accordance with the factors that it currently considers in determining the rates applicable to its similar new credit card accounts:

(i) Except as provided in paragraph (g)(2)(iii), the card issuer is required to conduct reviews described in paragraph (a) of this section only for rate increases that are imposed as a result of its review under this paragraph. See §§1026.9 and 1026.55 for additional requirements regarding rate increases on acquired accounts.

(ii) Except as provided in paragraph (g)(2)(iii) of this section, the card issuer is not required to conduct reviews in accordance with paragraph (a) of this section for any rate increases made prior to the card issuer's acquisition of such accounts.

(iii) If as a result of the card issuer's review, an account is subject to, or continues to be subject to, an increased rate as a penalty, or due to the consumer's delinquency or default, the requirements of paragraph (a) of this section apply.

(h) *Exceptions*—(1) *Servicemembers Civil Relief Act exception.* The requirements of this section do not apply to increases in an annual percentage rate that was previously decreased pursuant to 50 U.S.C. app. 527, provided that such a rate increase is made in accordance with § 1026.55(b)(6).

(2) *Charged off accounts.* The requirements of this section do not apply to accounts that the card issuer has charged off in accordance with loan-loss provisions.

EFFECTIVE DATE NOTE: At 86 FR 69782, Dec. 8, 2021, § 1026.59 was amended by adding paragraphs (f)(3) and (h)(3), effective Apr. 1, 2022. For the convenience of the user, the added text is set forth as follows:

§ 1026.59 Reevaluation of rate increases.

* * * * *

(f) * * *

(3) Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula). A card issuer must satisfy the conditions set forth in § 1026.55(b)(7)(ii) for selecting a replacement index. If the replacement index is not published on October 18, 2021, the card issuer generally must use the values of the indices on the next calendar day for which both the LIBOR index and the replacement index are published as the index values to use to determine the replacement formula. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, as the index values to use to determine the replacement formula.

* * * * *

(h) * * *

(3) *Transition from LIBOR.* The requirements of this section do not apply to increases in an annual percentage rate that occur as a result of the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a replacement index in setting a variable rate if the change from the use of the LIBOR index to a replacement index occurs in accordance with § 1026.55(b)(7)(i) or (ii).

§ 1026.60 Credit and charge card applications and solicitations.

(a) *General rules.* The card issuer shall provide the disclosures required under this section on or with a solicitation or an application to open a credit or charge card account.

(1) *Definition of solicitation.* For purposes of this section, the term *solicitation* means an offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application. A "firm offer of credit" as defined in section 603(l) of the Fair Credit Reporting Act (15 U.S.C. 1681a(l)) for a credit or charge card is a solicitation for purposes of this section.

(2) *Form of disclosures; tabular format.* (i) The disclosures in paragraphs (b)(1) through (5) (except for (b)(1)(iv)(B)) and (b)(7) through (15) of this section made pursuant to paragraph (c), (d)(2), (e)(1) or (f) of this section generally shall be in the form of a table with headings, content, and format substantially similar to any of the applicable tables found in G–10 in appendix G to this part.

(ii) The table described in paragraph (a)(2)(i) of this section shall contain only the information required or permitted by this section. Other information may be presented on or with an application or solicitation, provided such information appears outside the required table.

(iii) Disclosures required by paragraphs (b)(1)(iv)(B), (b)(1)(iv)(C) and (b)(6) of this section must be placed directly beneath the table.

(iv) When a tabular format is required, any annual percentage rate required to be disclosed pursuant to paragraph (b)(1) of this section, any introductory rate required to be disclosed pursuant to paragraph (b)(1)(ii) of this section, any rate that will apply after a premium initial rate expires required to be disclosed under paragraph (b)(1)(iii) of this section, and any fee or percentage amounts or maximum limits on fee amounts disclosed pursuant to paragraphs (b)(2), (b)(4), (b)(8) through (b)(13) of this section must be disclosed in bold text. However, bold text shall not be used for: The amount of any periodic fee disclosed pursuant to paragraph (b)(2) of this section that is not an annualized amount; and other annual percentage rates or fee amounts disclosed in the table.

(v) For an application or a solicitation that is accessed by the consumer in electronic form, the disclosures required under this section may be provided to the consumer in electronic form on or with the application or solicitation.

(vi)(A) Except as provided in paragraph (a)(2)(vi)(B) of this section, the table described in paragraph (a)(2)(i) of this section must be provided in a prominent location on or with an application or a solicitation.

(B) If the table described in paragraph (a)(2)(i) of this section is provided electronically, it must be provided in close proximity to the application or solicitation.

(3) *Fees based on a percentage.* If the amount of any fee required to be disclosed under this section is determined on the basis of a percentage of another amount, the percentage used and the identification of the amount against which the percentage is applied may be disclosed instead of the amount of the fee.

(4) *Fees that vary by state.* Card issuers that impose fees referred to in paragraphs (b)(8) through (12) of this section that vary by state may, at the issuer's option, disclose in the table required by paragraph (a)(2)(i) of this section: The specific fee applicable to the consumer's account; or the range of the fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to a disclosure provided with the table where the amount of the fee applicable to the consumer's account is disclosed. A card issuer may not list fees for multiple states in the table.

(5) *Exceptions.* This section does not apply to:

(i) Home-equity plans accessible by a credit or charge card that are subject to the requirements of §1026.40;

(ii) Overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards;

(iii) Lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines;

(iv) Lines of credit accessed solely by account numbers except for a covered separate credit feature solely accessible by an account number that is a hybrid prepaid-credit card as defined in §1026.61;

(v) Additions of a credit or charge card to an existing open-end plan;

(vi) General purpose applications unless the application, or material accompanying it, indicates that it can be used to open a credit or charge card account; or

(vii) Consumer-initiated requests for applications.

(b) *Required disclosures.* The card issuer shall disclose the items in this paragraph on or with an application or a solicitation in accordance with the requirements of paragraphs (c), (d), (e)(1), or (f) of this section. A credit card issuer shall disclose all applicable items in this paragraph except for paragraph (b)(7) of this section. A charge card issuer shall disclose the applicable items in paragraphs (b)(2), (4), (7) through (12), and (15) of this section. With respect to a covered separate credit feature that is a charge card account accessible by a hybrid prepaid-credit card as defined in §1026.61, a charge card issuer also shall disclose the applicable items in paragraphs (b)(3), (13), and (14) of this section.

(1) *Annual percentage rate.* Each periodic rate that may be used to compute the finance charge on an outstanding balance for purchases, a cash advance,

or a balance transfer, expressed as an annual percentage rate (as determined by § 1026.14(b)). When more than one rate applies for a category of transactions, the range of balances to which each rate is applicable shall also be disclosed. The annual percentage rate for purchases disclosed pursuant to this paragraph shall be in at least 16-point type, except for the following: Oral disclosures of the annual percentage rate for purchases; or a penalty rate that may apply upon the occurrence of one or more specific events.

(i) *Variable rate information.* If a rate disclosed under paragraph (b)(1) of this section is a variable rate, the card issuer shall also disclose the fact that the rate may vary and how the rate is determined. In describing how the applicable rate will be determined, the card issuer must identify the type of index or formula that is used in setting the rate. The value of the index and the amount of the margin that are used to calculate the variable rate shall not be disclosed in the table. A disclosure of any applicable limitations on rate increases shall not be included in the table.

(ii) *Discounted initial rate.* If the initial rate is an introductory rate, as that term is defined in § 1026.16(g)(2)(ii), the card issuer must disclose in the table the introductory rate, the time period during which the introductory rate will remain in effect, and must use the term ''introductory'' or ''intro'' in immediate proximity to the introductory rate. The card issuer also must disclose the rate that would otherwise apply to the account pursuant to paragraph (b)(1) of this section. Where the rate is not tied to an index or formula, the card issuer must disclose the rate that will apply after the introductory rate expires. In a variable-rate account, the card issuer must disclose a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in paragraphs (c)(2), (d)(3), or (e)(4) of this section, as applicable.

(iii) *Premium initial rate.* If the initial rate is temporary and is higher than the rate that will apply after the temporary rate expires, the card issuer must disclose the premium initial rate pursuant to paragraph (b)(1) of this section and the time period during which the premium initial rate will remain in effect. Consistent with paragraph (b)(1) of this section, the premium initial rate for purchases must be in at least 16-point type. The issuer must also disclose in the table the rate that will apply after the premium initial rate expires, in at least 16-point type.

(iv) *Penalty rates*—(A) *In general.* Except as provided in paragraph (b)(1)(iv)(B) and (C) of this section, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose pursuant to this paragraph (b)(1) the increased rate that may apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect.

(B) *Introductory rates.* If the issuer discloses an introductory rate, as that term is defined in § 1026.16(g)(2)(ii), in the table or in any written or electronic promotional materials accompanying applications or solicitations subject to paragraph (c) or (e) of this section, the issuer must briefly disclose directly beneath the table the circumstances, if any, under which the introductory rate may be revoked, and the type of rate that will apply after the introductory rate is revoked.

(C) *Employee preferential rates.* If a card issuer discloses in the table a preferential annual percentage rate for which only employees of the card issuer, employees of a third party, or other individuals with similar affiliations with the card issuer or third party, such as executive officers, directors, or principal shareholders are eligible, the card issuer must briefly disclose directly beneath the table the circumstances under which such preferential rate may be revoked, and the rate that will apply after such preferential rate is revoked.

(v) *Rates that depend on consumer's creditworthiness.* If a rate cannot be determined at the time disclosures are given because the rate depends, at least in part, on a later determination of the consumer's creditworthiness, the card issuer must disclose the specific rates or the range of rates that could apply and a statement that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness, and other factors if applicable. If the rate that depends, at least in part, on a later determination of the consumer's creditworthiness is a penalty rate, as described in paragraph (b)(1)(iv) of this section, the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply.

(vi) *APRs that vary by state.* Issuers imposing annual percentage rates that vary by state may, at the issuer's option, disclose in the table: the specific annual percentage rate applicable to the consumer's account; or the range of the annual percentage rates, if the disclosure includes a statement that the annual percentage rate varies by state and refers the consumer to a disclosure provided with the table where the annual percentage rate applicable to the consumer's account is disclosed. A card issuer may not list annual percentage rates for multiple states in the table.

(2) *Fees for issuance or availability.* (i) Any annual or other periodic fee that may be imposed for the issuance or availability of a credit or charge card, including any fee based on account activity or inactivity; how frequently it will be imposed; and the annualized amount of the fee.

(ii) Any non-periodic fee that relates to opening an account. A card issuer must disclose that the fee is a one-time fee.

(3) *Fixed finance charge; minimum interest charge.* Any fixed finance charge and a brief description of the charge. Any minimum interest charge if it exceeds $1.00 that could be imposed during a billing cycle, and a brief description of the charge. The $1.00 threshold amount shall be adjusted periodically by the Bureau to reflect changes in the Consumer Price Index. The Bureau shall calculate each year a price level adjusted minimum interest charge using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current minimum interest charge threshold has risen by a whole dollar, the minimum interest charge will be increased by $1.00. The issuer may, at its option, disclose in the table minimum interest charges below this threshold.

(4) *Transaction charges.* Any transaction charge imposed by the card issuer for the use of the card for purchases.

(5) *Grace period.* The date by which or the period within which any credit extended for purchases may be repaid without incurring a finance charge due to a periodic interest rate and any conditions on the availability of the grace period. If no grace period is provided, that fact must be disclosed. If the length of the grace period varies, the card issuer may disclose the range of days, the minimum number of days, or the average number of days in the grace period, if the disclosure is identified as a range, minimum, or average. In disclosing in the tabular format a grace period that applies to all types of purchases, the phrase ''How to Avoid Paying Interest on Purchases'' shall be used as the heading for the row describing the grace period. If a grace period is not offered on all types of purchases, in disclosing this fact in the tabular format, the phrase ''Paying Interest'' shall be used as the heading for the row describing this fact.

(6) *Balance computation method.* The name of the balance computation method listed in paragraph (g) of this section that is used to determine the balance for purchases on which the finance charge is computed, or an explanation of the method used if it is not listed. In determining which balance computation method to disclose, the card issuer shall assume that credit extended for purchases will not be repaid within the grace period, if any.

(7) *Statement on charge card payments.* A statement that charges incurred by use of the charge card are due when the periodic statement is received.

(8) *Cash advance fee.* Any fee imposed for an extension of credit in the form of cash or its equivalent.

(9) *Late payment fee.* Any fee imposed for a late payment.

(10) *Over-the-limit fee.* Any fee imposed for exceeding a credit limit.

(11) *Balance transfer fee.* Any fee imposed to transfer an outstanding balance.

(12) *Returned-payment fee.* Any fee imposed by the card issuer for a returned payment.

(13) *Required insurance, debt cancellation or debt suspension coverage.* (i) A fee for insurance described in § 1026.4(b)(7) or debt cancellation or suspension coverage described in § 1026.4(b)(10), if the insurance or debt cancellation or suspension coverage is required as part of the plan; and

(ii) A cross reference to any additional information provided about the insurance or coverage accompanying the application or solicitation, as applicable.

(14) *Available credit.* If a card issuer requires fees for the issuance or availability of credit described in paragraph (b)(2) of this section, or requires a security deposit for such credit, and the total amount of those required fees and/or security deposit that will be imposed and charged to the account when the account is opened is 15 percent or more of the minimum credit limit for the card, a card issuer must disclose the available credit remaining after these fees or security deposit are debited to the account, assuming that the consumer receives the minimum credit limit. In determining whether the 15 percent threshold test is met, the issuer must only consider fees for issuance or availability of credit, or a security deposit, that are required. If fees for issuance or availability are optional, these fees should not be considered in determining whether the disclosure must be given. Nonetheless, if the 15 percent threshold test is met, the issuer in providing the disclosure must disclose the amount of available credit calculated by excluding those optional fees, and the available credit including those optional fees. This paragraph does not apply with respect to fees or security deposits that are not debited to the account.

(15) *Web site reference.* A reference to the Web site established by the Bureau and a statement that consumers may obtain on the Web site information about shopping for and using credit cards. Until January 1, 2013, issuers may substitute for this reference a reference to the Web site established by the Board of Governors of the Federal Reserve System.

(c) *Direct mail and electronic applications and solicitations*—(1) *General.* The card issuer shall disclose the applicable items in paragraph (b) of this section on or with an application or solicitation that is mailed to consumers or provided to consumers in electronic form.

(2) *Accuracy.* (i) Disclosures in direct mail applications and solicitations must be accurate as of the time the disclosures are mailed. An accurate variable annual percentage rate is one in effect within 60 days before mailing.

(ii) Disclosures provided in electronic form must be accurate as of the time they are sent, in the case of disclosures sent to a consumer's email address, or as of the time they are viewed by the public, in the case of disclosures made available at a location such as a card issuer's Web site. An accurate variable annual percentage rate provided in electronic form is one in effect within 30 days before it is sent to a consumer's email address, or viewed by the public, as applicable.

(d) *Telephone applications and solicitations*—(1) *Oral disclosure.* The card issuer shall disclose orally the information in paragraphs (b)(1) through (7) and (b)(14) of this section, to the extent applicable, in a telephone application or solicitation initiated by the card issuer.

(2) *Alternative disclosure.* The oral disclosure under paragraph (d)(1) of this section need not be given if the card issuer either:

(i)(A) Does not impose a fee described in paragraph (b)(2) of this section; or

(B) Imposes such a fee but provides the consumer with a right to reject the plan consistent with § 1026.5(b)(1)(iv); and

(ii) The card issuer discloses in writing within 30 days after the consumer requests the card (but in no event later than the delivery of the card) the following:

(A) The applicable information in paragraph (b) of this section; and

(B) As applicable, the fact that the consumer has the right to reject the plan and not be obligated to pay fees described in paragraph (b)(2) or any other fees or charges until the consumer has used the account or made a payment on the account after receiving a billing statement.

(3) *Accuracy.* (i) The oral disclosures under paragraph (d)(1) of this section must be accurate as of the time they are given.

(ii) The alternative disclosures under paragraph (d)(2) of this section generally must be accurate as of the time they are mailed or delivered. A variable annual percentage rate is one that is accurate if it was:

(A) In effect at the time the disclosures are mailed or delivered; or

(B) In effect as of a specified date (which rate is then updated from time to time, but no less frequently than each calendar month).

(e) *Applications and solicitations made available to general public.* The card issuer shall provide disclosures, to the extent applicable, on or with an application or solicitation that is made available to the general public, including one contained in a catalog, magazine, or other generally available publication. The disclosures shall be provided in accordance with paragraph (e)(1) or (e)(2) of this section.

(1) *Disclosure of required credit information.* The card issuer may disclose in a prominent location on the application or solicitation the following:

(i) The applicable information in paragraph (b) of this section;

(ii) The date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change after that date; and

(iii) A statement that the consumer should contact the card issuer for any change in the required information since it was printed, and a toll-free telephone number or a mailing address for that purpose.

(2) *No disclosure of credit information.* If none of the items in paragraph (b) of this section is provided on or with the application or solicitation, the card issuer may state in a prominent location on the application or solicitation the following:

(i) There are costs associated with the use of the card; and

(ii) The consumer may contact the card issuer to request specific information about the costs, along with a toll-free telephone number and a mailing address for that purpose.

(3) *Prompt response to requests for information.* Upon receiving a request for any of the information referred to in this paragraph, the card issuer shall promptly and fully disclose the information requested.

(4) *Accuracy.* The disclosures given pursuant to paragraph (e)(1) of this section must be accurate as of the date of printing. A variable annual percentage rate is accurate if it was in effect within 30 days before printing.

(f) *In-person applications and solicitations.* A card issuer shall disclose the information in paragraph (b) of this section, to the extent applicable, on or with an application or solicitation that is initiated by the card issuer and given to the consumer in person. A card issuer complies with the requirements of this paragraph if the issuer provides disclosures in accordance with paragraph (c)(1) or (e)(1) of this section.

(g) *Balance computation methods defined.* The following methods may be described by name. Methods that differ due to variations such as the allocation of payments, whether the finance charge begins to accrue on the transaction date or the date of posting the transaction, the existence or length of a grace period, and whether the balance is adjusted by charges such as late payment fees, annual fees and unpaid finance charges do not constitute separate balance computation methods.

(1)(i) *Average daily balance (including new purchases).* This balance is figured by adding the outstanding balance (including new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(ii) *Average daily balance (excluding new purchases).* This balance is figured by adding the outstanding balance (excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle.

(2) *Adjusted balance.* This balance is figured by deducting payments and credits made during the billing cycle from the outstanding balance at the beginning of the billing cycle.

(3) *Previous balance.* This balance is the outstanding balance at the beginning of the billing cycle.

(4) *Daily balance.* For each day in the billing cycle, this balance is figured by taking the beginning balance each day, adding any new purchases, and subtracting any payment and credits.

[76 FR 79772, Dec. 22, 2011, as amended at 81 FR 84370, Nov. 22, 2016]

§ 1026.61 Hybrid prepaid-credit cards.

(a) *Hybrid prepaid-credit card*—(1) *In general.* (i) Credit offered in connection with a prepaid account is subject to this section and this regulation as specified below.

(ii) For purposes of this regulation, except as provided in paragraph (a)(4) of this section, a prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature as described in paragraph (a)(2)(i) of this section when it can access credit from that credit feature, or with respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in paragraph (a)(3) of this section when it can access credit from that credit feature. A hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to those credit features.

(iii) With respect to a credit feature structured as a negative balance on the asset feature of the prepaid account as described in paragraph (a)(3) of this section, a prepaid card is not a hybrid prepaid-credit card or a credit card for purposes of this regulation if the conditions set forth in paragraph (a)(4) of this section are met.

(2) *Prepaid card can access credit from a covered separate credit feature*—(i) *Covered separate credit feature.* (A) A separate credit feature that can be accessed by a hybrid prepaid-credit card as described in this paragraph (a)(2)(i) is defined as a covered separate credit feature. A prepaid card is a hybrid prepaid-credit card with respect to a separate credit feature when it is a single device that can be used from time to time to access the separate credit feature where the following two conditions are both satisfied:

(*1*) The card can be used to draw, transfer, or authorize the draw or transfer of credit from the separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; and

(*2*) The separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

(B) A separate credit feature that meets the conditions set forth in paragraph (a)(2)(i)(A) of this section is a covered separate credit feature accessible by a hybrid prepaid-credit card even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

(ii) *Non-covered separate credit feature.* A separate credit feature that does not meet the two conditions set forth in paragraph (a)(2)(i) of this section is defined as a non-covered separate credit feature. A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature, even if the prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature as described in paragraph (a)(2)(i) of this section. A non-covered separate credit feature is not subject to the rules applicable to hybrid prepaid-credit cards; however, it may be subject to this regulation depending on its own terms and conditions, independent of the connection to the prepaid account.

(3) *Prepaid card can access credit extended through a negative balance on the asset feature of the prepaid account*—(i) *In general.* Except as provided in paragraph (a)(4) of this section, a prepaid card is a hybrid prepaid-credit card when it is a single device that can be used from time to time to access credit extended through a negative balance on the asset feature of the prepaid account.

(ii) *Negative asset balances.* Notwithstanding paragraph (a)(3)(i) of this section with regard to coverage under this regulation, structuring a hybrid prepaid-credit card to access credit through a negative balance on the asset feature violates paragraph (b) of this section. A prepaid account issuer can use a negative asset balance structure to extend credit on an asset feature of a prepaid account only if the prepaid card is not a hybrid prepaid-credit card with respect to that credit as described in paragraph (a)(4) of this section.

(4) *Exception for credit extended through a negative balance.* A prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account and is not a credit card for purposes of this regulation with respect to that credit where:

(i) The prepaid card cannot access credit from a covered separate credit feature as described in paragraph (a)(2)(i) of this section that is offered by a prepaid account issuer or its affiliate; and

(ii) The prepaid card only can access credit extended through a negative balance on the asset feature of the prepaid account where both paragraphs (a)(4)(ii)(A) and (B) of this section are satisfied.

(A) The prepaid account issuer has an established policy and practice of either declining to authorize any transaction for which it reasonably believes the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction, or declining to authorize any such transactions except in one or more of the following circumstances:

(*1*) The amount of the transaction will not cause the asset feature balance to become negative by more than $10 at the time of the authorization; or

(*2*) In cases where the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account or where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account but in either case the funds from the separate asset account have not yet settled, the amount of the transaction will not cause the asset feature balance to become negative at the time of the authorization by more than the incoming or requested load amount, as applicable.

(B) The following fees or charges are not imposed on the asset feature of the prepaid account:

(*1*) Any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. This paragraph does not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available;

(*2*) Any fees or charges that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature, except that a prepaid account issuer may impose fees or charges for the actual costs of collecting the credit extended if otherwise permitted by law; or

(*3*) Any fees or charges where the amount of the fee or charge is higher when credit is extended on the asset feature or when there is a negative balance on the asset feature.

(C) A prepaid account issuer may still satisfy the exception in paragraph (a)(4) of this section even if it debits fees or charges from the asset feature when there are insufficient or unavailable funds in the asset feature to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in paragraph (a)(4)(ii)(B) of this section.

(5) *Definitions.* For purposes of this section and other provisions in the regulation that relate to hybrid prepaid-credit cards:

(i) *Affiliate* means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).

(ii) *Asset feature* means an asset account that is a prepaid account, or an asset subaccount of a prepaid account.

(iii) *Business partner* means a person (other than the prepaid account issuer or its affiliates) that can extend credit through a separate credit feature where the person or its affiliate has an arrangement with a prepaid account issuer or its affiliate except as provided in paragraph (a)(5)(iii)(D) of this section.

(A) *Arrangement defined.* For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a separate credit feature or the person's affiliate has an arrangement with a prepaid account issuer or its affiliate if the circumstances in either paragraph (a)(5)(iii)(B) or (C) of this section are met.

(B) *Arrangement by agreement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if the parties have an agreement that allows the prepaid card from time to time to draw, transfer, or authorize a draw or transfer of credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

(C) *Marketing arrangement.* A person that can extend credit through a separate credit feature or its affiliate has an arrangement with a prepaid account issuer or its affiliate if:

(*1*) The parties have a business, marketing, or promotional agreement or other arrangement which provides that prepaid accounts offered by the prepaid account issuer will be marketed to the customers of the person that can extend credit; or the separate credit feature offered by the person who can extend credit will be marketed to the holders of prepaid accounts offered by the prepaid account issuer (including any marketing to customers to encourage them to authorize the prepaid card to access the separate credit feature as described in paragraph (a)(5)(iii)(C)(*2*) of this section); and

(*2*) At the time of the marketing agreement or arrangement described in paragraph (a)(5)(iii)(C)(*1*) of this section, or at any time afterwards, the prepaid card from time to time can draw, transfer, or authorize the draw or transfer of credit from the separate credit feature offered by the person that can extend credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This requirement is satisfied even if there is no specific agreement between the parties that the card can access the credit feature, as described in paragraph (a)(5)(iii)(B) of this section.

(D) *Exception for certain credit card account arrangements.* For purposes of paragraph (a)(5)(iii) of this section, a person that can extend credit through a credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in paragraphs (a)(5)(iii)(A) through (C) of this section with regard to such credit card account if all of the following conditions are met:

(*1*) The credit card account is a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card.

(*2*) The prepaid account issuer and the card issuer do not allow the prepaid card to draw, transfer, or authorize the draw or transfer of credit from the credit card account from time to time in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, except where the prepaid account issuer or the card issuer has received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described above. If the credit card account is linked to the prepaid account prior to April 1, 2019, or prior to the arrangement between the prepaid account issuer and the card issuer as described in paragraphs (a)(5)(iii)(A) through (C) of this section, the prepaid account issuer and the card issuer will be deemed to have satisfied this condition even if they have not received from the consumer a written request that is separately signed or initialized to authorize the prepaid card to access the credit card account as described in this paragraph.

(*3*) The prepaid account issuer and the card issuer do not condition the acquisition or retention of the prepaid account or the credit card account on whether a consumer authorizes the prepaid card to access the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section. If the credit card account is linked to the prepaid account prior to April 1, 2019, this condition only applies to the retention of the prepaid account and the credit card account on or after April 1, 2019.

(*4*) The prepaid account issuer applies the same terms, conditions, or features to the prepaid account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section as it applies to the consumer's prepaid account when the consumer does not authorize such a linkage. In addition, the prepaid account issuer applies the same fees to load funds from the credit card account that is linked to the prepaid account as described above as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliate, or a person with which the prepaid account issuer has an arrangement as described in paragraphs (a)(5)(iii)(A) through (C) of this section.

(*5*) The card issuer applies the same specified terms and conditions to the credit card account when a consumer authorizes linking the prepaid card to the credit card account as described in paragraph (a)(5)(iii)(D)(*2*) of this section as it applies to the consumer's credit card account when the consumer does not authorize such a linkage. In addition, the card issuer applies the same specified terms and conditions to extensions of credit accessed by the prepaid card from the credit card account as it applies to extensions of credit accessed by the traditional credit card. For purposes of this paragraph, ''specified terms and conditions'' means the terms and conditions required to be disclosed under §1026.6(b), any repayment terms and conditions, and the limits on liability for unauthorized credit transactions.

(iv) *Credit feature* means a separate credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card, or a negative balance on an asset feature of a prepaid account through which credit can be extended in connection with a prepaid card.

(v) *Prepaid account* means a prepaid account as defined in Regulation E, 12 CFR 1005.2(b)(3).

(vi) *Prepaid account issuer* means a financial institution as defined in Regulation E, 12 CFR 1005.2(i), with respect to a prepaid account.

(vii) *Prepaid card* means any card, code, or other device that can be used to access a prepaid account.

(viii) *Separate credit feature* means a credit account or a credit subaccount of a prepaid account through which credit can be extended in connection with a prepaid card that is separate from the asset feature of the prepaid account. This term does not include a negative balance on an asset feature of a prepaid account.

(b) *Structure of credit features accessible by hybrid prepaid-credit cards.* With respect to a credit feature that is accessible by a hybrid prepaid-credit card, a card issuer shall not structure the credit feature as a negative balance on the asset feature of a prepaid account. A card issuer shall structure the credit feature as a separate credit feature, either as a separate credit account, or as a credit subaccount of a prepaid account that is separate from the asset feature of the prepaid account. The separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under §1026.61(a)(2)(i).

(c) *Timing requirement for credit card solicitation or application with respect to hybrid prepaid-credit cards.* (1) With respect to a covered separate credit feature that could be accessible by a hybrid prepaid-credit card at any point, a card issuer must not do any of the following until 30 days after the prepaid account has been registered:

(i) Open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card;

(ii) Make a solicitation or provide an application to open a covered separate credit feature that could be accessible by the hybrid prepaid-credit card; or

(iii) Allow an existing credit feature that was opened prior to the consumer obtaining the prepaid account to become a covered separate credit feature accessible by the hybrid prepaid-credit card.

(2) For purposes of paragraph (c) of this section, the term *solicitation* has the meaning set forth in §1026.60(a)(1).

[81 FR 84370, Nov. 22, 2016, as amended at 83 FR 6439, Feb. 13, 2018]

APPENDIX A TO PART 1026—EFFECT ON STATE LAWS

REQUEST FOR DETERMINATION

A request for a determination that a state law is inconsistent or that a state law is substantially the same as the Act and regulation shall be in writing and addressed to the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street NW., Washington, DC 20006. The request shall be made pursuant to the procedures herein.

SUPPORTING DOCUMENTS

A request for a determination shall include the following items:

(1) The text of the state statute, regulation, or other document that is the subject of the request.

(2) Any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies the relevant provision.

(3) A comparison of the state law with the corresponding provision of the Federal law, including a full discussion of the basis for the requesting party's belief that the state provision is either inconsistent or substantially the same.

(4) Any other information that the requesting party believes may assist the Bureau in its determination.

PUBLIC NOTICE OF DETERMINATION

Notice that the Bureau intends to make a determination (either on request or on its own motion) will be published in the FEDERAL REGISTER, with an opportunity for public comment, unless the Bureau finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision.

Subject to the Bureau's rules on Disclosure of Records and Information (12 CFR Part 1070), all requests made, including any documents and other material submitted in support of the requests, will be made available for public inspection and copying.

NOTICE AFTER DETERMINATION

Notice of a final determination will be published in the FEDERAL REGISTER, and the Bureau will furnish a copy of such notice to the party who made the request and to the appropriate state official.

REVERSAL OF DETERMINATION

The Bureau reserves the right to reverse a determination for any reason bearing on the coverage or effect of state or Federal law.

Notice of reversal of a determination will be published in the FEDERAL REGISTER and a copy furnished to the appropriate state official.

APPENDIX B TO PART 1026—STATE EXEMPTIONS

APPLICATION

Any state may apply to the Bureau for a determination that a class of transactions subject to state law is exempt from the requirements of the Act and this part. An application shall be in writing and addressed to the Executive Secretary, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20006, and shall be signed by the appropriate state official. The application shall be made pursuant to the procedures herein.

SUPPORTING DOCUMENTS

An application shall be accompanied by:

(1) The text of the state statute or regulation that is the subject of the application, and any other statute, regulation, or judicial or administrative opinion that implements, interprets, or applies it.

(2) A comparison of the state law with the corresponding provisions of the Federal law.

(3) The text of the state statute or regulation that provides for civil and criminal liability and administrative enforcement of the state law.

(4) A statement of the provisions for enforcement, including an identification of the state office that administers the relevant law, information on the funding and the number and qualifications of personnel engaged in enforcement, and a description of the enforcement procedures to be followed, including information on examination procedures, practices, and policies. If an exemption application extends to federally chartered institutions, the applicant must furnish evidence that arrangements have been made with the appropriate Federal agencies to ensure adequate enforcement of state law in regard to such creditors.

(5) A statement of reasons to support the applicant's claim that an exemption should be granted.

PUBLIC NOTICE OF APPLICATION

Notice of an application will be published, with an opportunity for public comment, in the FEDERAL REGISTER, unless the Bureau finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision.

Subject to the Bureau's rules on Disclosure of Records and Information (12 CFR Part 1070), all applications made, including any documents and other material submitted in support of the applications, will be made available for public inspection and copying.

FAVORABLE DETERMINATION

If the Bureau determines on the basis of the information before it that an exemption should be granted, notice of the exemption will be published in the FEDERAL REGISTER, and a copy furnished to the applicant and to each Federal official responsible for administrative enforcement.

The appropriate state official shall inform the Bureau within 30 days of any change in its relevant law or regulations. The official shall file with the Bureau such periodic reports as the Bureau may require.

The Bureau will inform the appropriate state official of any subsequent amendments to the Federal law, regulation, interpretations, or enforcement policies that might require an amendment to state law, regulation, interpretations, or enforcement procedures.

ADVERSE DETERMINATION

If the Bureau makes an initial determination that an exemption should not be granted, the Bureau will afford the applicant a reasonable opportunity to demonstrate further that an exemption is proper. If the Bureau ultimately finds that an exemption should not be granted, notice of an adverse determination will be published in the FEDERAL REGISTER and a copy furnished to the applicant.

REVOCATION OF EXEMPTION

The Bureau reserves the right to revoke an exemption if at any time it determines that the standards required for an exemption are not met.

Before taking such action, the Bureau will notify the appropriate state official of its intent, and will afford the official such opportunity as it deems appropriate in the circumstances to demonstrate that revocation is improper. If the Bureau ultimately finds that revocation is proper, notice of the Bureau's intention to revoke such exemption will be published in the FEDERAL REGISTER with a reasonable period of time for interested persons to comment.

Notice of revocation of an exemption will be published in the FEDERAL REGISTER. A copy of such notice will be furnished to the appropriate state official and to the Federal officials responsible for enforcement. Upon revocation of an exemption, creditors in that state shall then be subject to the requirements of the Federal law.

APPENDIX C TO PART 1026—ISSUANCE OF OFFICIAL INTERPRETATIONS

OFFICIAL INTERPRETATIONS

Interpretations of this part issued by officials of the Bureau provide the protection afforded under section 130(f) of the Act. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation which will be amended periodically.

REQUESTS FOR ISSUANCE OF OFFICIAL INTERPRETATIONS

A request for an official interpretation shall be in writing and addressed to the Assistant Director, Office of Regulations, Division of Research, Markets, and Regulations, Bureau of Consumer Financial Protection, 1700 G Street, NW., Washington, DC 20006. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

SCOPE OF INTERPRETATIONS

No interpretations will be issued approving creditors' forms, statements, or calculation tools or methods. This restriction does not apply to forms, statements, tools, or methods whose use is required or sanctioned by a government agency.

APPENDIX D TO PART 1026—MULTIPLE ADVANCE CONSTRUCTION LOANS

Section 1026.17(c)(6) permits creditors to treat multiple advance loans to finance construction of a dwelling that may be permanently financed by the same creditor either as a single transaction or as more than one transaction. If the actual schedule of advances is not known, the following methods may be used to estimate the interest portion of the finance charge and the annual percentage rate and to make disclosures. If the creditor chooses to disclose the construction phase separately, whether interest is payable periodically or at the end of construction, part I may be used. If the creditor chooses to disclose the construction and the permanent financing as one transaction, part II may be used.

PART I—CONSTRUCTION PERIOD DISCLOSED SEPARATELY

A. If interest is payable only on the amount actually advanced for the time it is outstanding:

1. Estimated interest—Assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—The number and amounts of any interest payments may be omitted in disclosing the payment schedule under §1026.18(g). The fact that interest payments are required and the timing of such payments shall be disclosed.

4. Amount financed—The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

B. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursement:

1. Estimated interest—Assume that the entire commitment amount is outstanding at the contract interest rate for the entire construction period.

2. Estimated annual percentage rate—Assume a single payment loan that matures at the end of the construction period. The finance charge is the sum of the estimated interest and any prepaid finance charge. The amount financed for computation purposes is determined by subtracting any prepaid finance charge from one-half of the commitment amount.

3. Repayment schedule—Interest payments shall be disclosed in making the repayment schedule disclosure under §1026.18(g).

4. Amount financed—The amount financed for disclosure purposes is the entire commitment amount less any prepaid finance charge.

Example

Assume a $50,000 loan commitment at 10.5% interest with a 5-month construction period and a prepaid finance charge of 2 points.

(A)		(B)
Estimated Interest		
$25,000 x .105 ÷ 12 x 5 = $1,093.75		$50,000 x .105 ÷ 12 x 5 = $2,187.50
Estimated APR		
$\frac{(1{,}093.75 + 1{,}000)}{(25{,}000 - 1{,}000)} \div 5 \times 12 =$	20.94%	$\frac{(2{,}187.50 + 1{,}000)}{(25{,}000 - 1{,}000)} \div 5 \times 12 =$ 31.88%
Disclosures		
Amount financed	$49,000.00	$49,000.00
Prepaid finance charge	1,000.00	1,000.00
FINANCE CHARGE (Estimate)	2,093.75	3,187.50
ANNUAL PERCENTAGE RATE (Estimate)	20.94%	31.88%
Repayment: One payment of principal of $50,000 on 12-12-80, interest on the amount of credit outstanding will be paid monthly.		4 monthly payments of $437.50, beginning 8-12-80, and a final payment of $50,437.50 on 12-12-80.
Total of payments (Estimate)	$51,093.75	$52,187.50

PART II—CONSTRUCTION AND PERMANENT FINANCING DISCLOSED AS ONE TRANSACTION

A. The creditor shall estimate the interest payable during the construction period to be included in the total finance charge as follows:

1. If interest is payable only on the amount actually advanced for the time it is outstanding, assume that one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period.

2. If interest is payable on the entire commitment amount without regard to the dates or amounts of actual disbursements, assume that the entire commitment amount is outstanding at the contract rate for the entire construction period.

B. The creditor shall compute the estimated annual percentage rate as follows:

1. Estimated interest payable during the construction period shall be treated for computation purposes as a prepaid finance charge (although it shall not be treated as a prepaid finance charge for disclosure purposes).

2. The number of payment shall not include any payments of interest only that are made during the construction period.

3. The first payment period shall consist of one-half of the construction period plus the period between the end of the construction period and the amortization payment.

C. The creditor shall disclose the repayment schedule as follows:

1. For loans under paragraph A.1 of part II, other than loans that are subject to §1026.19(e) and (f), without reflecting the number or amounts of payments of interest only that are made during the construction period. The fact that interest payments must be made and the timing of such payments shall be disclosed.

2. For loans under paragraph A.2 of part II and loans under paragraph A.1 of part II that are subject to §1026.19(e) and (f), including any payments of interest only that are made during the construction period.

D. The creditor shall disclose the amount financed as the entire commitment amount less any prepaid finance charge.

Example:

Assume a $50,000 loan commitment at 10.5% interest with a 5-month construction period and a prepaid finance charge of 2 points, followed by 30-year permanent financing at the same rate with monthly amortization payments of $457.37.

Computation of Estimated APR

		Interest on Amount Advanced		Interest on Entire Commitment
Estimated construction interest:				
$25,000 × .105 ÷ 12 × 5	=	$1,093.75	$50,000 × .105 ÷ 12 × 5 = $2,187.50	
Estimated total finance charge:				
360 × $457.37 =	$164,653.20		$164,653.20	
Principal	−50,000.00		−50,000.00	
Interest on Permanent Fin.	114,653.20		114,653.20	
Construction Interest	+1,093.75		+2,187.50	
Points	+1,000.00	$116,746.95	+1,000.00	$117,840.70

Estimated amount financed:				
Principal	$ 50,000.00		$ 50,000.00	
Construction Interest	- 1,093.75		- 2,187.50	
Points	- 1,000.00	$ 47,906.25	- 1,000.00	$ 46,812.50
Number of payments		360		360
Payment amount		$ 457.37		$ 457.37
First payment period (5 ÷ 2) + 1		3 1/2 months	(5 ÷ 2) + 1	3 1/2 months
Estimated APR (Actuarial)		10.75%		11.03%
Estimated APR (Volume I):				
11,574,695 ÷ 47,906.25 = 241.60 = FC/$100			11,784,070 ÷ 46,812.50 = 251.73 = FC/$100	
First period adjustment = 3 mo., 15 days = 45.0			First period adjustment = 3 mo., 15 days = 45.0	
Using 365 payment line, the figure closest to 241.60 is 241.03, which corresponds to an APR of		11%	Using 365 payment line, the figure closest to 251.73 is 252.33, which corresponds to an APR of	11.75%

Disclosures

Amount financed	$ 49,000.00	$ 49,000.00
Prepaid finance charge	1,000.00	1,000.00
FINANCE CHARGE (Estimate)	116,246.45	117,640.70
ANNUAL PERCENTAGE RATE (Estimate)	11%	11.75%
Repayment. Interest on the amount of credit outstanding during the construction period will be paid monthly, followed by 360 monthly payments of $457.37, beginning 1-12-81.		5 monthly payments of $437.50 beginning 8-12-80, followed by 360 monthly payments of $457.37 beginning 1-12-81.
Total of payments (Estimate)	$165,246.45	$166,640.70

[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 80130, Dec. 31, 2013]

APPENDIX E TO PART 1026—RULES FOR CARD ISSUERS THAT BILL ON A TRANSACTION-BY-TRANSACTION BASIS

The following provisions of Subpart B apply if credit cards are issued and the card issuer and the seller are the same or related persons; no finance charge is imposed; consumers are billed in full for each use of the card on a transaction-by-transaction basis, by means of an invoice or other statement reflecting each use of the card; and no cumulative account is maintained which reflects the transactions by each consumer during a period of time, such as a month. The term "related person" refers to, for example, a franchised or licensed seller of a creditor's product or service or a seller who assigns or sells sales accounts to a creditor or arranges for credit under a plan that allows the consumer to use the credit only in transactions with that seller. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

1. *Section 1026.6(a)(5) or §1026.6(b)(5)(iii).*

2. *Section 1026.6(a)(2) or §1026.6(b)(3)(ii)(B), as applicable.* The disclosure required by §1026.6(a)(2) or §1026.6(b)(3)(ii)(B) shall be limited to those charges that are or may be imposed as a result of the deferral of payment by use of the card, such as late payment or delinquency charges. A tabular format is not required.

3. *Section 1026.6(a)(4) or §1026.6(b)(5)(ii).*

4. *Section 1026.7(a)(2) or §1026.7(b)(2), as applicable; §1026.7(a)(9) or §1026.7(b)(9), as applicable.* Creditors may comply by placing the required disclosures on the invoice or statement sent to the consumer for each transaction.

5. *Section 1026.9(a).* Creditors may comply by mailing or delivering the statement required by §1026.6(a)(5) or §1026.6(b)(5)(iii) (see appendix G–3 and G–3(A) to this part) to each consumer receiving a transaction invoice during a one-month period chosen by the card issuer or by sending either the statement prescribed by §1026.6(a)(5) or §1026.6(b)(5)(iii), or an alternative billing error rights statement substantially similar to that in appendix G–4 and G–4(A) to this part, with each invoice sent to a consumer.

6. *Section 1026.9(c).* A tabular format is not required.

7. *Section 1026.10.*

8. *Section 1026.11(a).* This section applies when a card issuer receives a payment or other credit that exceeds by more than $1 the amount due, as shown on the transaction invoice. The requirement to credit amounts to an account may be complied with by other reasonable means, such as by a credit memorandum. Since no periodic statement is provided, a notice of the credit balance shall be sent to the consumer within a reasonable period of time following its occurrence unless a refund of the credit balance is mailed or delivered to the consumer within seven business days of its receipt by the card issuer.

9. *Section 1026.12 including §1026.12(c) and (d), as applicable.* Section 1026.12(e) is inapplicable.

10. *Section 1026.13, as applicable.* All references to "periodic statement" shall be read to indicate the invoice or other statement for the relevant transaction. All actions with regard to correcting and adjusting a consumer's account may be taken by issuing a refund or a new invoice, or by other appropriate means consistent with the purposes of the section.

11. *Section 1026.15, as applicable.*

Appendix F to Part 1026—Optional Annual Percentage Rate Computations for Creditors Offering Open-End Credit Plans Secured by a Consumer's Dwelling

In determining the denominator of the fraction under §1026.14(c)(3), no amount will be used more than once when adding the sum of the balances subject to periodic rates to the sum of the amounts subject to specific transaction charges. (Where a portion of the finance charge is determined by application of one or more daily periodic rates, the phrase "sum of the balances" shall also mean the "average of daily balances.") In every case, the full amount of transactions subject to specific transaction charges shall be included in the denominator. Other balances or parts of balances shall be included according to the manner of determining the balance subject to a periodic rate, as illustrated in the following examples of accounts on monthly billing cycles:

1. Previous balance—none.

A specific transaction of $100 occurs on the first day of the billing cycle. The average daily balance is $100. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge, which is $4.50. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transactions (such excess in this case is 0), totaling $100.

The annual percentage rate is the quotient (which is 4½%) multiplied by 12 (the number of months in a year), i.e., 54%.

2. Previous balance—$100.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. A specific transaction charge of 3% is applicable to the specific transaction. The periodic rate is 1½% applicable to the average daily balance. The numerator is the amount of the finance charge which is $5.25. The denominator is the amount of the transaction (which is $100), plus the amount by which the balance subject to the periodic rate exceeds the amount of the specific transaction (such excess in this case is $50), totaling $150. As explained in example 1, the annual percentage rate is 3½% × 12 = 42%.

3. If, in example 2, the periodic rate applies only to the previous balance, the numerator is $4.50 and the denominator is $200 (the amount of the transaction, $100, plus the balance subject only to the periodic rate, the $100 previous balance). As explained in example 1, the annual percentage rate is 2¼% × 12 = 27%.

4. If, in example 2, the periodic rate applies only to an adjusted balance (previous balance less payments and credits) and the consumer made a payment of $50 at the midpoint of the billing cycle, the numerator is $3.75 and the denominator is $150 (the amount of the transaction, $100, plus the balance subject to the periodic rate, the $50 adjusted balance). As explained in example 1, the annual percentage rate is 2½% × 12 = 30%.

5. Previous balance—$100.

A specific transaction (check) of $100 occurs at the midpoint of the billing cycle. The average daily balance is $150. The specific transaction charge is $.25 per check. The periodic rate is 1½% applied to the average daily balance. The numerator is the amount of the finance charge, which is $2.50 and includes the $.25 check charge and the $2.25 resulting from the application of the periodic rate. The denominator is the full amount of the specific transaction (which is $100) plus the amount by which the average daily balance exceeds the amount of the specific transaction (which in this case is $50), totaling $150. As explained in example 1, the annual percentage rate would be 1–2/3% × 12 = 20%.

6. Previous balance—none.

A specific transaction of $100 occurs at the midpoint of the billing cycle. The average daily balance is $50. The specific transaction charge is 3% of the transaction amount or $3.00. The periodic rate is 1½% per month applied to the average daily balance. The numerator is the amount of the finance charge, which is $3.75, including the $3.00 transaction charge and $.75 resulting from application of the periodic rate. The denominator is the full amount of the specific transaction ($100) plus the amount by which the balance subject to the periodic rate exceeds the amount of the transaction ($0). Where the specific transaction amount exceeds the balance subject to the periodic rate, the resulting number is considered to be zero rather than a negative number ($50 − $100 = −$50). The denominator, in this case, is $100. As explained in example 1, the annual percentage rate is 3¾% × 12 = 45%.

APPENDIX G TO PART 1026—OPEN-END MODEL FORMS AND CLAUSES

G–1—BALANCE COMPUTATION METHODS MODEL CLAUSES (HOME-EQUITY PLANS)

(a) Adjusted Balance Method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ‘‘adjusted balance’’ of your account. We get the ‘‘adjusted balance’’ by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid finance charges and] any payments and credits received during the present billing cycle.

(b) Previous Balance Method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle [minus any unpaid finance charges]. We do not subtract any payments or credits received during the billing cycle. [The amount of payments and credits to your account this billing cycle was $ ________.]

(c) Average Daily Balance Method (Excluding Current Transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ‘‘average daily balance’’ of your account (excluding current transactions). To get the ‘‘average daily balance’’ we take the beginning balance of your account each day and subtract any payments or credits [and any unpaid finance charges]. We do not add in any new [purchases/advances/loans]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the ‘‘average daily balance.’’

(d) Average Daily Balance Method (Including Current Transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ‘‘average daily balance’’ of your account (including current transactions). To get the ‘‘average daily balance’’ we take the beginning balance of your account each day, add any new [purchases/advances/loans], and subtract any payments or credits, [and unpaid finance charges]. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the ‘‘average daily balance.’’

(e) Ending Balance Method

We figure [a portion of] the finance charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new purchases and deducting payments and credits made during the billing cycle).

(f) Daily Balance Method (Including Current Transactions)

We figure [a portion of] the finance charge on your account by applying the periodic rate to the ‘‘daily balance’’ of your account for each day in the billing cycle. To get the ‘‘daily balance’’ we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid finance charges and] any payments or credits. This gives us the daily balance.

G–1(A)—Balance Computation Methods Model Clauses (Plans Other Than Home-Equity Plans)

(a) Adjusted Balance Method

We figure the interest charge on your account by applying the periodic rate to the ‘‘adjusted balance’’ of your account. We get the ‘‘adjusted balance’’ by taking the balance you owed at the end of the previous billing cycle and subtracting [any unpaid interest or other finance charges and] any payments and credits received during the present billing cycle.

(b) Previous Balance Method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the beginning of each billing cycle. We do not subtract any payments or credits received during the billing cycle.

(c) Average Daily Balance Method (Excluding Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the ‘‘average daily balance’’ of your account. To get the ‘‘average daily balance’’ we take the beginning balance of your account each day and subtract [any unpaid interest or other finance charges and] any payments or credits. We do not add in any new [purchases/advances/fees]. This gives us the daily balance. Then, we add all the daily balances for the billing cycle together and divide the total by the number of days in the billing cycle. This gives us the ‘‘average daily balance.’’

(d) Average Daily Balance Method (Including Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the ‘‘average daily balance’’ of your account. To get the ‘‘average daily balance’’ we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance. Then, we add up all the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the ''average daily balance.''

(e) Ending Balance Method

We figure the interest charge on your account by applying the periodic rate to the amount you owe at the end of each billing cycle (including new [purchases/advances/fees] and deducting payments and credits made during the billing cycle).

(f) Daily Balance Method (Including Current Transactions)

We figure the interest charge on your account by applying the periodic rate to the ''daily balance'' of your account for each day in the billing cycle. To get the ''daily balance'' we take the beginning balance of your account each day, add any new [purchases/advances/fees], and subtract [any unpaid interest or other finance charges and] any payments or credits. This gives us the daily balance.

G–2—Liability for Unauthorized Use Model Clause (Home-Equity Plans)

You may be liable for the unauthorized use of your credit card [or other term that describes the credit card]. You will not be liable for unauthorized use that occurs after you notify [name of card issuer or its designee] at [address], orally or in writing, of the loss, theft, or possible unauthorized use. [You may also contact us on the Web: [Creditor Web or email address]] In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

G–2(A)—Liability for Unauthorized Use Model Clause (Plans Other Than Home-Equity Plans)

If you notice the loss or theft of your credit card or a possible unauthorized use of your card, you should write to us immediately at: [address] [address listed on your bill],

or call us at [telephone number].

[You may also contact us on the Web: [Creditor Web or email address]]

You will not be liable for any unauthorized use that occurs after you notify us. You may, however, be liable for unauthorized use that occurs before your notice to us. In any case, your liability will not exceed [insert $50 or any lesser amount under agreement with the cardholder].

G–3—LONG-FORM BILLING-ERROR RIGHTS MODEL FORM (HOME-EQUITY PLANS)

YOUR BILLING RIGHTS

KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under the Fair Credit Billing Act.

Notify Us in Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address listed on your bill]. Write to us as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. [You may also contact us on the Web: [Creditor Web or email address]] You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

- Your name and account number.
- The dollar amount of the suspected error.
- Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are not sure about.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment your letter must reach us three business days before the automatic payment is scheduled to occur.

Your Rights and Our Responsibilities After We Receive Your Written Notice

We must acknowledge your letter within 30 days, unless we have corrected the error by then. Within 90 days, we must either correct the error or explain why we believe the bill was correct.

After we receive your letter, we cannot try to collect any amount you question, or report you as delinquent. We can continue to bill you for the amount you question, including finance charges, and we can apply any unpaid amount against your credit limit. You do not have to pay any questioned amount while we are investigating, but you are still obligated to pay the parts of your bill that are not in question.

If we find that we made a mistake on your bill, you will not have to pay any finance charges related to any questioned amount. If we didn't make a mistake, you may have to pay finance charges, and you will have to make up any missed payments on the questioned amount. In either case, we will send you a statement of the amount you owe and the date that it is due.

If you fail to pay the amount that we think you owe, we may report you as delinquent. However, if our explanation does not satisfy you and you write to us within ten days telling us that you still refuse to pay, we must tell anyone we report you to that you have a question about your bill. And, we must tell you the name of anyone we reported you to. We must tell anyone we report you to that the matter has been settled between us when it finally is.

If we don't follow these rules, we can't collect the first $50 of the questioned amount, even if your bill was correct.

Special Rule for Credit Card Purchases

If you have a problem with the quality of property or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the property or services.

There are two limitations on this right:

(a) You must have made the purchase in your home state or, if not within your home state within 100 miles of your current mailing address; and

(b) The purchase price must have been more than $50.

These limitations do not apply if we own or operate the merchant, or if we mailed you the advertisement for the property or services.

G–3(A)—Long-Form Billing-Error Rights Model Form (Plans Other Than Home-Equity Plans)

Your Billing Rights: Keep This Document For Future Use

This notice tells you about your rights and our responsibilities under the Fair Credit Billing Act.

What To Do If You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or email address]]

In your letter, give us the following information:

• *Account information:* Your name and account number.

• *Dollar amount:* The dollar amount of the suspected error.

• *Description of problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

• Within 60 days after the error appeared on your statement.

• At least 3 business days before an automated payment is scheduled, if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Letter

When we receive your letter, we must do two things:

1. Within 30 days of receiving your letter, we must tell you that we received your letter. We will also tell you if we have already corrected the error.

2. Within 90 days of receiving your letter, we must either correct the error or explain to you why we believe the bill is correct.

While we investigate whether or not there has been an error:

• We cannot try to collect the amount in question, or report you as delinquent on that amount.

• The charge in question may remain on your statement, and we may continue to charge you interest on that amount.

• While you do not have to pay the amount in question, you are responsible for the remainder of your balance.

• We can apply any unpaid amount against your credit limit.

After we finish our investigation, one of two things will happen:

• *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.

• *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable interest and fees. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive our explanation but still believe your bill is wrong, you must write to us within *10 days* telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your bill. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first $50 of the amount you question even if your bill is correct.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (NOTE: Neither of these are necessary if your purchase was based on an advertisement we

mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

[Creditor Name]

[Creditor Address]

[[Creditor Web or email address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay, we may report you as delinquent.

G–4—ALTERNATIVE BILLING-ERROR RIGHTS MODEL FORM (HOME-EQUITY PLANS)

BILLING RIGHTS SUMMARY

In Case of Errors or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us [on a separate sheet] at [address] [the address shown on your bill] as soon as possible. [You may also contact us on the Web: [Creditor Web or email address].] We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights.

In your letter, give us the following information:

• Your name and account number.

• The dollar amount of the suspected error.

• Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

Special Rule for Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than $50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all purchases are covered regardless of amount or location of purchase.)

G–4(A)—ALTERNATIVE BILLING-ERROR RIGHTS MODEL FORM (PLANS OTHER THAN HOME-EQUITY PLANS)

What To Do If You Think You Find A Mistake On Your Statement

If you think there is an error on your statement, write to us at:

[Creditor Name]

[Creditor Address]

[You may also contact us on the Web: [Creditor Web or email address]]

In your letter, give us the following information:

• *Account information:* Your name and account number.

• *Dollar amount:* The dollar amount of the suspected error.

• *Description of Problem:* If you think there is an error on your bill, describe what you believe is wrong and why you believe it is a mistake.

You must contact us within 60 days after the error appeared on your statement.

You must notify us of any potential errors *in writing* [or electronically]. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

While we investigate whether or not there has been an error, the following are true:

• We cannot try to collect the amount in question, or report you as delinquent on that amount.

• The charge in question may remain on your statement, and we may continue to charge you interest on that amount. But, if we determine that we made a mistake, you will not have to pay the amount in question or any interest or other fees related to that amount.

• While you do not have to pay the amount in question, you are responsible for the remainder of your balance.

• We can apply any unpaid amount against your credit limit.

Your Rights If You Are Dissatisfied With Your Credit Card Purchases

If you are dissatisfied with the goods or services that you have purchased with your credit card, and you have tried in good faith to correct the problem with the merchant, you may have the right not to pay the remaining amount due on the purchase.

To use this right, all of the following must be true:

1. The purchase must have been made in your home state or within 100 miles of your current mailing address, and the purchase price must have been more than $50. (NOTE: Neither of these is necessary if your purchase was based on an advertisement we

mailed to you, or if we own the company that sold you the goods or services.)

2. You must have used your credit card for the purchase. Purchases made with cash advances from an ATM or with a check that accesses your credit card account do not qualify.

3. You must not yet have fully paid for the purchase.

If all of the criteria above are met and you are still dissatisfied with the purchase, contact us *in writing* [or electronically] at:

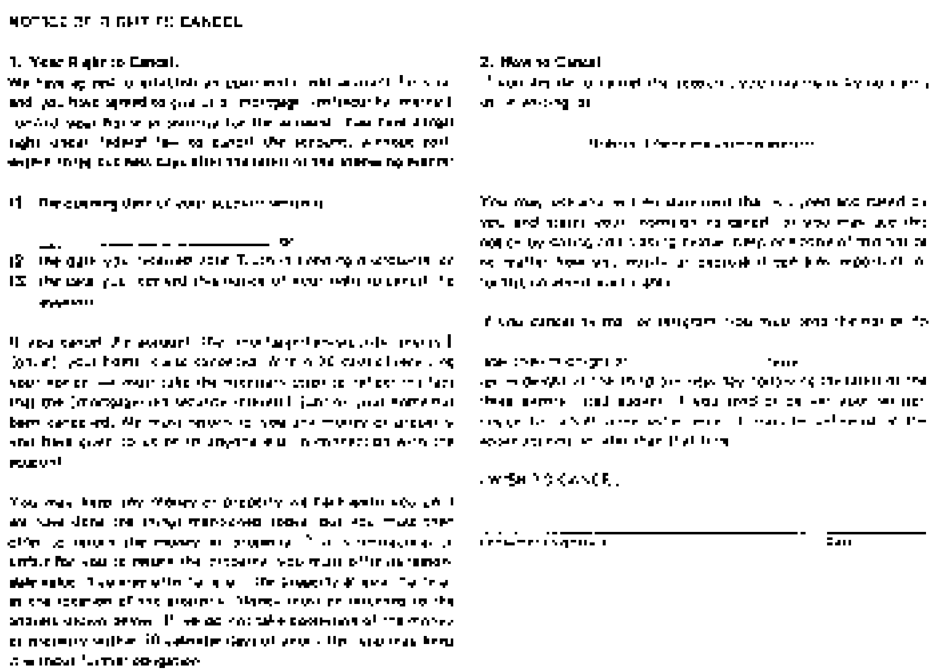
[Creditor Name]

[Creditor Address]

[[Creditor Web address]]

While we investigate, the same rules apply to the disputed amount as discussed above. After we finish our investigation, we will tell you our decision. At that point, if we think you owe an amount and you do not pay we may report you as delinquent.

G-5—Rescission Model Form (When Opening An Account)



G-5—Rescission Model Form (For Each Transaction)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel

We have extended credit to you under your open-end credit account. This extension of credit will increase the amount you owe on your account. We already have a [mortgage/lien/security interest] [on/in] your home as security for your account. You have a legal right under federal law to cancel this extension of credit, without cost, within three business days after the latest of the following events:

(1) the date of the additional extension of credit 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 the additional extension of credit.

If you cancel the additional extension of credit, your cancellation will only apply to the additional amount and to any increase in the [mortgage/lien/security interest] that resulted because of the additional amount. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect the fact that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this extension of credit.

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 shown 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.

2. How to Cancel

If you decide to cancel the additional extension of credit, 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

G-7—Rescission Model Form (When Increasing the Credit Limit)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel

We have agreed to increase the credit limit on your open-end credit account. We have a [mortgage/lien/security interest] [on/in] your home as security for your account. Increasing the credit limit will increase the amount of the [mortgage/lien/security interest] [on/in] your home. You have a legal right under federal law to cancel the increase in your credit limit, without cost, within three business days after the latest of the following events:

(1) the date of the increase in your credit limit, 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 the increase in your credit limit.

If you cancel, your cancellation will apply only to the increase in your credit limit and to the [mortgage/lien/security interest] that resulted from the increase in your credit limit. It will not affect the amount you presently owe, and it will not affect the [mortgage/lien/security interest] we already have [on/in] your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect the fact that any increase in the [mortgage/lien/security interest] [on/in] your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with the increase.

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.

2. How to Cancel

If you decide to cancel the increase in your credit limit, 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 no matter how you notify us 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

G-8—Rescission Model Form (When Adding a Security Interest)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel

[illegible]

2. How to Cancel

[illegible]

I WISH TO CANCEL

Consumer's Signature Date

G-9—Rescission Model Form (When Increasing the Security)

NOTICE OF RIGHT TO CANCEL

1. Your Right to Cancel

You have agreed to increase the amount of the mortgage/lien/security interest [on/in] your home that secures your line of credit account. You have a legal right under federal law to cancel the increase, without cost, within three business days after the latest of the following events:

(1) The date of the increase in the security interest, 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 the increase in the security.

If you cancel the increase in the security, your cancellation will apply only to the increase in the amount of the (mortgage/lien/security interest). It will not affect the amount you presently owe, or the (mortgage/lien/security interest) we already have on your home. Within 20 calendar days after we receive your notice of cancellation, we must take the necessary steps to reflect the fact that the increase in the (mortgage/lien/security interest) on your home has been cancelled. We must also return to you any money or property you have given to us or to anyone else in connection with this increase.

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 shown 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.

2. How to Cancel

If you decide to cancel the increase in security, 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

G-10(A) Applications and Solicitations Model Form (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	[Purchase rate] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[How to Avoid Paying Interest on Purchases/ Paying Interest]	[Description of grace period for purchases or statement that no grace period applies]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge]
For Credit Card Tips from the Consumer Financial Protection Bureau	[Reference to the Bureau's Website]

Fees	
[Annual Fee]/[Set-up and Maintenance Fees]	[Annual or availability of credit, if applicable fee] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees • Balance Transfer • Cash Advance • Foreign Transaction	 [Description of balance transfer fee] [Description of cash advance fee] [Description of foreign transaction fee]
Penalty Fees • Late Payment • Over-the-Credit Limit • Returned Payment	 [Description of late payment fee] [Description of over-the-credit limit fee] [Description of returned payment fee]
Other Fees • Required [insert name of required insurance, or debt cancellation or suspension coverage]	 [Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable]

<u>How We Will Calculate Your Balance</u>: [Description of balance computation method]

Loss of Introductory APR: [Description of events in which introductory rate may be revoked and rate that applies if introductory rate is revoked, if applicable]

[Description that rate that applies after introductory rate is revoked varies and how it is determined, if applicable]

G-10(B) Applications and Solicitations Sample (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** to **19.99%** when you open your account, based on your creditworthiness. After that, your APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on each of two accounts that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
How to Avoid Paying Interest on Purchases	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Consumer Financial Protection Bureau	**To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at https://www.consumerfinance.gov/learnmore.**

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars
Penalty Fees	
• Late Payment	Up to **$35**
• Over-the-Credit Limit	Up to **$35**
• Returned Payment	Up to **$35**
Other Fees	
• Required Account Protection Plan	**$0.78** per $100 of balance at the end of each statement period. See back for details.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

G-10(C) Applications and Solicitations (Credit Cards)

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%, 10.99%, or 12.99%** introductory APR for one year, based on your creditworthiness. After that, your APR will be **14.99%**. This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
How to Avoid Paying Interest on Purchases	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.00.
For Credit Card Tips from the Consumer Financial Protection Bureau	To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at http://www.consumerfinance.gov/learnmore.

Fees	
Set-up and Maintenance Fees	NOTICE: Some of these set-up and maintenance fees will be assessed before you begin using your card and will reduce the amount of credit you initially have available. For example, if you are assigned the minimum credit limit of $250, your initial available credit will be only about $209 (or about $204 if you choose to have an additional card).
• Annual Fee	$20
• Account Set-up Fee	$20 (one-time fee)
• Participation Fee	$12 annually ($1 per month)
• Additional Card Fee	$5 annually (if applicable)
Transaction Fees	
• Balance Transfer	Either $5 or 3% of the amount of each transfer, whichever is greater (maximum fee: $100).
• Cash Advance	Either $5 or 3% of the amount of each cash advance, whichever is greater.
• Foreign Transaction	2% of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to $35
• Over-the-Credit Limit	Up to $35
• Returned Payment	Up to $35

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)."

Loss of Introductory APR: We may end your introductory APR and apply the Penalty APR if you make a late payment.

G-10(D) Applications and Solicitations Model Form (Charge Cards)

Payment Information
[A statement that charges incurred through use of the charge card are due when the periodic statement is received]

Fees	
[Annual Fee][Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees	
• Balance Transfer	[Description of balance transfer fee]
• Cash Advance	[Description of cash advance fee]
• Foreign Transaction	[Description of foreign transaction fee]
Penalty Fees	
• Late Payment	[Description of late payment fee]
• Over-the-Credit Limit	[Description of over the credit limit fee]
• Returned Payment	[Description of returned payment fee]

G-10(E) Applications and Solicitations Sample (Charge Cards)

Payment Information
All charges made on this charge card are due and payable when you receive your periodic statement.

Fees	
Annual Fee	$50
Transaction Fees	
• Balance Transfer	Either $5 or 3% of the amount of each transfer, whichever is greater (maximum fee: $100)
• Cash Advance	Either $5 or 3% of the amount of each cash advance, whichever is greater
Penalty Fees	
• Late Payment	Up to $35. If you do not pay for two consecutive billing cycles, your fee will be $35 or 3% of the past due amount, whichever is greater
• Over-the-Credit Limit	Up to $35
• Returned Payment	Up to $35

G–11—APPLICATIONS AND SOLICITATIONS MADE AVAILABLE TO THE GENERAL PUBLIC MODEL CLAUSES

(a) Disclosure of Required Credit Information

The information about the costs of the card described in this [application]/[solicitation] is accurate as of (*month/year*). This information may have changed after that date. To find out what may have changed, [call us at (*telephone number*)][write to us at (*address*)].

(b) No Disclosure of Credit Information

There are costs associated with the use of this card. To obtain information about these costs, call us at (*telephone number*) or write to us at (*address*).

G–12 [RESERVED]

G–13(A)—CHANGE IN INSURANCE PROVIDER MODEL FORM (COMBINED NOTICE)

The credit card account you have with us is insured. This is to notify you that we plan to replace your current coverage with insurance coverage from a different insurer.

If we obtain insurance for your account from a different insurer, you may cancel the insurance.

[Your premium rate will increase to $ ____ per ____.]

[Your coverage will be affected by the following:

[ ] The elimination of a type of coverage previously provided to you. [(explanation)] [See ____ of the attached policy for details.]

[ ] A lowering of the age at which your coverage will terminate or will become more restrictive. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] A decrease in your maximum insurable loan balance, maximum periodic benefit payment, maximum number of payments, or any other decrease in the dollar amount of your coverage or benefits. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] A restriction on the eligibility for benefits for you or others. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] A restriction in the definition of ''disability'' or other key term of coverage. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] The addition of exclusions or limitations that are broader or other than those under the current coverage. [(explanation)] [See ____ of the attached policy or certificate for details.]

[ ] An increase in the elimination (waiting) period or a change to nonretroactive coverage. [(explanation)] [See ____ of the attached policy or certificate for details).]

[The name and mailing address of the new insurer providing the coverage for your account is (name and address).]

G–13(B)—CHANGE IN INSURANCE PROVIDER MODEL FORM

We have changed the insurer providing the coverage for your account. The new insurer's name and address are (name and address). A copy of the new policy or certificate is attached.

You may cancel the insurance for your account.

G-14A — Home Equity Sample

IMPORTANT TERMS
of our
HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: To obtain the terms described below, you must submit your application before January 1, 1990.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you have paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees; (2) refuse to make additional extensions of credit; and (3) reduce your credit limit.

If you ask, we will give you more specific information concerning when we can take these actions.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the "draw period"). During the draw period, payments will be due monthly. Your minimum monthly payment will equal the greater of $100 or 1/360th of the outstanding balance plus the finance charges that have accrued on the outstanding balance.

After the draw period ends, you will no longer be able to obtain credit advances and must pay the outstanding balance over 5 years (the "repayment period"). During the repayment period, payments will be due monthly. Your minimum monthly payment will equal 1/60th of the balance that was outstanding at the end of the draw period plus the finance charges that have accrued on the remaining balance.

Minimum Payment Example: If you made only the minimum monthly payments and took no other credit advances, it would take 15 years to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of 12%. During that period, you would make 120 monthly payments varying between $127.78 and $100.00 followed by 60 monthly payments varying between $187.06 and $118.08.

Fees and Charges: To open and maintain a line of credit, you must pay the following fees to us:

- Application fee: $150 (due at application)
  Points: 1% of credit limit (due when account is opened)
  Annual maintenance fee: $75 (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between $500 and $900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw and Balance Requirements: The minimum credit advance you can receive is $500. You must maintain an outstanding balance of at least $100.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable Rate Information: The line has a variable rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum monthly payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the monthly average prime rate charged by banks and is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

Rate Changes: The annual percentage rate can change each month. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Except for the 18% cap, there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Examples: If you had an outstanding balance of $10,000 during the draw period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $177.78. This annual percentage rate could be reached during the first month of the draw period. If you had an outstanding balance of $10,000 at the beginning of the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $216.67. This annual percentage rate could be reached during the first month of the repayment period.

Historical Example: The following table shows how the annual percentage rate and the minimum monthly payments for a single $10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from September of each year. While only one payment amount per year is shown, payments would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payment was made each month, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

Year	Index (%)	Margin* (%)		ANNUAL PERCENTAGE RATE (%)	Minimum Monthly Payment ($)
1974	12.00	2		14.00	144.44
1975	7.88	2		9.88	106.50
1976	7.00	2		9.00	100.00
1977	7.13	2		9.13	100.00
1978	9.41	2	Draw Period	11.41	105.47
1979	12.90	2		14.90	120.15
1980	12.23	2		14.23	117.53
1981	20.08	2		18.00**	138.07
1982	13.50	2		15.50	127.89
1983	11.00	2		13.00	100.35
1984	12.97	2		14.97	200.91
1985	9.57	2		11.57	170.18
1986	7.50	2	Repayment Period	9.50	149.78
1987	8.70	2		10.70	141.52
1988	10.00	2		12.00	130.55

* This is a margin we have used recently.

** This rate reflects the 18% rate cap.

G-14B — Home Equity Sample

IMPORTANT TERMS
of our
HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: All of these terms described below are subject to change.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: We can terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees if:

- You engage in fraud or material misrepresentation in connection with the line.
- You do not meet the repayment terms.
- Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

- The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.
- We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.
- You are in default of a material obligation in the agreement.
- Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.
- A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.
- The maximum annual percentage rate is reached.

The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the "draw period"). You can choose one of three payment options for the draw period:

- *Monthly interest-only payments:* Under this option, your payments will be due monthly and will equal the finance charges that accrued on the outstanding balance during the preceding month.
- *Quarterly interest-only payments:* Under this option, your payments will be due quarterly and will equal the finance charges that accrued on the outstanding balance during the preceding quarter.
- *2% of the balance:* Under this option, your payments will be due monthly and will equal 2% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance during the preceding month.

If the payment determined under any option is less than $50, the minimum payment will equal $50 or the outstanding balance on your line, whichever is less.

Under both the monthly and quarterly interest-only payment options, the minimum payment will not reduce the principal that is outstanding on your line.

After the draw period ends, you will no longer be able to obtain credit advances and must repay the outstanding balance (the "repayment period"). The length of the repayment period will depend on the balance outstanding at the beginning of it. During the repayment period, payments will be due monthly and will equal 2% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance or $50, whichever is greater.

Minimum Payment Examples: If you took a single $10,000 advance and the ANNUAL PERCENTAGE RATE was 8.125%:

- Under the monthly interest-only payment option, it would take 18 years and 1 month to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments of $79.33, followed by 96 payments varying between $179.33 and $50 and one final payment of $10.75.

Under the 2% of the balance payment option, it would take 10 years and 8 months to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments varying between $279.33 and $50, followed by 7 payments of $50 and one final payment of $27.50.

Fees and Charges: To open and maintain a line of credit, you must pay us the following fees:

- Application fee: $100 (due at application)
  Points: 1% of credit limit (due when account opened)
- Annual maintenance fee: $50 during the first 3 years, $75 thereafter (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between $500 and $900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw Requirement: The minimum credit advance that you can receive is $250.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable-Rate Feature: The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum monthly payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. During the draw period, the index is the monthly average prime rate charged by banks. During the repayment period, the index is the weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year. Information on these indices is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

The initial annual percentage rate is "discounted"—it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for the first year your credit line is open.

Ask us for the current index values, margin, discount and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

Rate Changes: The annual percentage rate can change monthly. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Apart from this rate "cap," there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Examples: If the ANNUAL PERCENTAGE RATE during the draw period equaled the 18% maximum and you had an outstanding balance of $10,000:

Under the monthly interest-only payment option, the minimum monthly payment would be $150.

Under the 2% of the balance payment option, the minimum monthly payment would be $350.

This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of $10,000 during the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be $450. This annual percentage rate could be reached during the first month of the repayment period.

Historical Example. The following table shows how the annual percentage rate and the monthly payments for a single $10,000 credit advance would have changed based on changes in the indexes over the past 15 years. For the draw period, the index values for the prime rate are from September of each year. For the repayment period, the index values for the yield on U.S. Treasury securities are from the first week ending in July. While only one payment amount per year is shown, payments under the 2% of the balance payment option and during the repayment period would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the indices or your payments will change in the future.

	Year	Index (%)	Margin* (%)	ANNUAL PERCENTAGE RATE (%)	Monthly Interest-Only Payments ($)	Monthly 2% of Balance Payments ($)
	1974	12.00	2	10.00**	83.33	283.33
	1975	7.88	2	9.88	82.33	221.55
	1976	7.00	2	9.00	75.00	169.34
	1977	7.13	2	9.13	76.08	133.41
Draw Period	1978	9.41	2	11.41	95.08	111.85
	1979	12.90	2	14.90	124.17	96.40
	1980	12.23	2	14.23	118.58	74.33
	1981	20.08	2	18.00***	150.00	64.13
	1982	13.50	2	15.50	129.17	50.00
	1983	11.00	2	13.00	108.33	50.00
	1984	12.17	2	14.17	418.08	50.00
Repayment Period	1985	7.66	2	9.66	264.01	
	1986	6.36	2	8.36	177.96	
	1987	6.71	2	8.71	134.45	
	1988	7.52	2	9.52	87.52	

* This is a margin we have used recently.
** This rate reflects a 4% "discount" we have used recently.
*** This rate reflects the 18% rate cap.

G-15 — Home Equity Model Clauses

(a) Retention of Information: This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

(b) Availability of Terms: To obtain the terms described below, you must submit your application before (date). However, [the (description of terms)] [are subject to change].

or

All of the terms described below are subject to change.

If these terms change [(other than the annual percentage rate)] and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

(c) Security Interest: We will take a [security interest in] [mortgage on] your home. You could lose your home if you do not meet the obligations in your agreement with us.

(d) Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment[, and charge you certain fees]; (2) refuse to make additional extensions of credit; (3) reduce your credit limit[; and (4) make specific changes that are set forth in your agreement with us].

If you ask, we will give you more specific information about when we can take these actions.

or

Possible Actions: We can terminate your account, require you to pay us the entire outstanding balance in one payment[, and charge you certain fees] if:

- You engage in fraud or material misrepresentation in connection with the line.
- You do not meet the repayment terms.
- Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

- The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.
- We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.
- You are in default of a material obligation in the agreement.
- Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.
- A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.
- The maximum annual percentage rate is reached.

[The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.]

(e) Minimum Payment Requirements: The length of the [draw period/repayment period] is (length). Payments will be due (frequency). Your minimum payment will equal (how payment determined).

[The minimum payment will not reduce the principal that is outstanding on your line.] [The minimum payment will not fully repay the principal that is outstanding on your line.] You will then be required to pay the entire balance in a single "balloon" payment.

(f) **Minimum Payment Example:** If you made only the minimum payments and took no other credit advances, it would take *(length of time)* to pay off a credit advance of $10,000 at an ANNUAL PERCENTAGE RATE of *(x percent)*. During that period, you would make *(number)* *(frequency)* payments of $ ___.

(g) **Fees and Charges:** To open and maintain a line of credit, you must pay the following fees to us:

(Description of fee): $ ___ (or ___ % of ___) *(When payable)*

(Description of fee): $ ___ (or ___ % of ___) *(When payable)*

You also must pay certain fees to third parties. These fees generally total $ ___ (or ___ % of ___) (between $ ___ and $ ___). If you ask, we will give you an itemization of the fees you will have to pay to third parties.

(h) **Minimum Draw and Balance Requirements:** The minimum credit advance you can receive is $ ___. You must maintain an outstanding balance of at least $ ___.

(i) **Negative Amortization:** Under some circumstances, your payments will not cover the finance charges that accrue and "negative amortization" will occur. Negative amortization will increase the amount that you owe us and reduce your equity in your home.

(j) **Tax Deductibility:** You should consult a tax advisor regarding the deductibility of interest and charges for the line.

(k) **Other Products:** If you ask, we will provide you with information on our other available home equity lines.

(l) **Variable-Rate Feature:** The plan has a variable-rate feature and the annual percentage rate (corresponding to the periodic rate) and the [minimum payment/term of the line] can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the *(identification of index)* and is [published in/available from] *(source of information)*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

[The initial annual percentage rate is "discounted"—it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for *(period)*.]

Ask us for the current index value, margin, [discount] and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

(m) **Rate Changes:** The annual percentage rate can change *(frequency)*. [The rate cannot increase by more than ___ percentage points in any one *(year period)*./There is no limit on the amount by which the rate can change in any one *(year period)*.] [The maximum ANNUAL PERCENTAGE RATE that can apply is ___ %./The ANNUAL PERCENTAGE RATE cannot increase by more than ___ percentage points above the initial rate.] [Ask us for the specific rate limitations that will apply to your credit line.]

(n) **Maximum Rate and Payment Examples:** If you had an outstanding balance of $10,000, the minimum payment at the maximum ANNUAL PERCENTAGE RATE of ___ % would be $ ___. This annual percentage rate could be reached [*when maximum rate could be reached*].

(e) **Historical Example.** The following table shows how the annual percentage rate and the minimum payments for a single $10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from [when values are measured]. [While only one payment amount per year is shown, payments would have varied during each year.]

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

Year	Index	Margin	ANNUAL PERCENTAGE RATE	Minimum Payment
	(%)	(%)	(%)	($)
1975				
1976				
1977				
1978				
1979				
1980				
1981				
1982				
1983				
1984				
1985				
1986				
1987				
1988				
1989				

G–16(A) DEBT SUSPENSION MODEL CLAUSE

Please enroll me in the optional [insert name of program], and bill my account the fee of [how cost is determined]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here]. X__________________

G–16(B) DEBT SUSPENSION SAMPLE

Please enroll me in the optional [name of program], and bill my account the fee of $.83 per $100 of my month-end account balance. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here. X__________________

G-17(A) Account-Opening Model Form

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	[Purchase rate] [Description that rate varies and how it is determined, if applicable]
APR for Balance Transfers	[Balance transfer rate] [Description that rate varies and how it is determined, if applicable]
APR for Cash Advances	[Cash advance rate] [Description that rate varies and how it is determined, if applicable]
Penalty APR and When it Applies	[Penalty rate] [Description of events that may result in the penalty rate] [Description of how long penalty rate may apply]
[How to Avoid Paying Interest]/[Paying Interest]	[Description of grace period for purchases, cash advances, balance transfers, or any other credit extended or statement that no grace period applies]
[Minimum Interest Charge]/[Minimum Charge]	[Description of minimum interest charge or minimum charge, if applicable]
For Credit Card Tips from the Consumer Financial Protection Bureau	[Reference to the Bureau's Website]

Fees	
[Annual Fees]/[Set-up and Maintenance Fees]	[Notice of available credit, if applicable] [Notice of right to reject plan, if applicable] [Description of fees for availability or issuance of credit, such as an annual fee, if applicable]
Transaction Fees • Balance Transfer • Cash Advance • Foreign Transaction	 [Description of balance transfer fee] [Description of cash advance fee] [Description of foreign transaction fee]
Penalty Fees • Late Payment • Over-the-Credit Limit • Returned Payment	 [Description of late payment fee] [Description of over the credit limit fee] [Description of returned payment fee]
Other Fees • Required [insert name of required insurance or debt cancellation or suspension coverage]	 [Description of cost of insurance, or debt cancellation or suspension plans] [Cross reference to additional information, if applicable]

<u>How We Will Calculate Your Balance</u>: [Description of balance computation method]

<u>Loss of Introductory APR</u>: [Circumstances in which introductory rate may be revoked and rate that applies if introductory rate is revoked, if applicable]

[Description that rate that applies after introductory rate is revoked varies and how it is determined, if applicable]

<u>Billing Rights</u>: [Reference to account agreement for details on billing error rights]

G-17(B) Account-Opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	**8.99%** This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	**15.99%** This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	**21.99%** This APR will vary with the market based on the Prime Rate.
Penalty APR and When It Applies	**28.99%** This APR may be applied to your account if you: 1) Make a late payment; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. **How Long Will the Penalty APR Apply?:** If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.
Paying Interest	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50.
For Credit Card Tips from the Consumer Financial Protection Bureau	**To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at https://www.consumerfinance.gov/learnmore**

Fees	
Annual Fee	**None**
Transaction Fees	
• Balance Transfer	Either **$5** or **3%** of the amount of each transfer, whichever is greater (maximum fee: **$100**).
• Cash Advance	Either **$5** or **3%** of the amount of each cash advance, whichever is greater.
• Foreign Transaction	**2%** of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to **$35**
• Over-the-Credit Limit	Up to **$35**
• Returned Payment	Up to **$35**
Other Fees	
• Required Account Protection Plan	**$0.78** per $100 of balance at the end of each statement period. **See back for details.**

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G–17(C) Account-Opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	8.99% [illegible] [illegible] 14.99%. [illegible]
APR for Balance Transfers	[illegible] [illegible]
APR for Cash Advances	[illegible] [illegible]
Penalty APR and When it Applies	[illegible] [illegible] 1) [illegible] 2) [illegible] 3) [illegible] 4) [illegible] How Long Will the Penalty APR Apply? [illegible]
Paying Interest	[illegible]
Minimum Interest Charge	[illegible]
For Credit Card Tips from the Consumer Financial Protection Bureau	[illegible]

Fees	
Set-up and Maintenance Fees	NOTICE: [illegible] [illegible]
• Annual Fee	[illegible]
• Account Set-up Fee	[illegible]
• Participation Fee	[illegible]
• Additional Card Fee	[illegible]
Transaction Fees	
• Balance Transfer	[illegible]
• Cash Advance	[illegible]
• Foreign Transaction	[illegible]
Penalty Fees	
• Late Payment	[illegible]
• Over-the-Credit Limit	[illegible]
• Returned Payment	[illegible]

How We Will Calculate Your Balance: [illegible]

Loss of Introductory APR: [illegible]

Billing Rights: [illegible]

G-17(D) Account-Opening Sample (Line of Credit)

Interest Rates and Interest Charges	
APR for Cash Advances	**18.00%**
Minimum Interest Charge	If you are charged interest, the charge will be no less than $1.50
Paying Interest	You will be charged interest from the transaction date

Fees	
Annual Fee	**$20**
Penalty Fees	
• Late Payment	**$10**
• Over-the-Credit Line	**$10**

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

G-18(A) Periodic Statement Transactions; Interest Charges; Fees Sample

Transactions				
Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
[illegible]	2/22	2/23	Store #1	$2.05
[illegible]	2/24	2/25	Store #2	$12.11
[illegible]	2/25	2/25	Pymt Thank You	$450.05–
[illegible]	2/25	2/26	Store #3	$4.65
[illegible]	2/25	2/26	Store #4	$114.95
[illegible]	2/25	2/26	Store #5	$7.15
[illegible]	2/25	2/26	Store #6	$14.15
[illegible]	2/25	2/26	Store #7	$40.35
[illegible]	2/25	2/27	Store #8	$27.48
[illegible]	2/26	2/27	Store #9	$128.76
[illegible]	2/26	2/26	Cash Advance	$121.50
[illegible]	2/27	2/28	Store #10	$32.87
[illegible]	2/27	3/1	Balance Transfer	$785.00
[illegible]	2/28	3/1	Store #11	$14.18
[illegible]	2/25	2/26	Cash Advance	$196.50
[illegible]	3/1	3/2	Store #12	$3.78
[illegible]	3/1	3/3	Store #13	$13.45
[illegible]	3/2	3/4	Store #14	$7.35
[illegible]	3/4	3/5	Store #13	$13.45–
[illegible]	3/5	3/8	Store #15	$25.90
[illegible]	3/11	3/17	Store #16	$7.34
[illegible]	3/11	3/14	Store #17	$10.60
[illegible]	3/15	3/17	Store #18	$24.50
[illegible]	3/16	3/17	Store #19	$8.75
[illegible]	3/17	3/18	Store #20	$14.30
[illegible]	3/19	3/20	Store #21	$28.14
			Fees	
[illegible]	2/23	2/23	Late Fee	$35.00
[illegible]	2/26	2/26	Cash Advance Fee	$5.00
[illegible]	2/27	2/27	Balance Transfer Fee	$23.55
[illegible]	2/28	2/25	Cash Advance Fee	$5.90
			TOTAL FEES FOR THIS PERIOD	[illegible]
			Interest Charged	
			Interest Charge on Purchases	[illegible]
			Interest Charge on Cash Advances	$4.36
			TOTAL INTEREST FOR THIS PERIOD	[illegible]

2012 Totals Year-to-Date	
Total fees charged in 2012	$90.14
Total interest charged in 2012	[illegible]

G–18(B)—LATE PAYMENT FEE SAMPLE

Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a $35 late fee and your APRs may be increased up to the Penalty APR of 28.99%.

G-18(C)(1) Minimum Payment Warning (When Amortization Occurs and the 36-month Disclosures Are Required)

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	10 years	$3,284
$62	3 years	$2,232 (Savings=$1,052)

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

G-18(C)(2) Minimum Payment Warning (When Amortization Occurs and the 36-month Disclosures Are Not Required)

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay...	You will pay off the balance shown on this statement in about...	And you will end up paying an estimated total of...
Only the minimum payment	14 months	$130

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

G-18(C)(3) Minimum Payment Warning (When Negative or No Amortization Occurs)

Minimum Payment Warning: Even if you make no more charges using this card, if you make only the minimum payment each month we estimate you will never pay off the balance shown on this statement because your payment will be less than the interest charged each month.

If you make more than the minimum payment each period, you will pay less in interest and pay off your balance sooner. For example, if you instead paid $74 per month, you would pay off the balance shown on this statement in around 3 years.

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

G-18(D) Periodic Statement New Balance, Due Date, Late Payment and Minimum Payment Sample (Credit Cards)

Payment Information	
New Balance	$1,784.53
Minimum Payment Due	$53.00
Payment Due Date	4/20/12

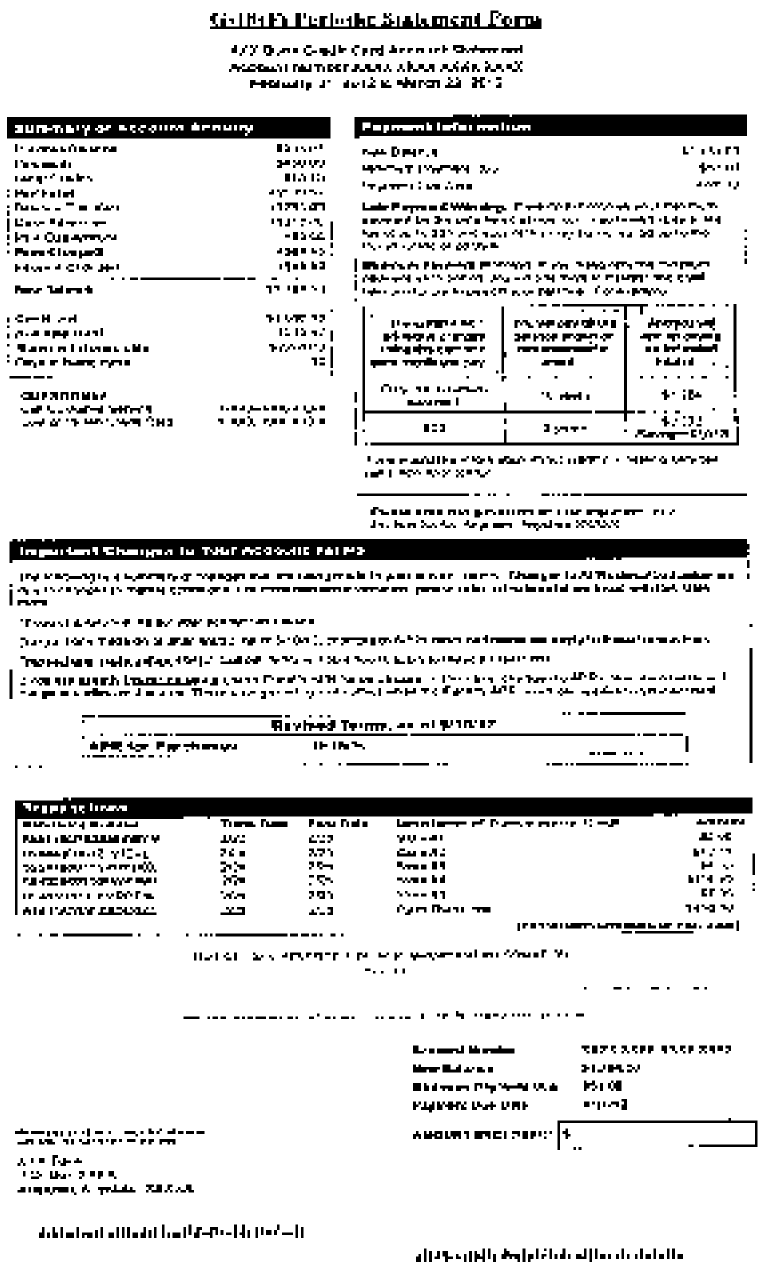
Late Payment Warning: If we do not receive your minimum payment by the date listed above, you may have to pay a late fee of up to $35 and your APRs may be increased up to the Penalty APR of 28.99%.

Minimum Payment Warning: If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example:

If you make no additional charges using this card and each month you pay . . .	You will pay off the balance shown on this statement in about . . .	And you will end up paying an estimated total of . . .
Only the minimum payment	10 years	$3,284
$62	3 years	$2,232 (Savings=$1,052)

If you would like information about credit counseling services, call 1-800-xxx-xxxx.

G–18(E) [Reserved]



G-18(F) Periodic Statement Form (contd.)

[illegible] Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
[illegible]	2/25	2/26	Store #[illegible]	[illegible]
[illegible]	2/25	2/27	Store #7	$40.35
[illegible]	2/26	2/27	Store #8	$27.58
[illegible]	2/26	2/27	Store #9	$12[illegible]
[illegible]	2/26	2/26	Cash Advance	$12[illegible]
[illegible]	2/27	2/28	Store #10	$32.87
[illegible]	2/27	3/1	Balance Transfer	[illegible]
[illegible]	2/28	2/28	Cash Advance	[illegible]
[illegible]	2/28	3/1	Store #11	[illegible]
[illegible]	3/1	3/2	Store #12	[illegible]
[illegible]	3/1	3/3	Store #13	[illegible]
[illegible]	3/2	3/4	Store #14	[illegible]
[illegible]	3/4	3/5	Store #13	[illegible]
[illegible]	3/7	[illegible]	Store #15	$25.00
[illegible]	3/11	3/13	Store #16	$7.34
[illegible]	3/11	3/12	Store #17	[illegible]
[illegible]	3/15	3/17	Store #18	$24.50
[illegible]	3/16	3/17	Store #19	[illegible]
[illegible]	3/17	3/18	Store #20	[illegible]
[illegible]	3/19	3/20	Store #21	[illegible]
			Fees	
[illegible]	[illegible]	[illegible]	Late Fee	[illegible]
[illegible]	2/26	2/26	Cash Advance Fee	[illegible]
[illegible]	[illegible]	[illegible]	Balance Transfer Fee	[illegible]
[illegible]	[illegible]	2/26	Cash Advance Fee	[illegible]
			TOTAL FEES FOR THIS PERIOD	[illegible]
			Interest Charged	
			Interest Charge on Purchases	[illegible]
			Interest Charge on Cash Advances	[illegible]
			TOTAL INTEREST FOR THIS PERIOD	[illegible]

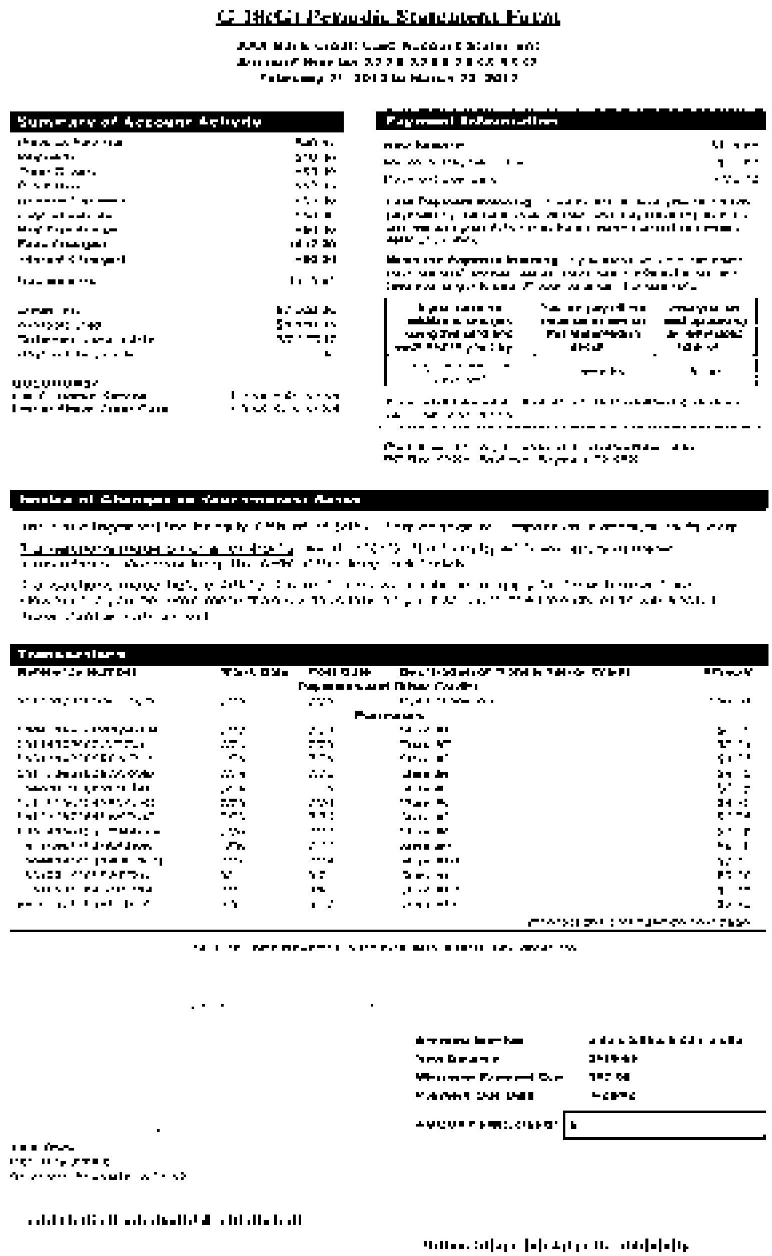
2012 Totals Year-to-Date	
Total fees charged in 2012	[illegible]
Total interest charged in 2012	[illegible]

Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	[illegible]	[illegible]	[illegible]
Cash Advances	[illegible]	[illegible]	[illegible]
Balance Transfers	0.00%	[illegible]	[illegible]

[illegible] Variable Rate



XXX Bank Credit Card Account Statement
Account Number XXXX XXXX XXXX XXXX
February 21, 2012 to March 22, 2012

Transactions (cont.)

Reference Number	Trans Date	Post Date	Description of Transaction or Credit	Amount
		Fees		
[illegible]	[illegible]	[illegible]	Late Fee	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
			TOTAL FEES FOR THIS PERIOD	[illegible]
		Interest Charged		
			Interest Charge on Purchases	[illegible]
			Interest Charge on Cash Advances	[illegible]
			TOTAL INTEREST FOR THIS PERIOD	[illegible]

2012 Totals Year-to-Date	
Total fees charged in 2012	[illegible]
Total interest charged in 2012	[illegible]

Interest Charge Calculation

Your Annual Percentage Rate (APR) is the annual interest rate on your account.

Type of Balance	Annual Percentage Rate (APR)	Balance Subject to Interest Rate	Interest Charge
Purchases	[illegible]	[illegible]	[illegible]
Cash Advances	[illegible]	[illegible]	[illegible]
Balance Transfers	[illegible]	[illegible]	[illegible]

[illegible]

G–18(H)—DEFERRED INTEREST PERIODIC STATEMENT CLAUSE

[You must pay your promotional balance in full by [date] to avoid paying accrued interest charges.]

G-19 Checks Accessing a Credit Card Sample

Interest and Fee Information	
APR for Check Transactions	1.99% Promotional APR through your November 2012 billing cycle. After November 2012, we will charge the APR for Cash Advances, currently 24.99%.
Use by Date	You must use the checks by 4/1/12 for the promotional APR to apply. If you use the checks after that date, we will still honor the check but you will not receive the promotional APR. Instead, the standard APR for Cash Advances will apply.
Fee	Either $5 or 3% of the amount of each transaction, whichever is greater.
Paying Interest	We will begin charging interest on these checks on the transaction date.

G-20 Change-in-Terms Sample (Increase in Annual Percentage Rate)

Important Changes to Your Account Terms

The following is a summary of changes that are being made to your account terms. For more detailed information, please refer to the booklet enclosed with this statement.

These changes will impact your account as follows:

Transactions made on or after 4/9/12: As of 5/10/12, any changes to APRs described below will apply to these transactions.

Transactions made before 4/9/12: Current APRs will continue to apply to these transactions.

If you are already being charged a higher Penalty APR for purchases: In this case, any changes to APRs described below will not go into effect at this time. These changes will go into effect when the Penalty APR no longer applies to your account.

Revised Terms, as of 5/10/12	
APR for Purchases	16.99%

[illegible]

Important Changes to Your Account Terms

[illegible]

[illegible]

Revised Terms, as of [illegible]	
Late Payment Fee	[illegible] $35
Returned Payment Fee	[illegible] $35

G-22 Penalty Rate Increase Sample (Payment 60 or Fewer Days Late)

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99%. This change will impact your account as follows:

Transactions made on or after 4/4/12: As of 5/10/12, the Penalty APR will apply to these transactions. We may keep the APR at this level indefinitely.

Transactions made before 4/4/12: Current rates will continue to apply to these transactions. However, if you become more than 60 days late on your account, the Penalty APR will apply to those transactions as well.

G-23 Penalty Rate Increase Sample (Payment More Than 60 Days Late)

Notice of Changes to Your Interest Rates

You have triggered the Penalty APR of 28.99% because we did not receive your minimum payment within 60 days of the due date. As of 5/10/12, the Penalty APR will apply to all existing balances and new transactions on your account.

If you make six consecutive minimum payments starting with your first payment due after 5/10/12, your rate for transactions made before 4/4/12 will return to the Standard APR. If you do not make these six consecutive minimum payments, we may keep the Penalty APR on your account indefinitely.

G–24—DEFERRED INTEREST OFFER CLAUSES

(a) For Credit Card Accounts Under an Open-End (Not Home-Secured) Consumer Credit Plan

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if you make a late payment.]

(b) For Other Open-End Plans

[Interest will be charged to your account from the purchase date if the purchase balance is not paid in full within the/by [deferred interest period/date] or if your account is otherwise in default.]

G–25(A)—CONSENT FORM FOR OVER-THE-CREDIT LIMIT TRANSACTIONS

Your Choice Regarding Over-the-Credit Limit Coverage

Unless you tell us otherwise, we will decline any transaction that causes you to go over your credit limit. If you want us to authorize these transactions, you can request over-the-credit limit coverage.

If you have over-the-credit limit coverage and you go over your credit limit, we will charge you a fee of up to $35. We may also increase your APRs to the Penalty APR of XX.XX%. You will only pay one fee per billing cycle, even if you go over your limit multiple times in the same cycle.

Even if you request over-the-credit limit coverage, in some cases we may still decline a transaction that would cause you to go over your limit, such as if you are past due or significantly over your credit limit.

If you want over-the-limit coverage and to allow us to authorize transactions that go over your credit limit, please:

—Call us at [telephone number];
—Visit [Web site]; or
—Check or initial the box below, and return the form to us at [address].

__ I want over-the-limit coverage. I understand that if I go over my credit limit, my APRs may be increased and I will be charged a fee of up to $35. [I have the right to cancel this coverage at any time.]

[__ I *do not* want over-the-limit coverage. I understand that transactions that exceed my credit limit will not be authorized.]

Printed Name: ______________________
Date: ______________________
[Account Number]: ______________________

G–25(B)—REVOCATION NOTICE FOR PERIODIC STATEMENT REGARDING OVER-THE-CREDIT LIMIT TRANSACTIONS

You currently have over-the-credit limit coverage on your account, which means that we pay transactions that cause you go to over your credit limit. If you do go over your credit limit, we will charge you a fee of up to $35. We may also increase your APRs. To remove over-the-credit-limit coverage from your account, call us at 1–800-xxxxxxx or visit [insert Web site].

[You may also write us at: [insert address].]

[You may also check or initial the box below and return this form to us at: [insert address].

__ I want to cancel over-the-limit coverage for my account.

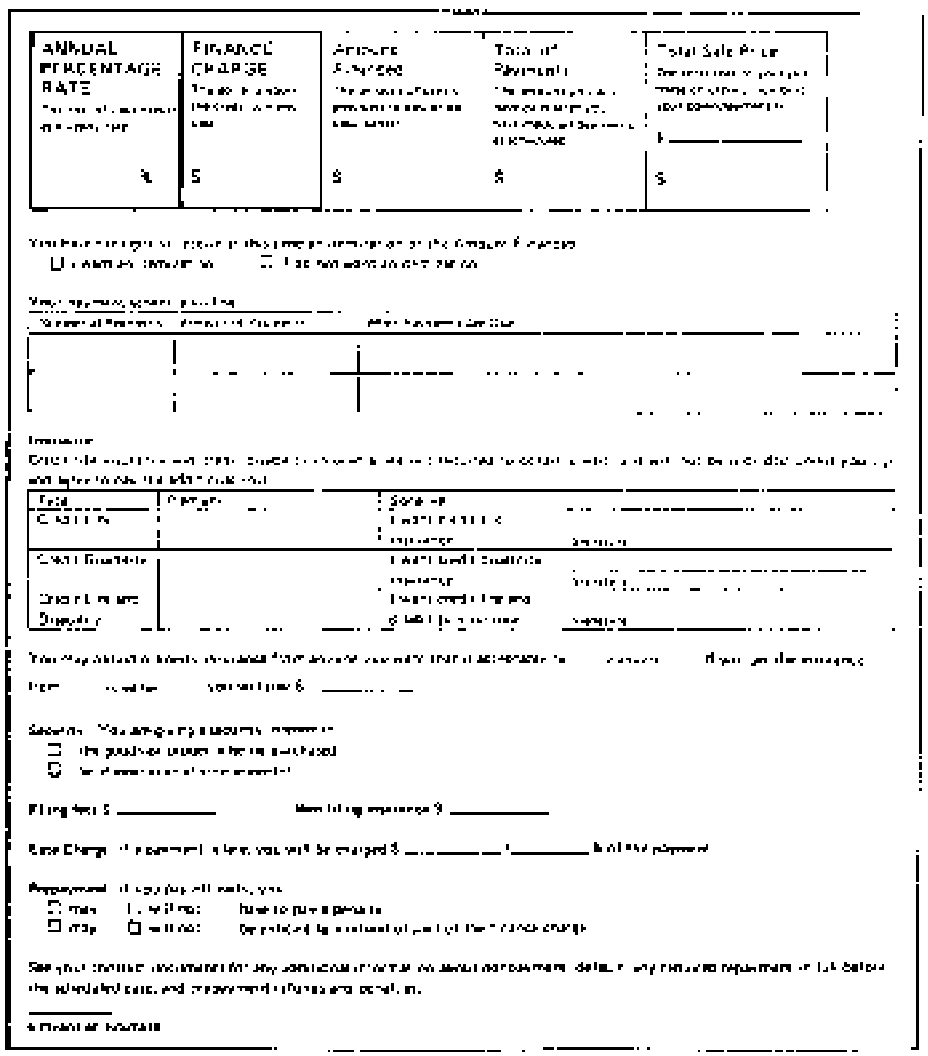
Printed Name: ______________________
Date: ______________________
[Account Number]: ______________________

APPENDIX H TO PART 1026—CLOSED-END MODEL FORMS AND CLAUSES

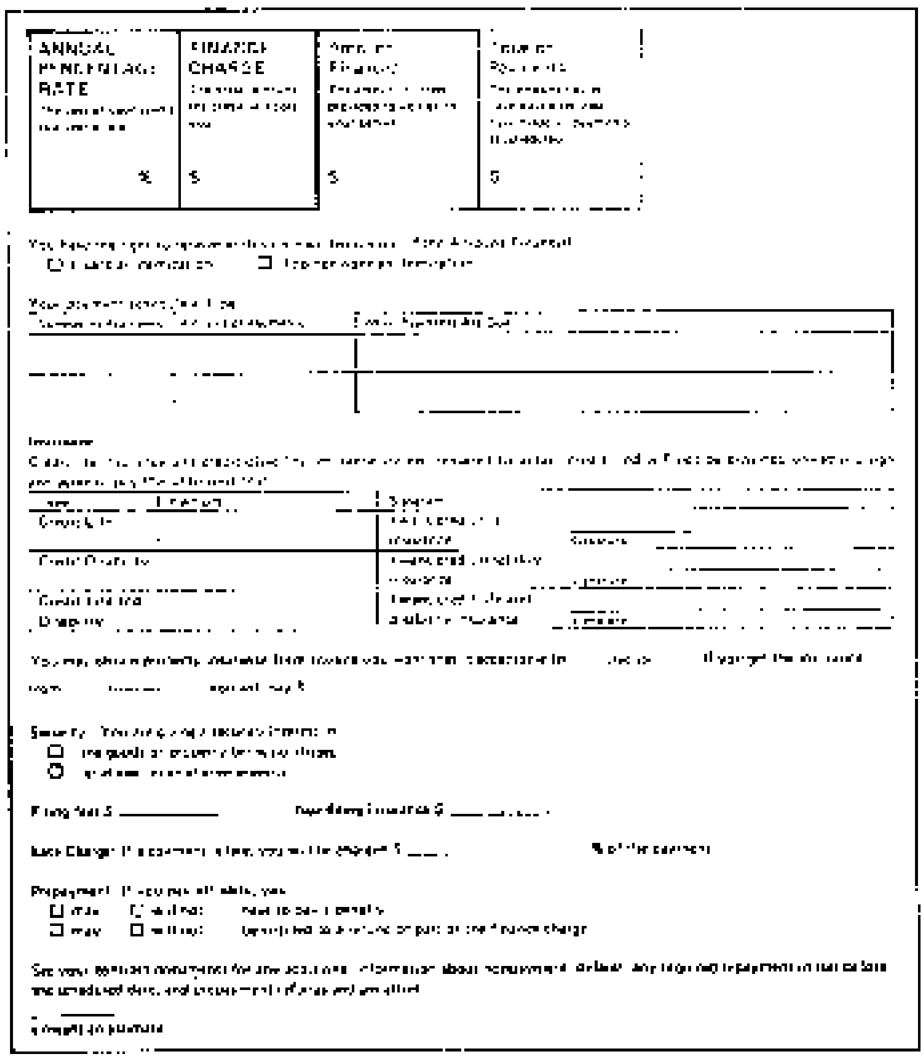
H–1 Credit Sale Model Form (§ 1026.18)
H–2 Loan Model Form (§ 1026.18)
H–3 Amount Financed Itemization Model Form (§ 1026.18(c))
H–4(A) Variable-Rate Model Clauses (§ 1026.18(f)(1))
H–4(B) Variable-Rate Model Clauses (§ 1026.18(f)(2))
H–4(C) Variable-Rate Model Clauses (§ 1026.19(b))
H–4(D)(1) Adjustable-Rate Mortgage Model Form (§ 1026.20(c))
H–4(D)(2) Adjustable-Rate Mortgage Sample Form (§ 1026.20(c))
H–4(D)(3) Adjustable-Rate Mortgage Model Form (§ 1026.20(d))
H–4(D)(4) Adjustable-Rate Mortgage Sample Form (§ 1026.20(d))
H–4(E) Fixed-Rate Mortgage Interest Rate and Payment Summary Model Clause (§ 1026.18(s))
H–4(F) Adjustable-Rate Mortgage or Step-Rate Mortgage Interest Rate and Payment Summary Model Clause (§ 1026.18(s))
H–4(G) Mortgage with Negative Amortization Interest Rate and Payment Summary Model Clause (§ 1026.18(s))
H–4(H) Fixed-Rate Mortgage with Interest-Only Interest Rate and Payment Summary Model Clause (§ 1026.18(s))
H–4(I) Adjustable-Rate Mortgage Introductory Rate Disclosure Model Clause (§ 1026.18(s)(2)(iii))
H–4(J) Balloon Payment Disclosure Model Clause (§ 1026.18(s)(5))
H–4(K) No Guarantee to Refinance Statement Model Clause (§ 1026.18(t))
H–5 Demand Feature Model Clauses (§ 1026.18(i))
H–6 Assumption Policy Model Clause (§ 1026.18(q))
H–7 Required Deposit Model Clause (§ 1026.18(r))
H–8 Rescission Model Form (General) (§ 1026.23)
H–9 Rescission Model Form (Refinancing (with Original Creditor)) (§ 1026.23)
H–10 Credit Sale Sample

H–11 Installment Loan Sample
H–12 Refinancing Sample
H–13 Closed-End Transaction With Demand Feature Sample
H–14 Variable-Rate Mortgage Sample (§1026.19(b))
H–15 Closed-End Graduated-Payment Transaction Sample
H–16 Mortgage Sample
H–17(A) Debt Suspension Model Clause
H–17(B) Debt Suspension Sample
H–18 Private Education Loan Application and Solicitation Model Form
H–19 Private Education Loan Approval Model Form
H–20 Private Education Loan Final Model Form
H–21 Private Education Loan Application and Solicitation Sample
H–22 Private Education Loan Approval Sample
H–23 Private Education Loan Final Sample
H–24(A) Mortgage Loan Transaction Loan Estimate—Model Form
H–24(B) Mortgage Loan Transaction Loan Estimate—Fixed Rate Loan Sample
H–24(C) Mortgage Loan Transaction Loan Estimate—Interest Only Adjustable Rate Loan Sample
H–24(D) Mortgage Loan Transaction Loan Estimate—Refinance Sample
H–24(E) Mortgage Loan Transaction Loan Estimate—Balloon Payment Sample
H–24(F) Mortgage Loan Transaction Loan Estimate—Negative Amortization Sample
H–24(G) Mortgage Loan Transaction Loan Estimate—Modification to Loan Estimate for Transaction Not Involving Seller—Model Form
H–25(A) Mortgage Loan Transaction Closing Disclosure—Model Form
H–25(B) Mortgage Loan Transaction Closing Disclosure—Fixed Rate Loan Sample
H–25(C) Mortgage Loan Transaction Closing Disclosure—Borrower Funds From Second-Lien Loan in Summaries of Transactions Sample
H–25(D) Mortgage Loan Transaction Closing Disclosure—Borrower Satisfaction of Seller's Second-Lien Loan Outside of Closing in Summaries of Transactions Sample
H–25(E) Mortgage Loan Transaction Closing Disclosure—Refinance Transaction Sample
H–25(F) Mortgage Loan Transaction Closing Disclosure—Refinance Transaction Sample (amount in excess of §1026.19(e)(3))
H–25(G) Mortgage Loan Transaction Closing Disclosure—Refinance Transaction With Cash From Consumer at Consummation Sample
H–25(H) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Cost Details—Model Form
H–25(I) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Disclosure Provided to Seller—Model Form
H–25(J) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Transaction Not Involving Seller—Model Form
H–26 Mortgage Loan Transaction—Pre-Loan Estimate Statement—Model Form
H–27(A) Mortgage Loan Transaction —Written List of Providers—Model Form
H–27(B) Mortgage Loan Transaction—Sample of Written List of Providers
H–27(C) Mortgage Loan Transaction—Sample of Written List of Providers with Services You Cannot Shop For
H–28(A) Mortgage Loan Transaction Loan Estimate—Spanish Language Model Form
H–28(B) Mortgage Loan Transaction Loan Estimate—Spanish Language Purchase Sample
H–28(C) Mortgage Loan Transaction Loan Estimate—Spanish Language Refinance Sample
H–28(D) Mortgage Loan Transaction Loan Estimate—Spanish Language Balloon Payment Sample
H–28(E) Mortgage Loan Transaction Loan Estimate—Spanish Language Negative Amortization Sample
H–28(F) Mortgage Loan Transaction Closing Disclosure—Spanish Language Model Form
H–28(G) Mortgage Loan Transaction Closing Disclosure—Spanish Language Purchase Sample
H–28(H) Mortgage Loan Transaction Closing Disclosure—Spanish Language Refinance Sample
H–28(I) Mortgage Loan Transaction Loan Estimate—Modification to Loan Estimate for Transaction Not Involving Seller—Spanish Language Model Form
H–28(J) Mortgage Loan Transaction Closing Disclosure—Modification to Closing Disclosure for Transaction Not Involving Seller—Spanish Language Model Form
H–29 Escrow Cancellation Notice Model Form (§1026.20(e))
H–30(A) Sample Form of Periodic Statement (§1026.41)
H–30(B) Sample Form of Periodic Statement with Delinquency Box (§1026.41)
H–30(C) Sample Form of Periodic Statement for a Payment-Option Loan (§1026.41)
H–30(D) Sample Clause for Homeownership Counselor Contact Information (§1026.41)
H–30(E) Sample Form of Periodic Statement for Consumer in Chapter 7 or Chapter 11 Bankruptcy
H–30(F) Sample Form of Periodic Statement for Consumer in Chapter 12 or Chapter 13 Bankruptcy

H-1—Credit Sale Model Form



H-2—Loan Model Form



ANNUAL PERCENTAGE RATE

FINANCE CHARGE

Amount Financed

Total of Payments

%

$

$

$

H-3—Amount Financed Itemization Model Form

Itemization of the Amount Financed of $__________

$__________ Amount given to you directly

$__________ Amount paid on your account

Amount paid to others on your behalf

$__________ to [public officials] [credit bureau] [appraiser] [insurance company]

$__________ to [illegible]

$__________ to [illegible]

$__________ Prepaid finance charge

H-4(A)—Variable-Rate Model Clauses

[illegible]

H-4(B)—Variable-Rate Model Clauses

[illegible]

H–4(C)—VARIABLE RATE MODEL CLAUSES

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment Are Determined

• Your interest rate will be based on [an index plus a margin] [a formula].

• Your payment will be based on the interest rate, loan balance, and loan term.

—[The interest rate will be based on (identification of index) plus our margin. Ask for our current interest rate and margin.]

—[The interest rate will be based on (identification of formula). Ask us for our current interest rate.]

—Information about the index [formula for rate adjustments] is published [can be found] ______.

—[The initial interest rate is not based on the (index) (formula) used to make later adjustments. Ask us for the amount of current interest rate discounts.]

How Your Interest Rate Can Change

• Your interest rate can change (frequency).

• [Your interest rate cannot increase or decrease more than ____ percentage points at each adjustment.]

• Your interest rate cannot increase [or decrease] more than ____ percentage points over the term of the loan.

How Your Payment Can Change

• Your payment can change (frequency) based on changes in the interest rate.

• [Your payment cannot increase more than (amount or percentage) at each adjustment.]

• [You will be notified at least 210, but no more than 240, days before first payment at the adjusted level is due after the initial interest rate adjustment of the loan. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

• [You will be notified at least 60, but no more than 120, days before first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

• [For example, on a $10,000 [term] loan with an initial interest rate of ____ [(the rate shown in the interest rate column below for the year 19 ____)] [(in effect (month) (year)], the maximum amount that the interest rate can rise under this program is ____ percentage points, to ____%, and the monthly payment can rise from a first-year payment of $____ to a maximum of $____ in the ____ year. To see what your payments would be, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000 ÷ $10,000 = 6; 6 × ____ = $____ per month.)]

[Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future.

The example is based on the following assumptions:

Amount	$10,000.
Term	——.
Change date	——.
Payment adjustment	(frequency).
Interest adjustment	(frequency).
[Margin] *	——.

Caps ____ [periodic interest rate cap].
____ [lifetime interest rate cap.
____ [payment cap].
[Interest rate carryover].
[Negative amortization].
[Interest rate discount].**
Index(identification of index or formula).

* This is a margin we have used recently, your margin may be different.

** This is the amount of a discount we have provided recently; your loan may be discounted by a different amount.]

Year	Index (%)	Margin (percentage points)	Interest rate (%)	Monthly payment ($)	Remaining balance ($)
1982					
1983					
1984					
1985					
1986					
1987					
1988					
1989					
1990					
1991					
1992					
1993					
1994					
1995					

Year	Index (%)	Margin (percentage points)	Interest rate (%)	Monthly payment ($)	Remaining balance ($)
1996	....	....	....	....	

Note: To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1982 would be: $60,000 ÷ $10,000 = 6; 6 × ____ = $____ per month.)

H-4(D)(1) Model Form for § 1026.20(c)

Changes to Your Mortgage Interest Rate and Payments on *[date]*

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a *[duration]* period during which your interest rate stayed the same. That period ends on *[date]*, so on that date your interest rate and mortgage payment change. After that, your interest rate may change *[frequency]* for the rest of your loan term. [Also, as of *[date]* *[changes to loan terms, features or options]*.]

	Current Rate and *[frequency]* Payment	New Rate and *[frequency]* Payment
Interest Rate	%	%
[Principal]	$_____]	$_____]
[Interest]	$_____]	$_____]
[Escrow (Taxes and Insurance)]	$_____]	$_____]
Total *[frequency]* Payment	$_____	$_____ **(due *[date]*)**

<u>**Interest Rate**</u>: We calculated your interest rate by taking a published "index rate" and adding a certain number of percentage points, called the "margin." Under your loan agreement, your index rate is *[index]* and your margin is ___%. The *[index]* is published *[frequency]* in *[source of information]*. [*Description and amount of any other adjustments to the index*]

[<u>**Rate Limits**</u>]: [Your rate cannot go higher than ___% over the life of the loan.] [Your rate can change each year by no more than ___%.] [We did not include an additional ___% interest rate increase to your new rate because a rate limit applied. This additional increase may be applied to your interest rate when it adjusts again on *[date]*.]

<u>**New Interest Rate and Monthly Payment**</u>: The table above shows your new interest rate and new monthly payment. Your new payment is based on the *[index]*, your margin, *[description of other adjustments]* to the index, your loan balance of $______, and your remaining loan term of ___ months.

[<u>**Interest-Only Payments**</u>: Your new payment will not cover any principal. Therefore, making this payment will not reduce your loan balance.]

[<u>**Warning about Increase in Your Loan Balance**</u>: Your new payment covers only part of the interest and no principal. Therefore, the unpaid interest will add to the balance of the loan. [If you want to fully pay off your loan by the end of the loan term at the new interest rate, you would need to pay $_____ per month.]]

[<u>**Prepayment Penalty**</u>: [None] [If you pay off your loan, refinance or sell your home before *[date]*, you could be charged a penalty. Contact *[mortgage company, at [phone number]]* [or *[email address]*] for more information, such as the maximum amount of the penalty you could be charged.]]

H-4(D)(2) Sample Form for § 1026.20(c)

[illegible] 2012

[illegible] Smith
[illegible]
Memphis, TN [illegible]

Springside Mortgage
[illegible] Main St
Memphis, TN [illegible]

Changes to Your Mortgage Interest Rate and Payments on September 1, 2012

Under the terms of your Adjustable Rate Mortgage (ARM), you had a three year period during which your interest rate stayed the same. That period ends on September 1, 2012, so on that date your interest rate and mortgage payment change. After that, your interest rate may change annually for the rest of your loan term.

	Current Rate and Monthly Payment	New Rate and Monthly Payment
Interest Rate	[illegible]%	[illegible]%
Total Monthly Payment	$[illegible]	$[illegible] (due October 1, [illegible])

Interest Rate: [illegible] interest rate [illegible] percentage points [illegible] margin [illegible] Street Journal.

Rate Limits: [illegible] rate [illegible] over the life of the loan. [illegible] rate can change each year by no more than [illegible]%.

New Interest Rate and Monthly Payment: [illegible] new interest rate and new monthly payment [illegible] remaining loan term of [illegible] months.

Prepayment Penalty: [illegible] Springside Mortgage [illegible] for more information [illegible] penalty [illegible] be charged.

H-4(D)(3) Model Form for § 1026.20(d)

H-4(D)(4) Sample Form for § 1026.20(d)

[illegible]

Changes to Your Mortgage Interest Rate and Payments on September 1, 2012

Under the terms of your Adjustable-Rate Mortgage (ARM), you had a three-year period during which your interest rate stayed the same. That period ends on September 1, 2012, so on that date your interest rate may change. After that, your interest rate may change annually for the rest of your loan term. Any change in your interest rate may also change your mortgage payment. Also, as of September 1, 2012 your mortgage payment will include principal as well as interest.

	Current Rate and Monthly Payment	Estimated New Rate and Monthly Payment
Interest Rate	[illegible]	[illegible]
Principal	[illegible]	[illegible]
Interest	[illegible]	[illegible]
Escrow (Taxes and Insurance)	[illegible]	[illegible]
Total Monthly Payment	**$1,158.33**	**[illegible]** (due October 1, 2012)

Interest Rate: [illegible]

Rate Limits: [illegible]

New Interest Rate and Monthly Payment: [illegible] **However, if the LIBOR index has changed when we calculate the exact amount of your new interest rate and payment, your new interest rate and payment may be different from the estimate above. We will send you another notice with the exact amount of your new interest rate and payment 2 to 4 months before the first new payment is due, if your new payment will be different from your current payment.**

Prepayment Penalty: None

If You Anticipate Problems Making Your Payments:

- [illegible]
- [illegible]
  - [illegible]
  - [illegible]
  - [illegible]
  - [illegible]
- [illegible]

H-4(E) Fixed-Rate Mortgage Interest Rate and Payment Summary Model Clause

INTEREST RATE AND PAYMENT SUMMARY

	Rate & Monthly Payment
Interest Rate	___%
Principal + Interest Payment	$___
Est. Taxes + Insurance (Escrow) • Includes [Private] Mortgage Insurance	$___
Total Est. Monthly Payment	$___

H-4(F) Adjustable-Rate Mortgage or Step-Rate Mortgage Interest Rate and Payment Summary Model Clause

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for ___ [period])	MAXIMUM during FIRST FIVE YEARS [(date)]	MAXIMUM EVER (as early as [date])
Interest Rate	___%	[___%]	___%
Principal + Interest Payment	$___	[$___]	$___
Est. Taxes + Insurance (Escrow) • Includes [Private] Mortgage Insurance	$___	[$___]	$___
Total Est. Monthly Payment	$___	[$___]	$___

H-4(G) Mortgage with Negative Amortization Interest Rate and Payment Summary Model Clause

INTEREST RATE AND PAYMENT SUMMARY

[illegible] ___ % [illegible]

[illegible] $___ [illegible]

	[illegible]	[illegible]	[illegible]	[illegible]
Maximum Interest Rate	___% [illegible]	[___%]	[___%]	___% [illegible]
Full Payment Option [illegible]	$	[$___]	[$___]	$___
Minimum Payment Option [illegible]	$___	[$___]	[$___]	$___

You will borrow an additional $___ by (date) [illegible]

H-4(H) Fixed Rate Mortgage with Interest Only Interest Rate and Payment Summary Model Clause

INTEREST RATE AND PAYMENT SUMMARY

	Introductory Rate & Monthly Payment (for first ___ years)	Maximum EVER (as early as ___)
Interest Rate	___%	___%
Principal Payment	none	$___
Interest Payment	$	$
Est. Taxes + Insurance (Escrow)	$___	$___
Total Est. Monthly Payment	$	$

H–4(I)—INTRODUCTORY RATE MODEL CLAUSE

[Introductory Rate Notice

You have a discounted introductory rate of ____ % that ends after (period).

In the (period in sequence), even if market rates do not change, this rate will increase to ____ %.]

H–4(J)—BALLOON PAYMENT MODEL CLAUSE

[Final Balloon Payment due (date): $_______]

H–4(K)—''NO-GUARANTEE-TO-REFINANCE'' STATEMENT MODEL CLAUSE

There is no guarantee that you will be able to refinance to lower your rate and payments.

H-5—Demand Feature Model Clauses

This obligation is payable on demand.
has a demand feature.]
[All disclosures are based on an assumed maturity of one year.]

H-6—Assumption Policy Model Clause

Assumption: Someone buying your house [may, subject to conditions, be allowed to] [cannot] assume the remainder of the mortgage on the original terms.

H-7—Required Deposit Model Clause

The annual percentage rate does not take into account your required deposit.

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 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).

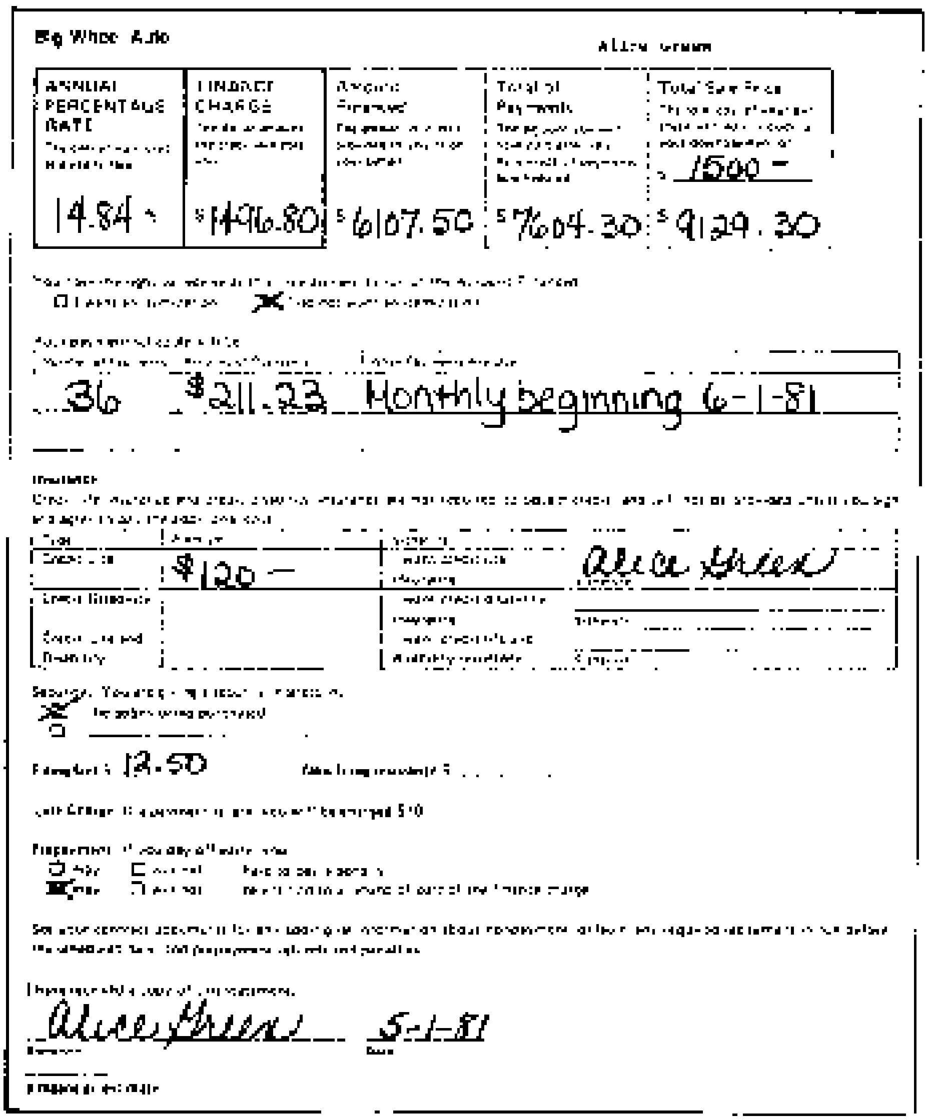
If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

Consumer's Signature ____________________

Date __________________________________

H-10—Credit Sale Sample



Big Wheel Auto

Alice Green

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
14.84 %	$1496.80	$6107.50	$7604.30	$9129.30

$ 1500 —

36 $211.23 Monthly beginning 6-1-81

Credit Life $120 —

Alice Green

12.50

Alice Green 5-1-81

H-11—Installment Loan Sample

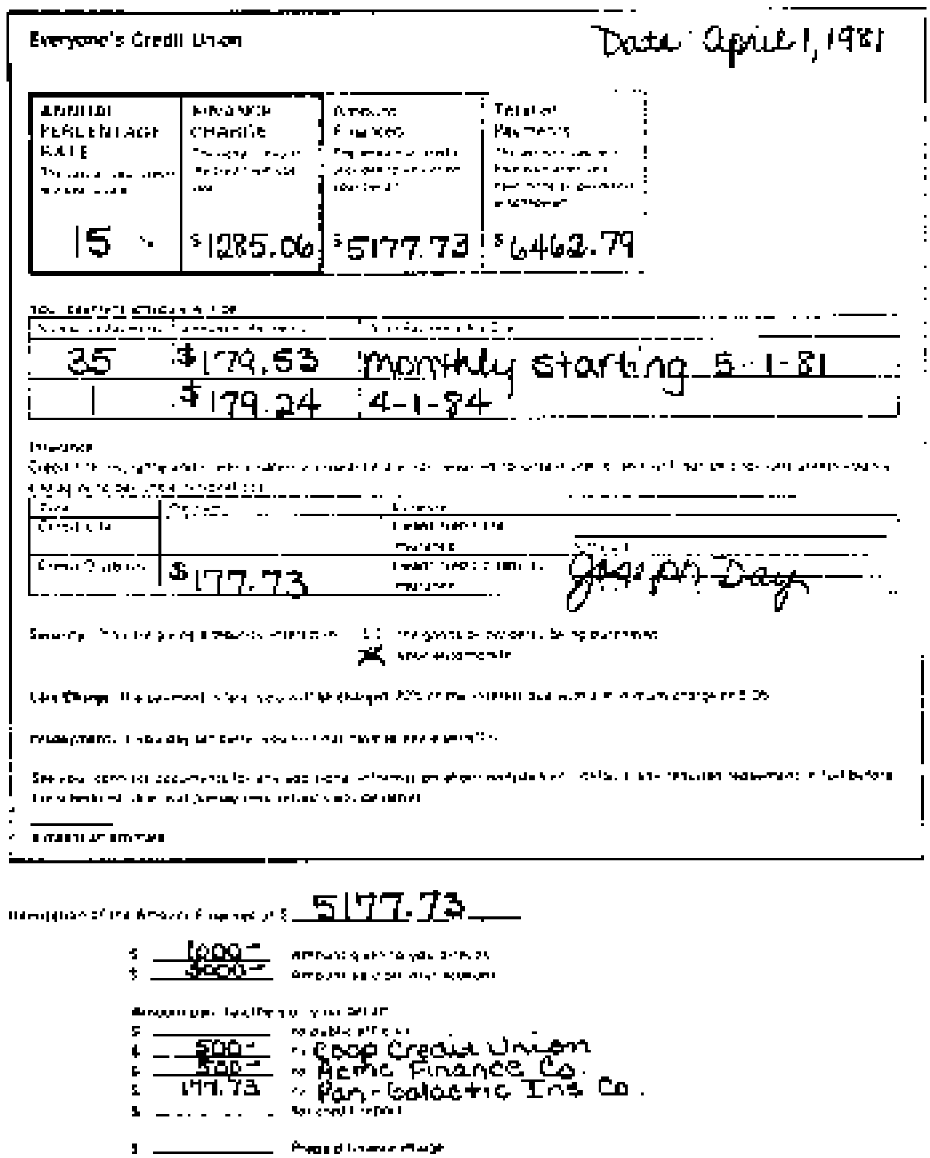
Friendly Bank & Trust Co.
700 East Street
Little Creek, USA

Lisa Stone
77-4859-22
300 Maple Avenue
Little Creek, USA

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
12 %	$ 675.31	$ 5000-	$ 5675.31

Number of Payments	Amount of Payments	When Payments Are Due
1	$262.03®	6/1/81
23	$235.36	Monthly beginning 7/1/81

H-12—Refinancing Sample



Everyone's Credit Union

Date April 1, 1981

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
15 %	$1285.06	$5177.73	$6462.79

Number of Payments	Amount of Payments	When Payments Are Due
35	$179.53	monthly starting 5-1-81
1	$179.24	4-1-84

Insurance

Type	Premium	Signature
Credit Life		
Credit Disability	$177.73	

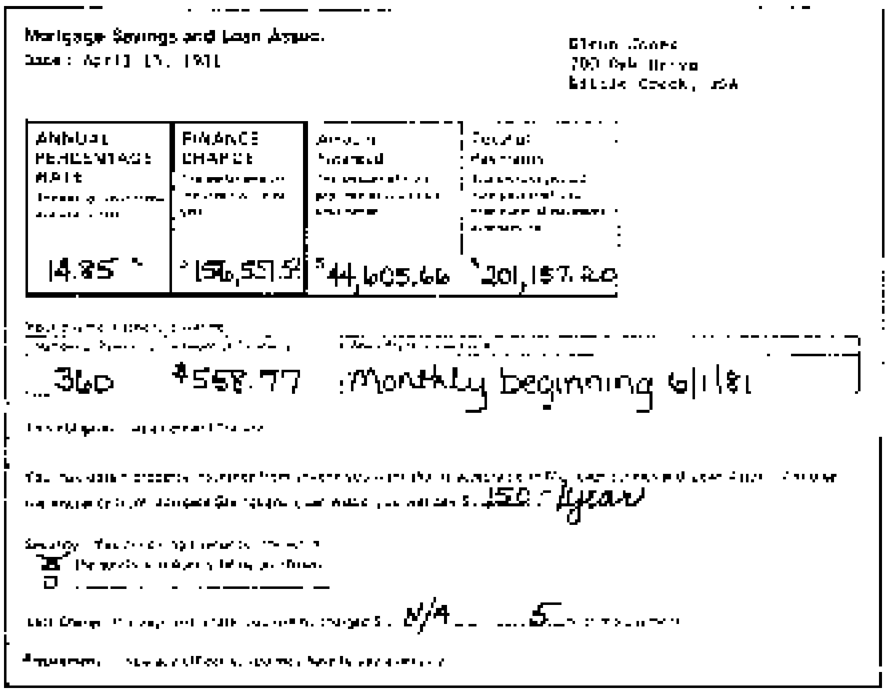
Itemization of the Amount Financed of $ 5177.73

$ 1000.— Amount given to you directly
$ 3000.— Amount paid on your account

Amount paid to others on your behalf
$ 500.— to Coop Credit Union
$ 500.— to Acme Finance Co.
$ 177.73 to Pan-Galactic Ins. Co.

$ ______ Prepaid finance charge

H–13—CLOSED-END TRANSACTION WITH DEMAND FEATURE SAMPLE



H–14—Variable Rate Mortgage Sample

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. Information on other ARM programs is available upon request.

How Your Interest Rate and Payment Are Determined

• Your interest rate will be based on an index rate plus a margin.

• Your payment will be based on the interest rate, loan balance, and loan term.

—The interest rate will be based on the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin. Ask us for our current interest rate and margin.

—Information about the index rate is published weekly in the Wall Street Journal.

• Your interest rate will equal the index rate plus our margin unless your interest rate ''caps'' limit the amount of change in the interest rate.

How Your Interest Rate Can Change

• Your interest rate can change yearly.

• Your interest rate cannot increase or decrease more than 2 percentage points per year.

• Your interest rate cannot increase or decrease more than 5 percentage points over the term of the loan.

How Your Monthly Payment Can Change

• Your monthly payment can increase or decrease substantially based on annual changes in the interest rate.

• [For example, on a $10,000, 30-year loan with an initial interest rate of 12.41 percent in effect in July 1996, the maximum amount that the interest rate can rise under this program is 5 percentage points, to 17.41 percent, and the monthly payment can rise from a first-year payment of $106.03 to a maximum of $145.34 in the fourth year. To see what your payment is, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of $60,000 would be: $60,000 ÷ $10,000 = 6; 6 × 106.03 = $636.18 per month.)]

• [You will be notified at least 210, but no more than 240, days before first payment at the adjusted level is due after the initial interest rate adjustment of the loan. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

• [You will be notified at least 60, but no more than 120, days before first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

[Example

The example below shows how your payments would have changed under this ARM program based on actual changes in the index from 1982 to 1996. This does not necessarily indicate how your index will change in the future. The example is based on the following assumptions:

Amount	$10,000.
Term	30 years.
Payment adjustment	1 year.
Interest adjustment	1 year.
Margin	3 percentage points.

Caps 2 percentage points annual interest rate.
5 percentage points lifetime interest rate.
Index Weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year.

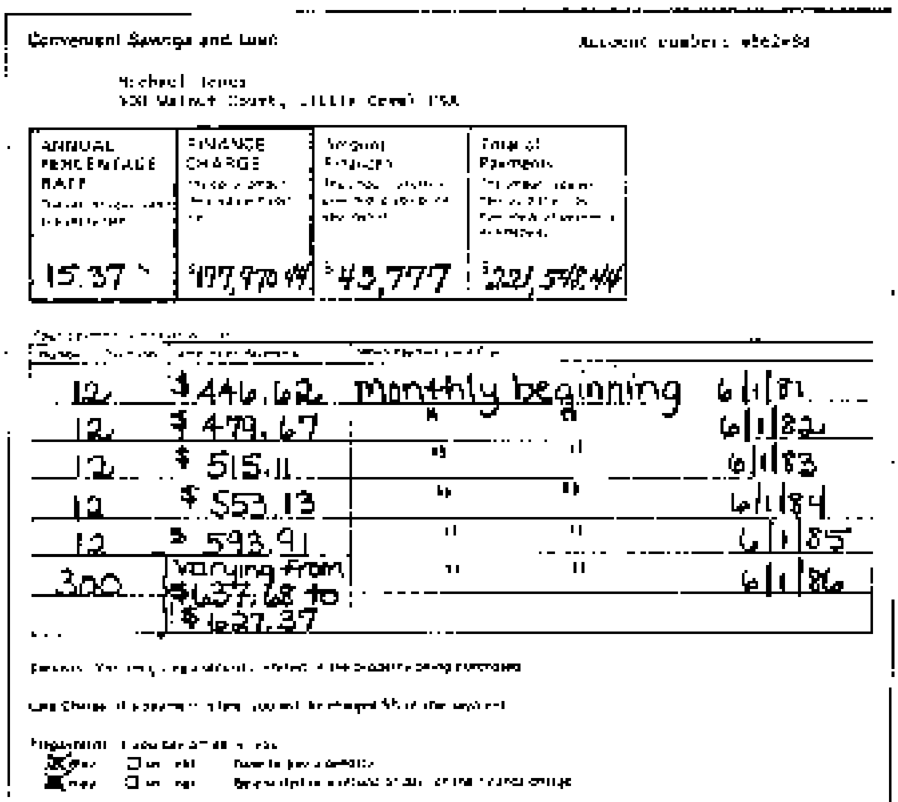
Year (as of 1st week ending in July)	Index	Margin* (percentage points)	Interest rate (%)	Monthly payment ($)	Remaining balance ($)
1982	14.41	3	17.41	145.90	9,989.37
1983	9.78	3	**15.41	129.81	9,969.66
1984	12.17	3	15.17	127.91	9,945.51
1985	7.66	3	**13.17	112.43	9,903.70
1986	6.36	3	***12.41	106.73	9,848.94
1987	6.71	3	***12.41	106.73	9,786.98
1988	7.52	3	***12.41	106.73	9,716.88
1989	7.97	3	***12.41	106.73	9,637.56
1990	8.06	3	***12.41	106.73	9,547.83
1991	6.40	3	***12.41	106.73	9,446.29
1992	3.96	3	***12.41	106.73	9,331.56
1993	3.42	3	***12.41	106.73	9,201.61
1994	5.47	3	***12.41	106.73	9,054.72
1995	5.53	3	***12.41	106.73	8,888.52
1996	5.82	3	***12.41	106.73	8,700.37

*This is a margin we have used recently; your margin may be different.
**This interest rate reflects a 2 percentage point annual interest rate cap.
***This interest rate reflects a 5 percentage point lifetime interest rate cap.
Note: To see what your payments would have been during that period, divide your mortgage amount by $10,000; then multiply the monthly payment by that amount. (For example, in 1996 the monthly payment for a mortgage amount of $60,000 taken out in 1982 would be: $60,000 ÷ $10,000 = 6; 6 × $106.73 = $640.38.)]

• [You will be notified at least 210, but no more than 240, days before first payment at the adjusted level is due after the initial interest rate adjustment of the loan. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

• [You will be notified at least 60, but no more than 120, days before first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.]

H–15 CLOSED-END GRADUATED PAYMENT TRANSACTION SAMPLE



Convenient Savings and Loan

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments
15.37 %	$177,970.44	$43,777	$221,548.44

12	$446.62	monthly beginning	6/1/81
12	$479.67	" "	6/1/82
12	$515.11	" "	6/1/83
12	$553.13	" "	6/1/84
12	$593.91	" "	6/1/85
300	varying from $637.68 to $627.37	" "	6/1/86

H-16 Mortgage Sample

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.

You are borrowing $______ (optional credit insurance is / is not included in this amount).

The annual percentage rate on your loan will be: ______%.

Your regular [frequency] payment will be: $
[At the end of your loan, you will still owe us: $ (balloon amount)]

[Your interest rate may increase. Increases in the interest rate could increase your payment. The highest amount your payment could increase is to $]

H–17(A) DEBT SUSPENSION MODEL CLAUSE

Please enroll me in the optional [insert name of program], and bill my account the fee of [insert charge for the initial term of coverage]. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

[To Enroll, Sign Here]/[To Enroll, Initial Here].

X ____________________

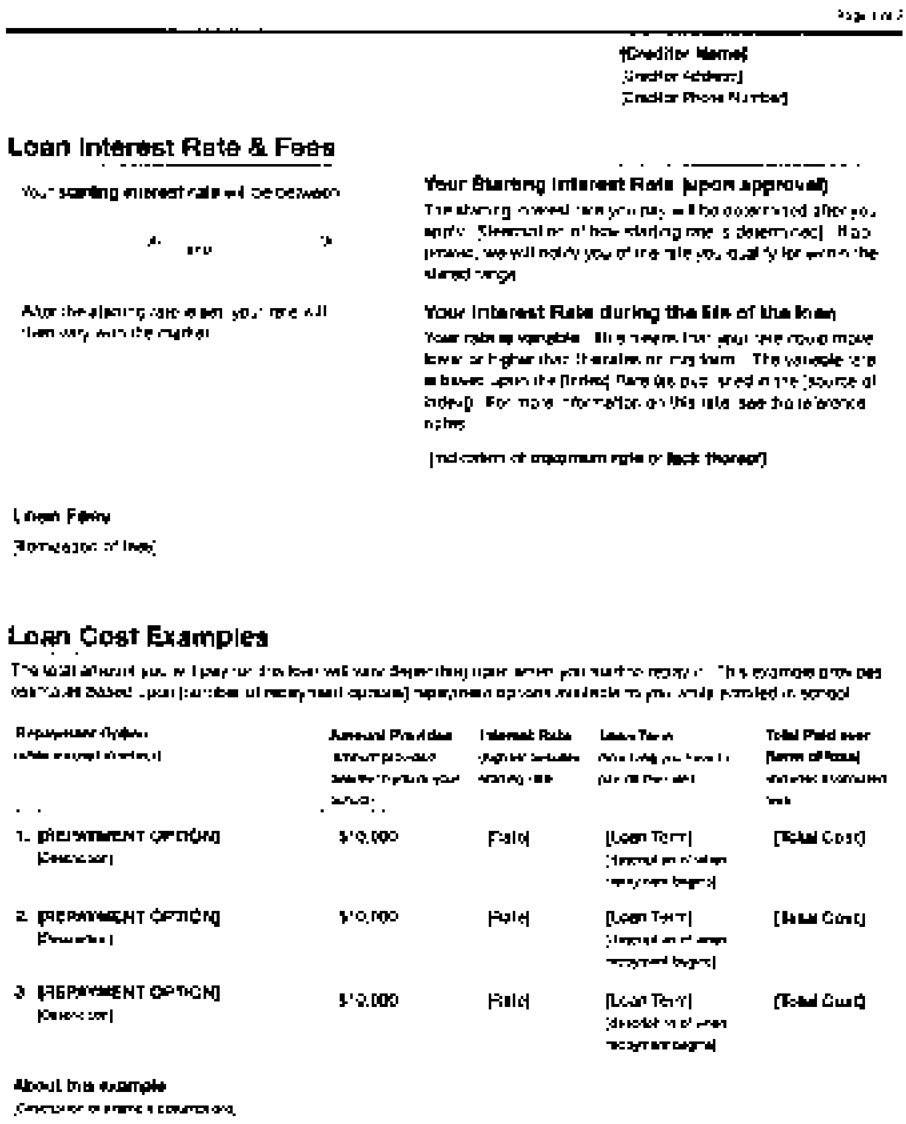
H–17(B) DEBT SUSPENSION SAMPLE

Please enroll me in the optional [name of program], and bill my account the fee of $200.00. I understand that enrollment is not required to obtain credit. I also understand that depending on the event, the protection may only temporarily suspend my duty to make minimum payments, not reduce the balance I owe. I understand that my balance will actually grow during the suspension period as interest continues to accumulate.

To Enroll, Initial Here.

X ____________________

H-18 Private Education Loan Application and Solicitation Model Form



[Creditor Name]
[Creditor Address]
[Creditor Phone Number]

Loan Interest Rate & Fees

Your starting interest rate will be between

[illegible]

After the starting rate is set, your rate will then vary with the market

Your Starting Interest Rate (upon approval)

[illegible]

Your Interest Rate during the life of the loan

[illegible]

[Indication of maximum rate or lack thereof]

Loan Fees

[Itemization of fees]

Loan Cost Examples

[illegible]

Repayment Option [illegible]	Amount Provided [illegible]	Interest Rate [illegible]	Loan Term [illegible]	Total Paid over [term of loan] [illegible]
1. [REPAYMENT OPTION] [Description]	$10,000	[Rate]	[Loan Term] [illegible]	[Total Cost]
2. [REPAYMENT OPTION] [Description]	$10,000	[Rate]	[Loan Term] [illegible]	[Total Cost]
3. [REPAYMENT OPTION] [Description]	$10,000	[Rate]	[Loan Term] [illegible]	[Total Cost]

About this example

[illegible]

Page 2 of 2

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	[Rate] fixed	Federal Family Education Loan
	[Rate] fixed	Federal Direct Loan

You may qualify for Federal education loans.
For additional information, contact your school's financial aid office or the Department of Education at:
www.federalstudentaid.ed.gov

Next Steps

1. **Find Out About Other Loan Options.**
Some schools have school-specific student loan benefits and terms not detailed on this form. Contact your school's financial aid office or visit the Department of Education's web site at:
www.federalstudentaid.ed.gov for more information about other loans.

2. **To Apply for this Loan, Complete the Application and the Self-Certification Form.**
You may get the self-certification form from your school's financial aid office. If you are approved for this loan, the loan terms will be available for 30 days (terms will not change during this period, except as permitted by law and the variable interest rate may change based on the market).

REFERENCE NOTES

Variable Interest Rate
- [Optional interest rate information, if applicable]

Eligibility Criteria
- [Description of eligibility criteria]

Bankruptcy Limitations
- If you file for bankruptcy you may still be required to pay back this loan.

More information about loan eligibility and repayment deferral or forbearance options is available in your loan application and loan agreement.

H-19 Private Education Loan Approval Model Form

Page 1 of 2

BORROWER
[Borrower Name]
[Borrower Address]

CREDITOR
[Creditor Name]
[Creditor Address]

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
[illegible]	Your current interest rate	The estimated dollar amount the credit will cost you	The estimated amount you will have paid when you have made all payments

ITEMIZATION OF AMOUNT FINANCED

Amount paid to you	[Amount]
Amount paid to others on your behalf	+ [Amount]
• [Institution Name]	
Amount Financed	= [Amount]
(Description)	
Initial finance charges (total)	+ [Amount]
• [Charge Type], [Amount]	
• [Charge Type], [Amount]	
Total Loan Amount	= [Amount]

ABOUT YOUR INTEREST RATE

- **Your rate is variable.** This means that your actual rate varies with the market and could be lower or higher than the rate on this form. The variable rate is based upon the [Index] Rate (as published in the [source of index]). For more information on this rate, see reference notes.
- Although your rate will vary, **it will never exceed [maximum interest rate]** (the maximum allowable [by law] for this loan).
- Your **Annual Percentage Rate (APR)** is **[Rate]**. The APR is typically different than the Interest Rate since it considers fees and reflects the cost of your loan as a yearly rate. For more information about the APR, see reference notes.

FEES

- [Itemization of Fees, if applicable]

Estimated Repayment Schedule & Terms

	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS]		
[LOAN TERMS]	at [Interest Rate]% (Your current interest rate, if rate stays the same)	at [Maximum Rate]% (The maximum interest rate allowable for your loan)	The estimated Total of Payments at the Maximum Rate of interest would be [Total Payment Amount]
[Dates of Deferment Period, if applicable] deferment period	No payment required. [Amount of accrued interest] will accrue during this time	No payment required. [Amount] will accrue during this time	
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]	
[Payment Due Dates] [number of monthly payments] monthly payments	[Payment Amount]	[Payment Amount]	

Page 3 of 3

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	[Rate] fixed	
STAFFORD for Students	[Rate] fixed	Undergraduate subsidized
	[Rate] fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	[Rate] fixed	Federal Family Education Loan
	[Rate] fixed	Federal Direct Loan

You may qualify for Federal education loans.

For additional information, contact your school's financial aid office or the Department of Education at:

www.federalstudentaid.ed.gov

Next Steps & Terms of Acceptance

This offer is good until:

[Date of Acceptance Deadline]

1. **Find Out About Other Loan Options.**
   Contact your school's financial aid office for more information.

2. **You Have Until [Date of Acceptance Deadline] to Accept this Offer**
   The terms of this offer will not change except as permitted by law and the variable interest rate may change based on the market.

To Accept the Terms of this loan,
[Description of method of acceptance]

REFERENCE NOTES

Variable Interest Rate
- Your loan has a variable interest rate that is based on a publicly available index, the [Index Name], which is currently [Rate]. Your rate will be calculated each month by adding a margin of [Margin Rate] to the [index].
- The interest rate you pay may be higher or lower than your Annual Percentage Rate (APR) because the APR considers the fees you pay to obtain the loan, the interest rate, and whether you defer payments while in school.
- [Description of other limits, if applicable]

Bankruptcy Limitations
- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options.
- [Description of deferment options, if applicable]

Prepayments.
- [Prepayment Disclosure]

Security
- You are giving a security interest in [description, if applicable]

See your loan agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

H-20 Private Education Loan Final Model Form

BORROWER
[Borrower Name]
[Borrower Address]

CREDITOR
[Creditor Name]
[Creditor Address]

RIGHT TO CANCEL

You have a right to cancel this transaction, without penalty, by midnight on [deadline for cancellation]. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at [Creditor Phone Number].

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
The total amount you are borrowing.	Your current interest rate.	The estimated dollar amount the credit will cost you.	The estimated amount you will have paid when you have made all payments.

ITEMIZATION OF AMOUNT FINANCED

Amount paid to you	[Amount]
Amount paid to others on your behalf	[Amount]
• [Name of others]	
Amount Financed	[Amount]
Initial finance charges	[Amount]
• [Charge Type], [Amount]	
• [Charge Type], [Amount]	
Total Loan Amount	[Amount]

ABOUT YOUR INTEREST RATE

- **Your rate is variable.** This means that your rate of interest may change and could be lower or higher than the rate on this form. The variable rate is based upon the [index] Rate as published in the [source of index]. For more information on this rate, see reference notes.
- There is no limit on the amount the interest rate can increase.
- **Your Annual Percentage Rate (APR) is [Rate].** The APR is typically different than your Interest Rate since it considers fees and reflects the cost of your loan as a yearly rate. For more information about the APR, see reference notes.

FEES

- [Itemization of fees, if applicable]

Estimated Repayment Schedule & Terms

[LOAN TERM]	[PAYMENT PERIOD, e.g. MONTHLY PAYMENTS]		
	If [Interest Rate]% (the current interest rate)	If Maximum Rate [illegible] 25%	[illegible]
[Dates of Deferment Period, if applicable] deferment period	No payment required. [illegible]	No payment required. [illegible]	[illegible]
[Payment Due Dates] [illegible]	[Payment Amount]	[Payment Amount] [illegible]	[illegible]
[Payment Due Dates] [illegible]	[Payment Amount]	[Payment Amount] [illegible]	[illegible]

[illegible]

REFERENCE NOTES

[illegible]

H-21 Private Education Loan Application and Solicitation Sample

[illegible]

First ABC Bank
[illegible]

Loan Interest Rate & Fees

Your starting interest rate will be between

7.375% and 17.375%

[illegible]

Your Starting Interest Rate (upon approval)

[illegible]

Your Interest Rate during the life of the loan

[illegible]

Loan Fees

[illegible]

Loan Cost Examples

[illegible]

Repayment Option [illegible]	Amount Provided [illegible]	Interest Rate [illegible]	Loan Term [illegible]	Total Paid over 20 years [illegible]
1. [illegible]	$10,000	17.375%	20 years [illegible]	[illegible]
2. PAY ONLY THE INTEREST [illegible]	$10,000	17.375%	20 years [illegible]	[illegible]
3. MAKE FULL PAYMENTS [illegible]	$10,000	17.375%	20 years [illegible]	[illegible]

About this example

[illegible]

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	5% fixed	
STAFFORD for Students	5.5% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	8.5% fixed	Federal Family Education Loan
	7.9% fixed	Federal Direct Loan

You may qualify for Federal education loans.

For additional information, contact your school's financial aid office or the Department of Education at:

www.federalstudentaid.ed.gov

Next Steps

1. **Find Out About Other Loan Options.**
   Some schools have school-specific student loan benefits and terms not detailed on this form. Contact your school's financial aid office or visit the Department of Education's web site at: www.federalstudentaid.ed.gov for more information about other loans.

2. **To Apply for this Loan, Complete the Application and the Self-Certification Form.**
   You may get the certification form from your school's financial aid office. If you are approved for this loan, the loan terms will be available for 30 days (terms will not change during this period, except as permitted by law and the variable interest rate may change based on the market).

REFERENCE NOTES

Variable Interest Rate

- This loan has a variable interest rate that is based on a publicly available index, the London Interbank Offered Rate (LIBOR). Your rate will be calculated each month by adding a margin between 4% and 12% to the LIBOR.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time.

Eligibility Criteria

Borrower

- Must be enrolled in an eligible school at least half-time.
- Must be 18 years or older at the time you apply.

Co-Signer

- Rates are typically higher without a co-signer.
- Must be 18 years or older at the time of loan application.

Bankruptcy Limitations

- If you file for bankruptcy you may still be required to pay back this loan.

More information about loan eligibility and repayment deferral or forbearance options is available in your loan application and loan agreement.

H-22 Private Education Loan Approval Sample

Page 1 of 2

BORROWER [illegible]	CREDITOR [illegible]
Christopher Smith Jr. [illegible]	First ABC Bank [illegible]
1482 Columbus Way [illegible]	[illegible]
[illegible]	[illegible]

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
$10,600.00	7.375%	$18,541.74	$28,541.24
The total amount you are borrowing	Your current interest rate	[illegible]	[illegible]

ITEMIZATION OF AMOUNT FINANCED

Amount paid to you	$0.00
Amount paid to others on your behalf • ABC State University	+ $10,000
Amount Financed (total amount given to you)	= $10,000
Initial finance charges (total) • Origination Fee ($300) • Loan Guarantee Fee ($300)	+ $600
Total Loan Amount	= $10,600

ABOUT YOUR INTEREST RATE

- **Your rate is variable.** [illegible] For more information on this rate, see reference notes.
- Although your rate will vary, **it will never exceed 25%** [illegible]
- **Your Annual Percentage Rate (APR)** [illegible] For more information about the APR, see reference notes.

FEES

- **Late Charge:** [illegible]
- **Returned check charge:** up to [illegible]
- **Fee when you begin repaying the loan:** [illegible]

Estimated Repayment Schedule & Terms

20 YEAR LOAN TERM	MONTHLY PAYMENTS: at 7.375% [illegible]	at 25% [illegible]	[illegible]
Sept. 1, 2009 - Oct. 31, 2013 deferment period	No payment required [illegible]	No payment required [illegible]	
Nov. 1, 2013 - Sept. 30, 2033 239 monthly payments	$118.93	$245.41	
Oct. 1, 2033 1 monthly payment	$116.87	$274.53	

Federal Loan Alternatives

Loan program	Current Interest Rates by Program Type	
PERKINS for Students	5% fixed	
STAFFORD for Students	5.6% fixed	Undergraduate subsidized
	6.8% fixed	Undergraduate unsubsidized & Graduate
PLUS for Parents and Graduate / Professional Students	8.5% fixed	Federal Family Education Loan
	7.9% fixed	Federal Direct Loan

You may qualify for Federal education loans.
For additional information, contact your school's financial aid office or the Department of Education at:
www.federalstudentaid.ed.gov

Next Steps & Terms of Acceptance

This offer is good until:

August 1, 2009

1. **Find Out About Other Loan Options.**
Contact your school's financial aid office for more information.

2. **You Have Until August 1, 2009 to Accept this Offer.**
The terms of this offer will not change except as permitted by law and the variable interest may change based on the market.

To Accept the terms of this loan, contact us at:
First ABC Bank
12345 Hill Ct
Anytown, CA 90000
(800) 555-5555

REFERENCE NOTES

Variable Interest Rate
- Your loan has a variable interest rate that is based on a publicly available index, the London Interbank Offered Rate (LIBOR), which is currently 4.310%. Your rate is calculated each month by adding a margin of 5% to the LIBOR.
- The Interest Rate may be higher or lower than your Annual Percentage Rate (APR) because the APR considers all fees you pay to obtain this loan, the interest rate, and whether you defer payments while in school.
- The rate will not increase more than once a month, but there is no limit on the amount that the rate could increase at one time. Your rate will never exceed 25%.
- If the interest rate increases, your monthly payments will be higher.

Bankruptcy Limitations
- If you file for bankruptcy you may still be required to pay back this loan.

Repayment Options
- Although you selected to postpone payments, you can make interest payments while you are in school. You can also choose to change your payment choice to Pay Interest Only or Make Full Payments. More information about repayment deferral or forbearance options is available in your loan agreement.

Prepayments
- If you pay the loan off early, you will not have to pay a penalty. You will not be entitled to a refund of part of the finance charge.

See your loan agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

H-23 Private Education Loan Final Sample

Page 1 of 1

BORROWER
[illegible]
Plymouth, MA [illegible]

CREDITOR
First ABC Bank
[illegible]
Anytown, CA [illegible]

RIGHT TO CANCEL

You have a right to cancel this transaction, without penalty, by midnight on August [illegible] 2009. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at 800-555-5555.

Loan Rates & Estimated Total Costs

Total Loan Amount	Interest Rate	Finance Charge	Total of Payments
$10,000.00	7.375%	$18,541.24	$28,541.24
The total amount you are borrowing	Your current interest rate	The estimated dollar amount the credit will cost you	The estimated amount you will have paid when you have made all payments

ITEMIZATION OF AMOUNT FINANCED

Amount paid to you	$0.00
Amount paid to others on your behalf	+ [illegible]
+ ABC State University	
Amount financed (total amount provided)	= [illegible]
Initial finance charges (total)	+ [illegible]
+ Origination Fee ([illegible])	
+ Loan Guarantee Fee ([illegible])	
Total Loan Amount	= [illegible]

ABOUT YOUR INTEREST RATE

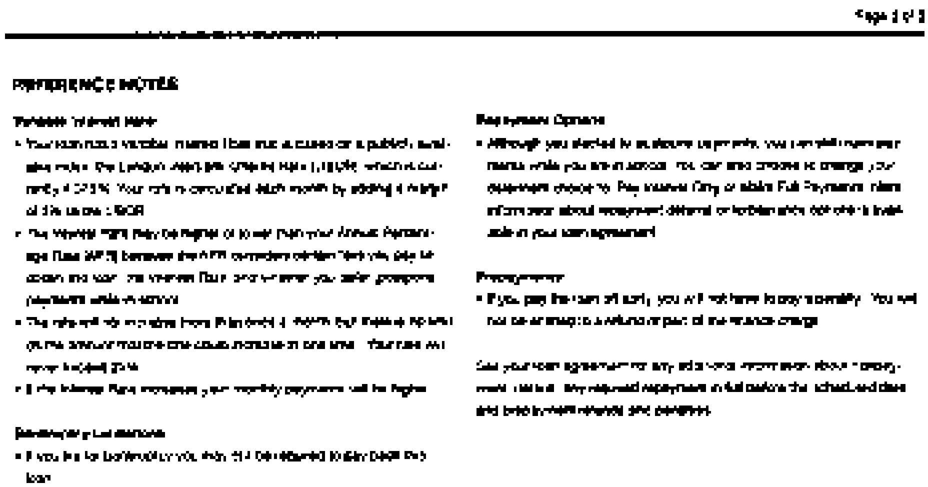
- **Your rate is variable.** This means that your actual rate varies with the market and could be lower or higher than the rate on this form. The variable rate is based upon the LIBOR Rate (as published in the Wall Street Journal). For more information on this rate, see reference notes.
- **There is no limit on the amount the interest rate can increase.**
- Your **Annual Percentage Rate (APR)** is [illegible]%. The APR is typically different than the Interest Rate since it considers fees and reflects the cost of your loan as a yearly rate. For more information about the APR, see reference notes.

FEES

- **Late Charge:** 5% of the amount of the past due payment, or $25, whichever is greater.
- **Returned check charge:** up to $25.
- **Fee when you begin receiving the loan:** [illegible]% of loan balance.

Estimated Repayment Schedule & Terms

[illegible] YEAR LOAN TERM	MONTHLY PAYMENTS at 7.375%	MONTHLY PAYMENTS No Maximum Rate	
	The current interest rate if you defer	[illegible]	
Sept. 1, 2009 - Oct. 31, 2012 [illegible]	No payment required [illegible]	No payment required [illegible]	[illegible]
Nov. 1, 2012 - Sept. 30, 2032 [illegible] monthly payments	$118.93	$645.41 [illegible]	[illegible]
Oct. 1, 2032 1 monthly payment	$118.97	$674.60 [illegible]	[illegible]



H–24(A) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—MODEL FORM

Description: This is a blank model Loan Estimate that illustrates the application of the content requirements in §1026.37. This form provides two variations of page one, four variations of page two, and four variations of page three, reflecting the variable content requirements in §1026.37.

Loan Estimate

Loan Terms

Loan Amount

Interest Rate

Monthly Principal & Interest

Can this amount increase after closing?

Does the loan have these features?

Prepayment Penalty

Balloon Payment

Projected Payments

Payment Calculation

Principal & Interest

Mortgage Insurance

Estimated Escrow

Estimated Total Monthly Payment

Estimated Taxes, Insurance & Assessments

This estimate includes

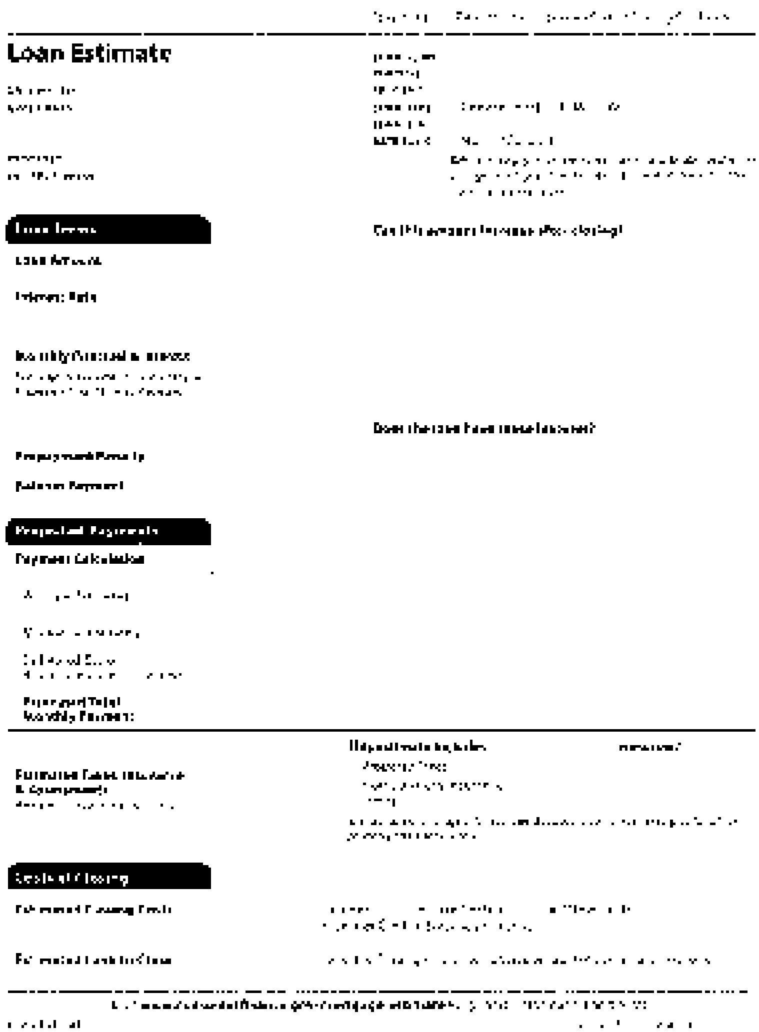
In escrow?

Property Taxes

Costs at Closing

Estimated Closing Costs

Estimated Cash to Close



Loan Estimate

Loan Terms

Loan Amount

Interest Rate

Monthly Principal & Interest

Can this amount increase after closing?

Does the loan have these features?

Prepayment Penalty

Balloon Payment

Projected Payments

Payment Calculation

Estimated Total Monthly Payment

Estimated Taxes, Insurance & Assessments

This estimate includes

Property Taxes

Costs at Closing

Estimated Closing Costs

Estimated Cash to Close

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes

Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (months)

Mortgage Insurance Premium (months)

Prepaid Interest (per day for days @)

Property Taxes (months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance per month for mo.

Mortgage Insurance per month for mo.

Property Taxes per month for mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I

Lender Credits

Calculating Cash to Close

Total Closing Costs (J)

Closing Costs Financed (Paid from your Loan Amount)

Down Payment/Funds from Borrower

Deposit

Funds for Borrower

Seller Credits

Adjustments and Other Credits

Estimated Cash to Close

LOAN ESTIMATE PAGE 2 OF 3 • LOAN ID #

Closing Cost Details

LOAN COSTS

A. Origination Charges
% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

OTHER COSTS

E. Taxes and Other Government Fees
Recording Fees and Other Taxes
Transfer Taxes

F. Prepaids
Homeowner's Insurance Premium (months)
Mortgage Insurance Premium (months)
Prepaid Interest (per day for days @)
Property Taxes (months)

G. Initial Escrow Payment at Closing
Homeowner's Insurance per month for mo.
Mortgage Insurance per month for mo.
Property Taxes per month for mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS
D + I
Lender Credits

Calculating Cash to Close

Total Closing Costs (J)
Closing Costs Financed (Paid from your Loan Amount)
Down Payment/Funds from Borrower
Deposit
Funds for Borrower
Seller Credits
Adjustments and Other Credits
Estimated Cash to Close

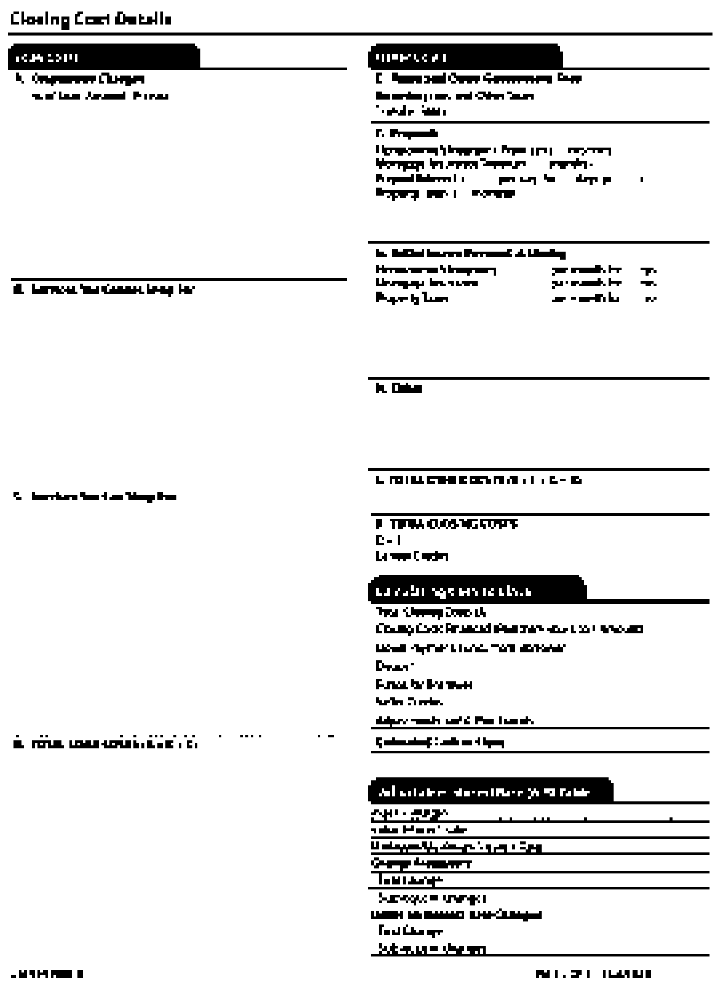
Adjustable Payment (AP) Table

Interest Only Payments?
Optional Payments?
Step Payments?
Seasonal Payments?
Monthly Principal and Interest Payments
First Change/Amount
Subsequent Changes
Maximum Payment

Adjustable Interest Rate (AIR) Table

Index + Margin
Initial Interest Rate
Minimum/Maximum Interest Rate
Change Frequency
First Change
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

Closing Cost Details



Closing Cost Details

A. Origination Charges

E. Taxes and Other Government Fees

Recording Fees and Other Taxes

F. Prepaids

H. Other

Lender Credits

Total Closing Costs (J)

Deposit

Funds for Borrower

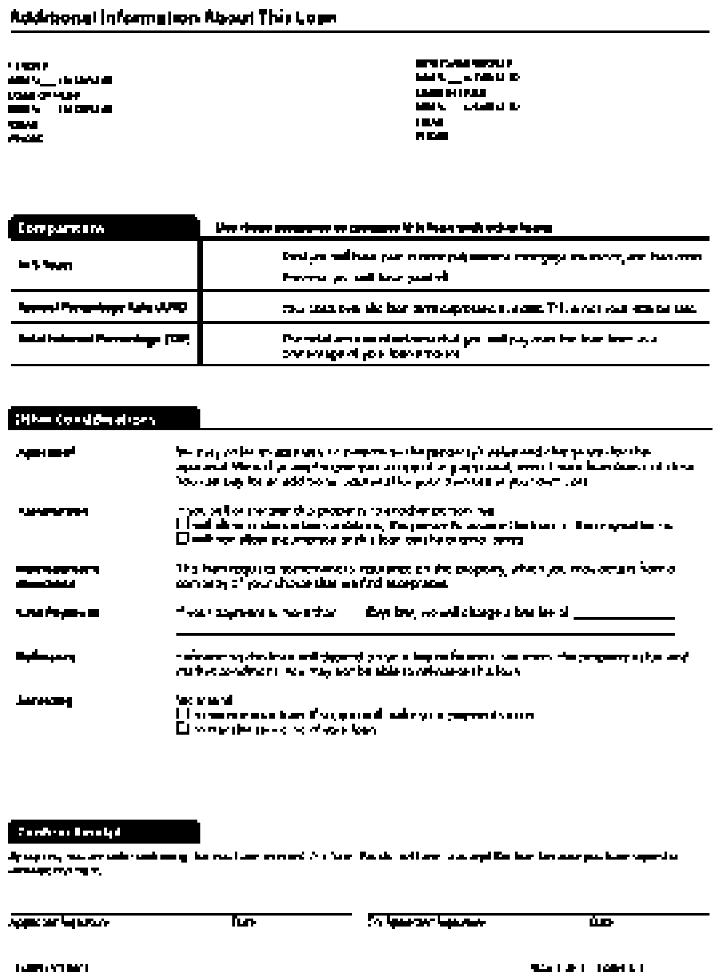
Seller Credits

Adjustments and Other Credits

Estimated Cash to Close

First Change

Subsequent Changes


Additional Information About This Loan

Additional Information About This Loan

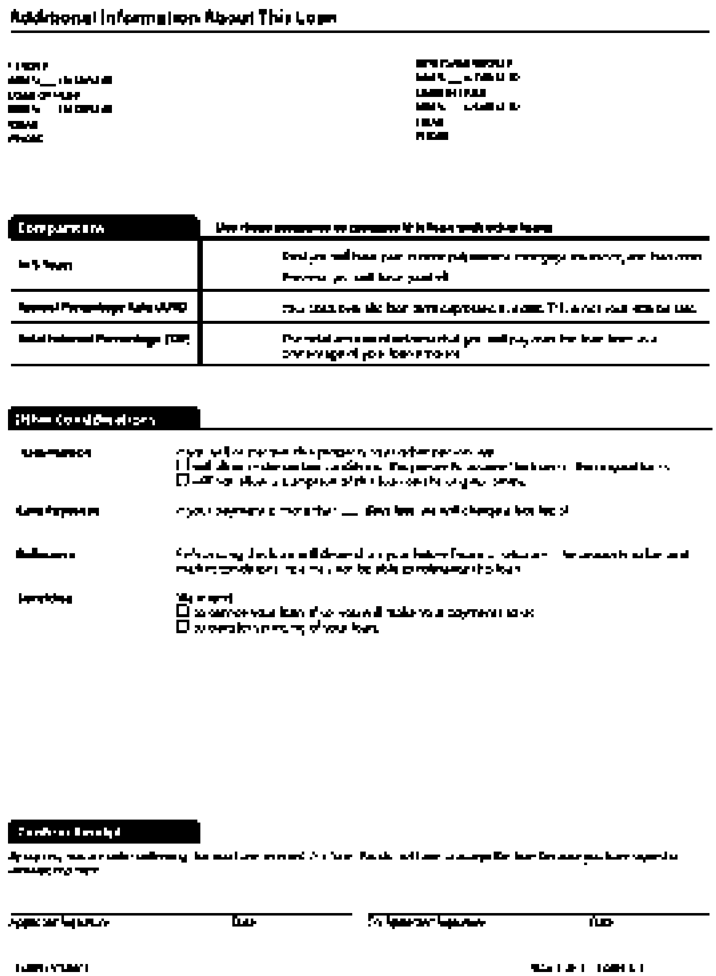
[illegible]

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	[illegible]
Annual Percentage Rate (APR)	[illegible]
Total Interest Percentage (TIP)	[illegible]

Other Considerations

Appraisal	[illegible]
Assumption	[illegible]
Homeowner's Insurance	[illegible]
Late Payment	[illegible]
Loan Acceptance	[illegible]
Refinance	[illegible]
Servicing	[illegible]

[illegible]



Additional Information About This Loan

Comparisons

In 5 Years

Annual Percentage Rate (APR)

Total Interest Percentage (TIP)

Other Considerations

Additional Information About This Loan

[illegible]

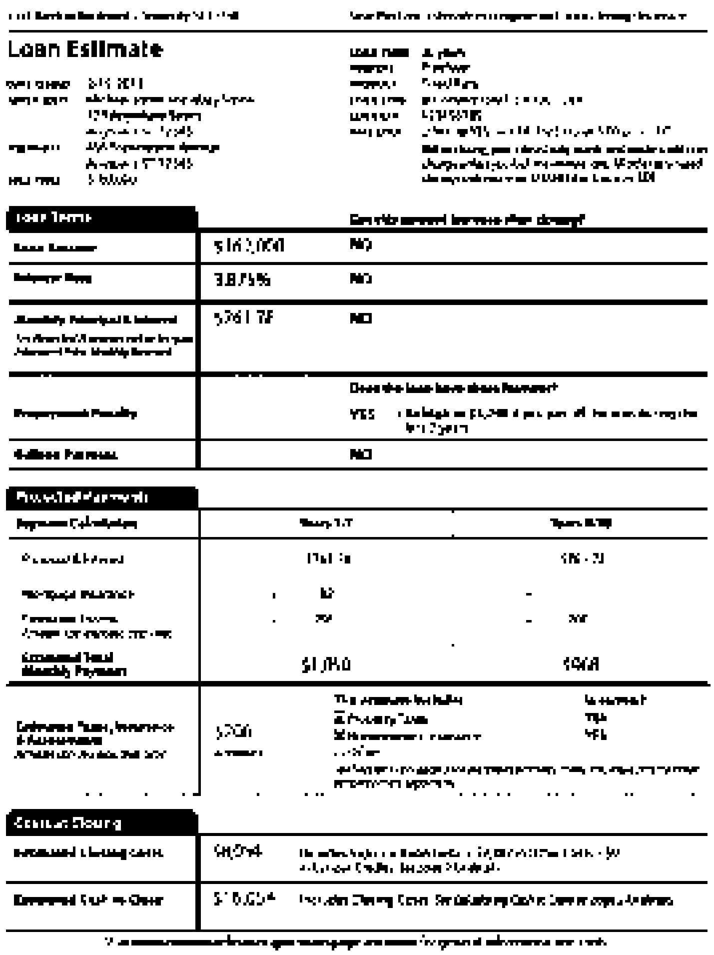
Comparisons	[illegible]
In 5 Years	[illegible]
Annual Percentage Rate (APR)	[illegible]
Total Interest Percentage (TIP)	[illegible]

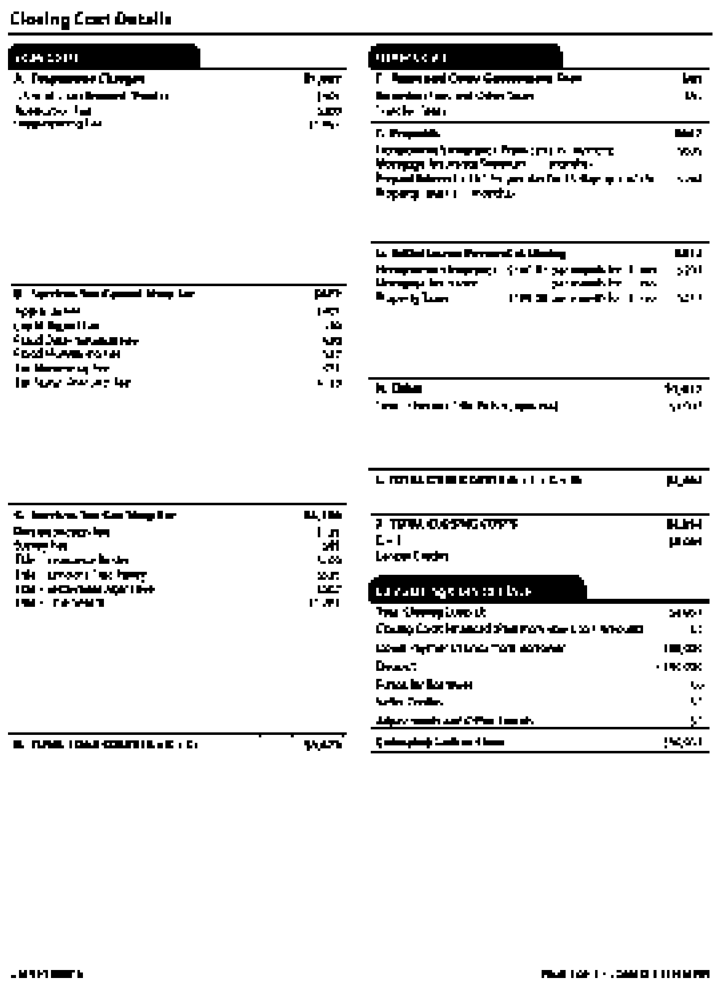
Other Considerations

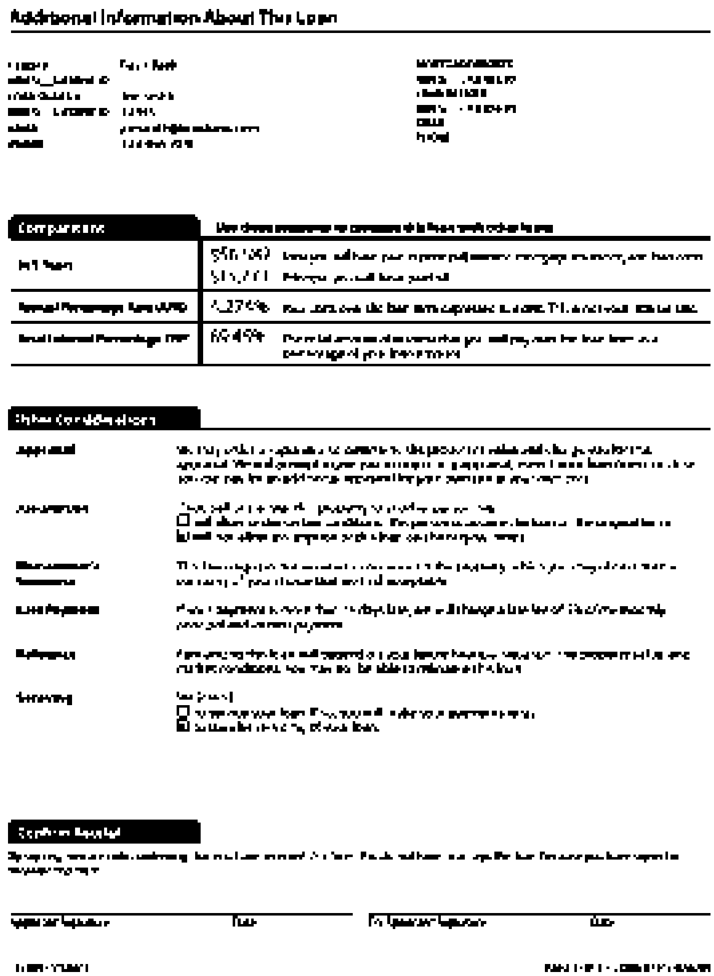
[illegible]

H–24(B) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—FIXED RATE LOAN SAMPLE

Description: This is a sample of a completed Loan Estimate for a fixed rate loan. This loan is for the purchase of property at a sale price of $180,000 and has a loan amount of $162,000, a 30-year loan term, a fixed interest rate of 3.875 percent, and a prepayment penalty equal to 2.00 percent of the outstanding principal balance of the loan for the first two years after consummation of the transaction. The consumer has elected to lock the interest rate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance.


Loan Estimate
Loan Terms
$162,000
NO
3.875%
NO
$761.78
NO
YES
NO
Projected Payments
$1,050
$968
$206
Costs at Closing


Closing Cost Details


Additional Information About This Loan

Comparisons

In 5 Years

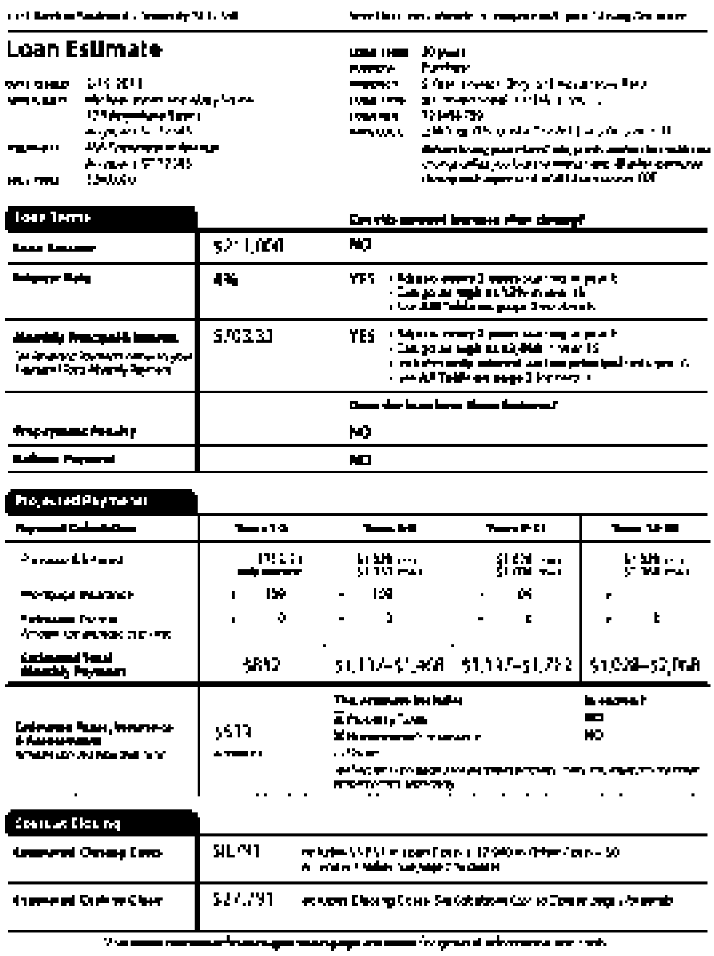
Other Considerations

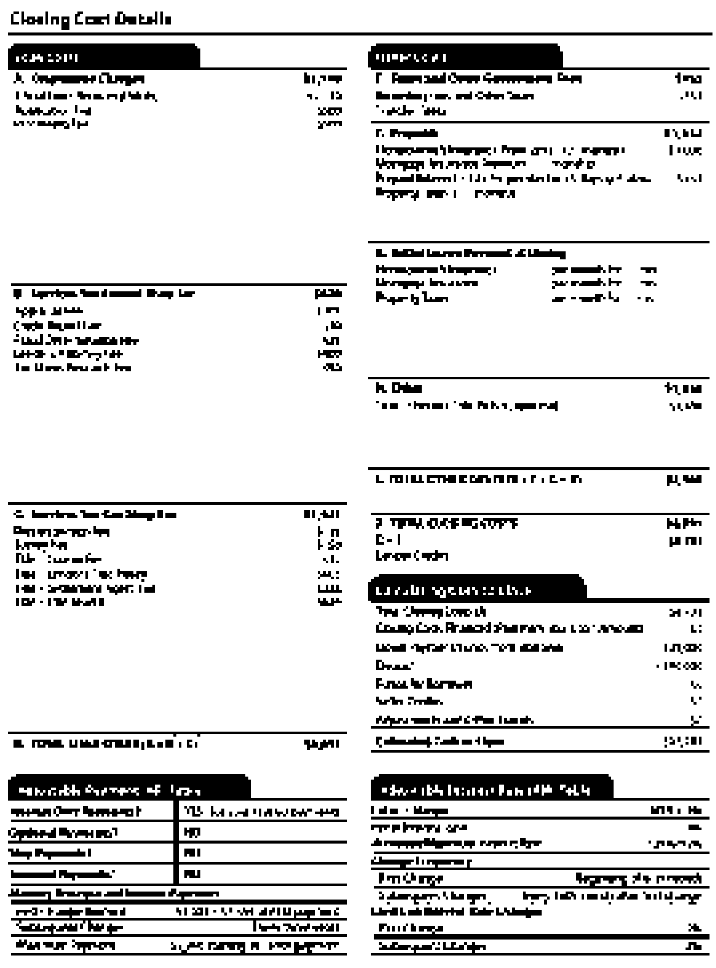
Confirm Receipt

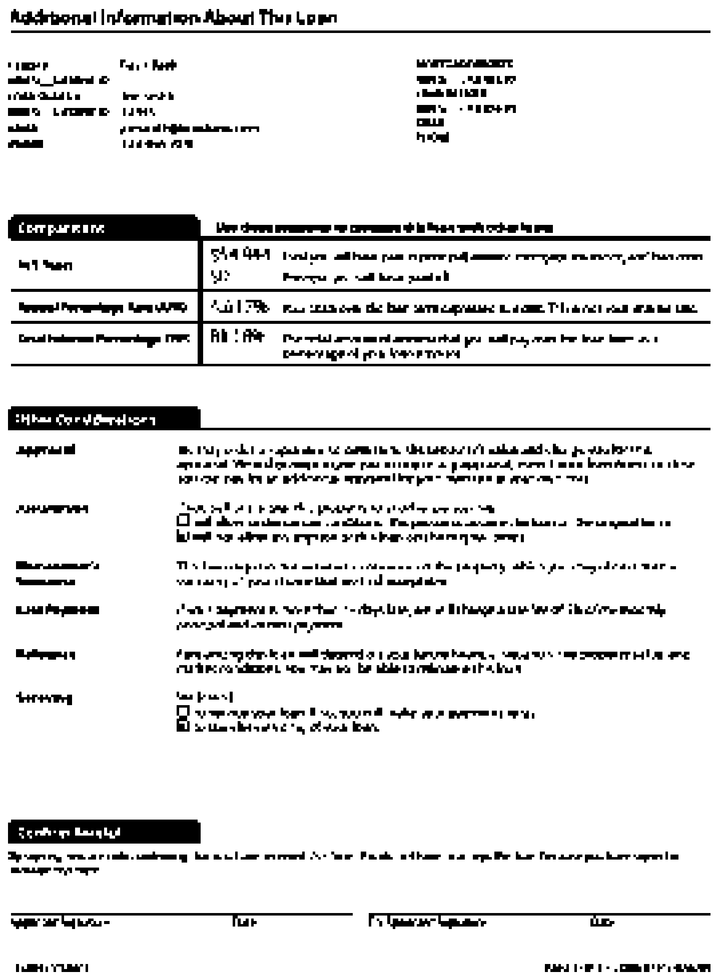
H–24(C) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—INTEREST ONLY ADJUSTABLE RATE LOAN SAMPLE

Description: This is a sample of a completed Loan Estimate for an adjustable rate loan with interest only payments. This loan is for the purchase of property at a sale price of $240,000 and has a loan amount of $211,000 and a 30-year loan term. For the first five years of the loan term, the scheduled payments cover only interest and the loan has an introductory interest rate that is fixed at 4.00 percent. After five years, the payments include principal and the interest rate adjusts every three years based on the value of the Monthly Treasury Average index plus a margin of 4.00 percent. The consumer has elected to lock the interest rate. The creditor does not require an escrow account with the loan.

The creditor requires that the consumer pay for private mortgage insurance.


Loan Estimate


Closing Cost Details



H–24(D) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—REFINANCE SAMPLE

Description: This is a sample of a completed Loan Estimate for a transaction that is for a refinance of an existing mortgage loan that secures the property, for which the consumer is estimated to receive funds from the transaction. The estimated property value is $180,000, the loan amount is $150,000, the estimated outstanding balance of the existing mortgage loan is $120,000, and the interest rate is 4.25 percent. The consumer has elected to lock the interest rate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance.

Loan Estimate

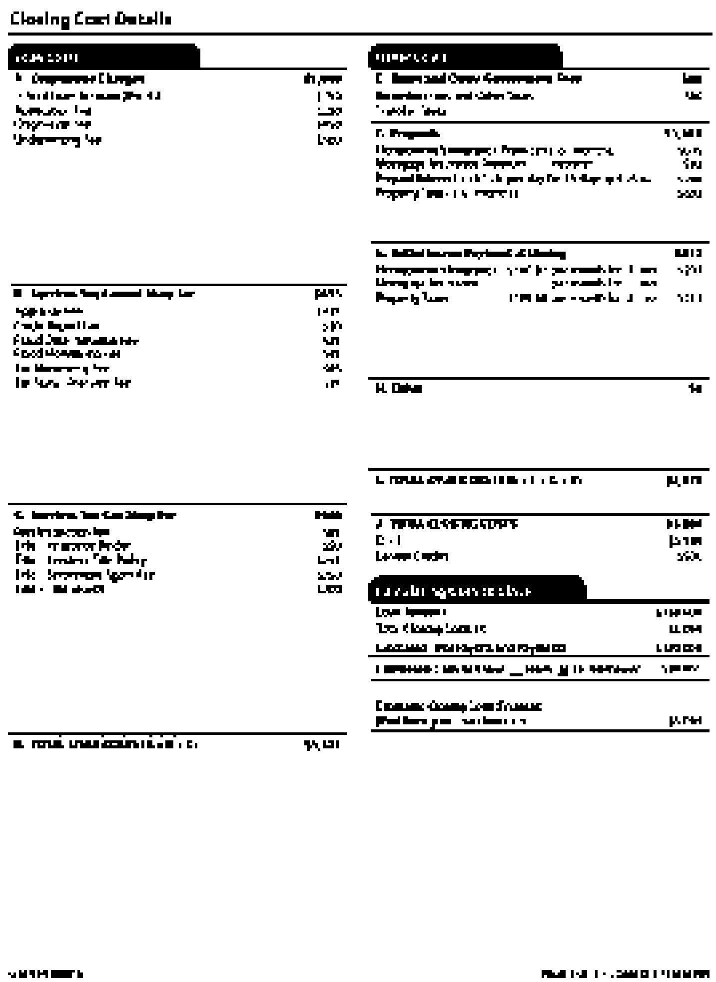
[illegible]

[illegible]		[illegible]
[illegible]	$150,000	NO
[illegible]	[illegible]	NO
[illegible]	[illegible]	NO
		[illegible]
[illegible]		NO
[illegible]		NO

[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	$1,036	$944
[illegible]	[illegible]	[illegible]

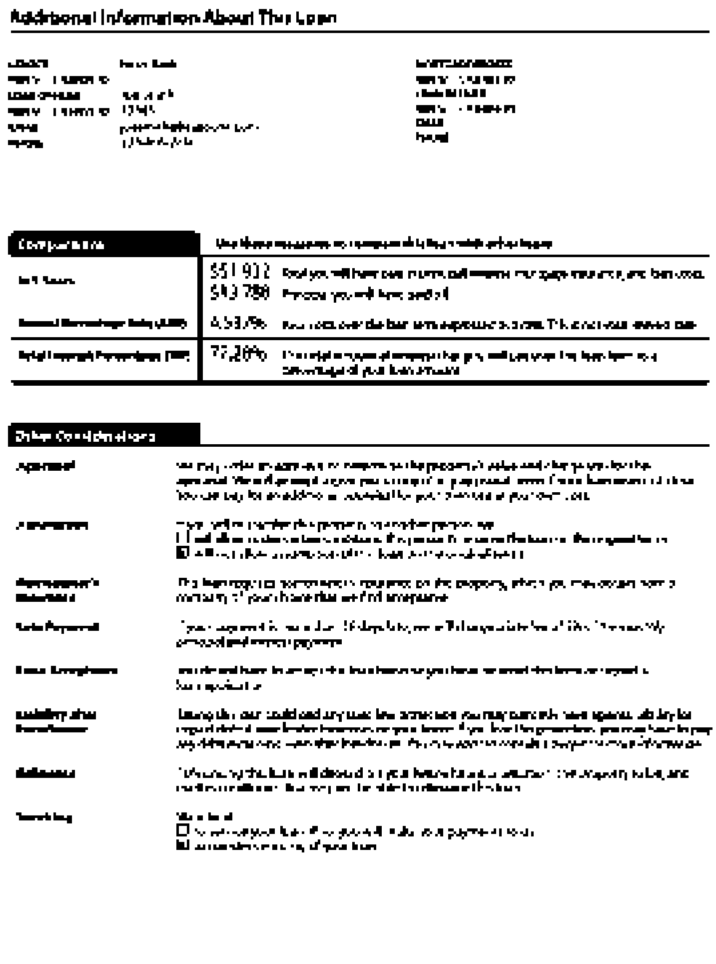
[illegible]		
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]

[illegible]



Closing Cost Details

H. Other



Additional Information About This Loan

Comparisons

Other Considerations

H–24(E) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—BALLOON PAYMENT SAMPLE

Description: This is a sample of the information required by §1026.37(a) through (c) for a transaction with a loan term of seven years that includes a final balloon payment.

Loan Estimate

[illegible]	[illegible]
[illegible]	Michael Jones and Mary Stone
	123 Anywhere Street
	Anytown, ST 12345
[illegible]	456 Somewhere Avenue
	Anytown, ST 12345
[illegible]	[illegible]

[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible] Balloon Payment, Fixed Rate
[illegible]	[illegible] Conventional [illegible]
[illegible]	[illegible]
[illegible]	☐ NO ☒ YES, until [illegible]

Loan Terms

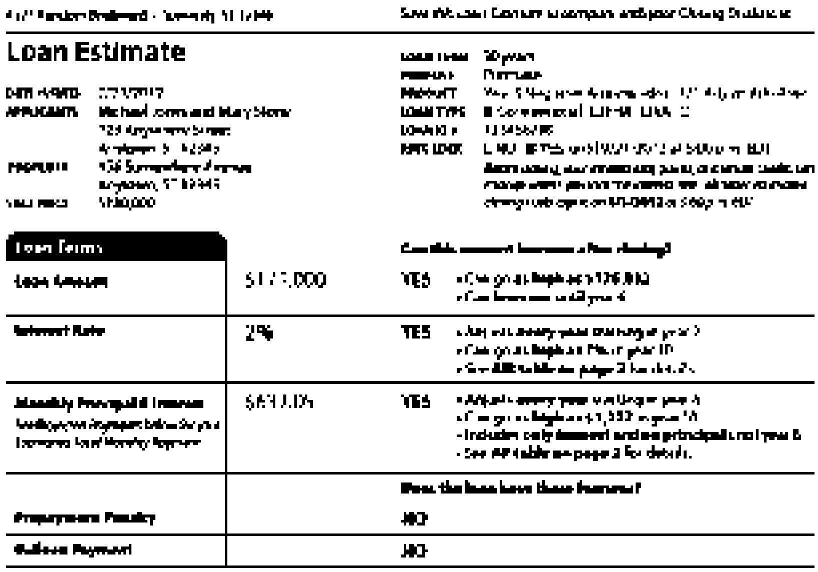
[illegible]		[illegible]
[illegible]	$171,000	NO
[illegible]	4.375%	NO
[illegible]	$853.78	NO
		[illegible]
[illegible]		NO
[illegible]		YES • [illegible]

Projected Payments

[illegible]	[illegible]	[illegible]
[illegible]	$853.78	$149,262.95
[illegible]	+ 82	+ —
[illegible]	+ [illegible]	+ —
[illegible]	$1,250	$149,262.95
[illegible]	$309 a month	[illegible] ☒ [illegible] YES ☒ [illegible] YES ☐ Other: [illegible]

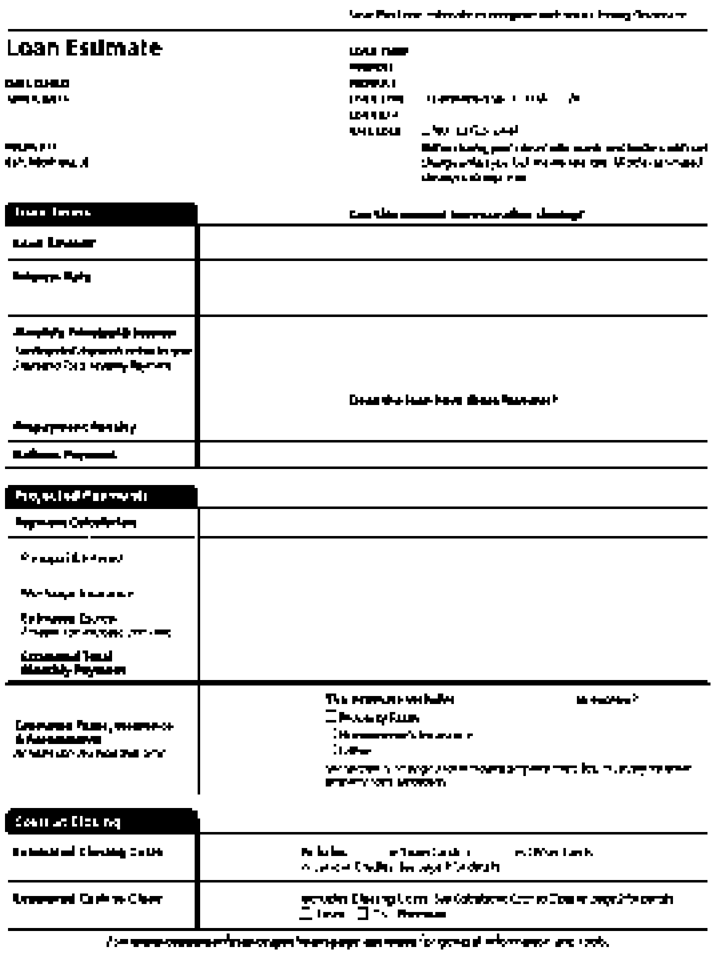
H–24(F) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—NEGATIVE AMORTIZATION SAMPLE

Description: This is a sample of the information required by §1026.37(a) and (b) for a transaction with negative amortization.



H–24(G) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—MODIFICATION TO LOAN ESTIMATE FOR TRANSACTION NOT INVOLVING SELLER—MODEL FORM

Description: This is a blank model Loan Estimate that illustrates the application of the content requirements in §1026.37, with the optional alternative tables permitted by §1026.37(d)(2) and (h)(2) for transactions without a seller. This form provides one variation of page one, four variations of page two, and four variations of page three, reflecting the variable content requirements in §1026.37.


Loan Estimate
Projected Payments
Costs at Closing

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes

Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (months)

Mortgage Insurance Premium (months)

Prepaid Interest (per day for days @)

Property Taxes (months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance per month for mo.

Mortgage Insurance per month for mo.

Property Taxes per month for mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I

Lender Credits

Calculating Cash to Close

Loan Amount

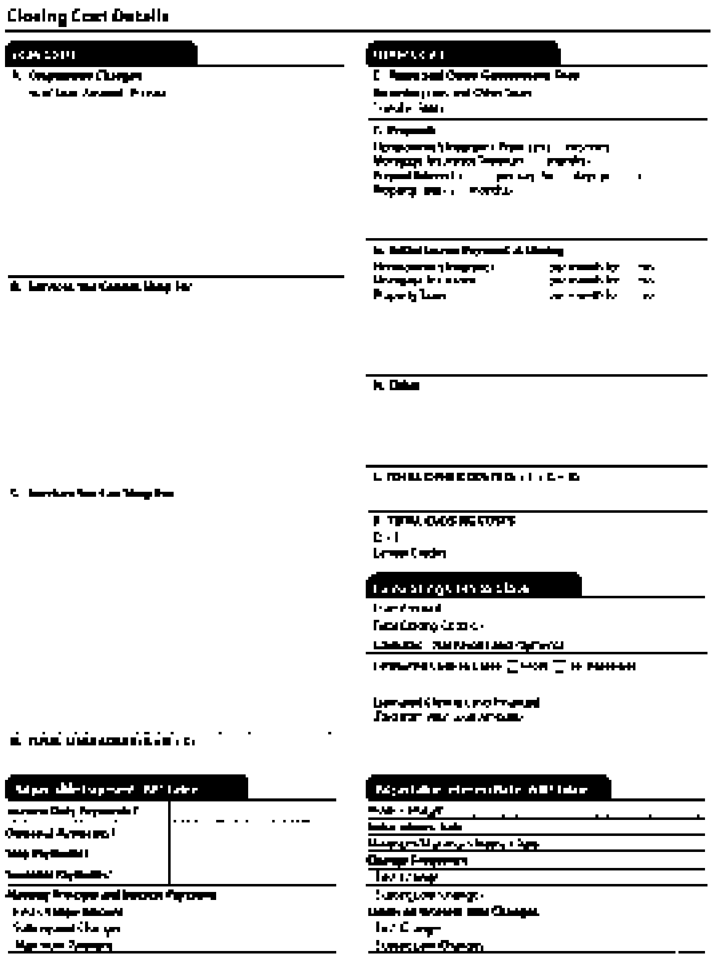
Total Closing Costs (J)

Estimated Total Payoffs and Payments

Estimated Cash to Close ☐ From ☐ To Borrower

Estimated Closing Costs Financed

(Paid from your Loan Amount)


Closing Cost Details

Closing Cost Details

Loan Costs

A. Origination Charges

% of Loan Amount (Points)

B. Services You Cannot Shop For

C. Services You Can Shop For

D. TOTAL LOAN COSTS (A + B + C)

Adjustable Payment (AP) Table

Interest Only Payments?	
Optional Payments?	
Step Payments?	
Seasonal Payments?	

Monthly Principal and Interest Payments

First Change/Amount

Subsequent Changes

Maximum Payment

Other Costs

E. Taxes and Other Government Fees

Recording Fees and Other Taxes

Transfer Taxes

F. Prepaids

Homeowner's Insurance Premium (months)

Mortgage Insurance Premium (months)

Prepaid Interest (per day for days @)

Property Taxes (months)

G. Initial Escrow Payment at Closing

Homeowner's Insurance per month for mo.

Mortgage Insurance per month for mo.

Property Taxes per month for mo.

H. Other

I. TOTAL OTHER COSTS (E + F + G + H)

J. TOTAL CLOSING COSTS

D + I

Lender Credits

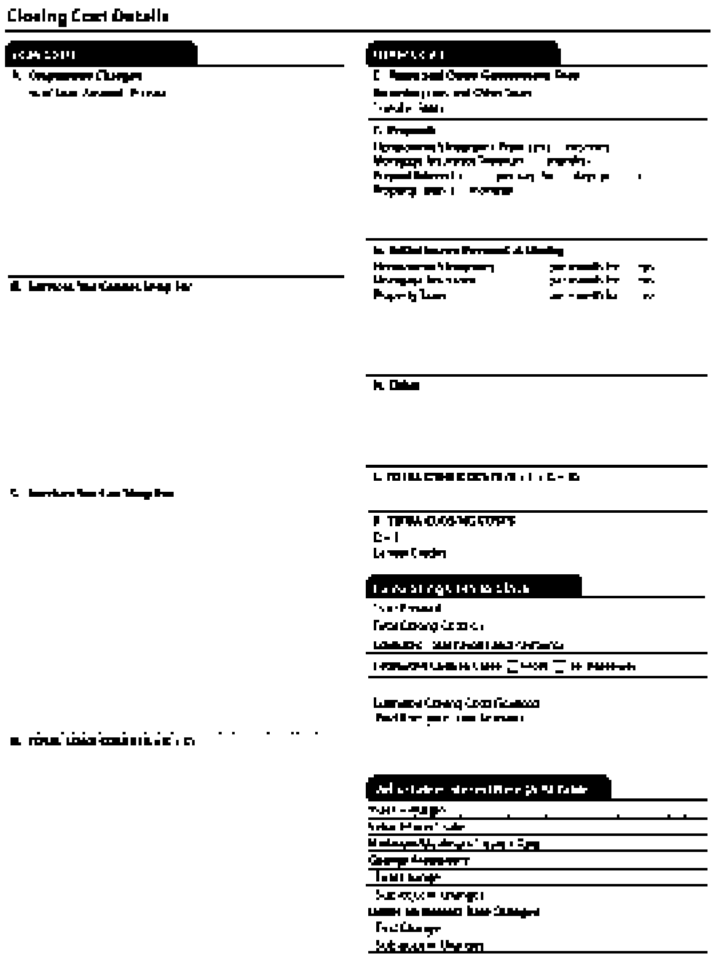
Calculating Cash to Close

Total Closing Costs (J)

Closing Costs Financed (Paid from your Loan Amount)

Estimated Closing Costs Financed

Paid from your Loan Amount



Closing Cost Details

Additional Information About This Loan

[illegible]

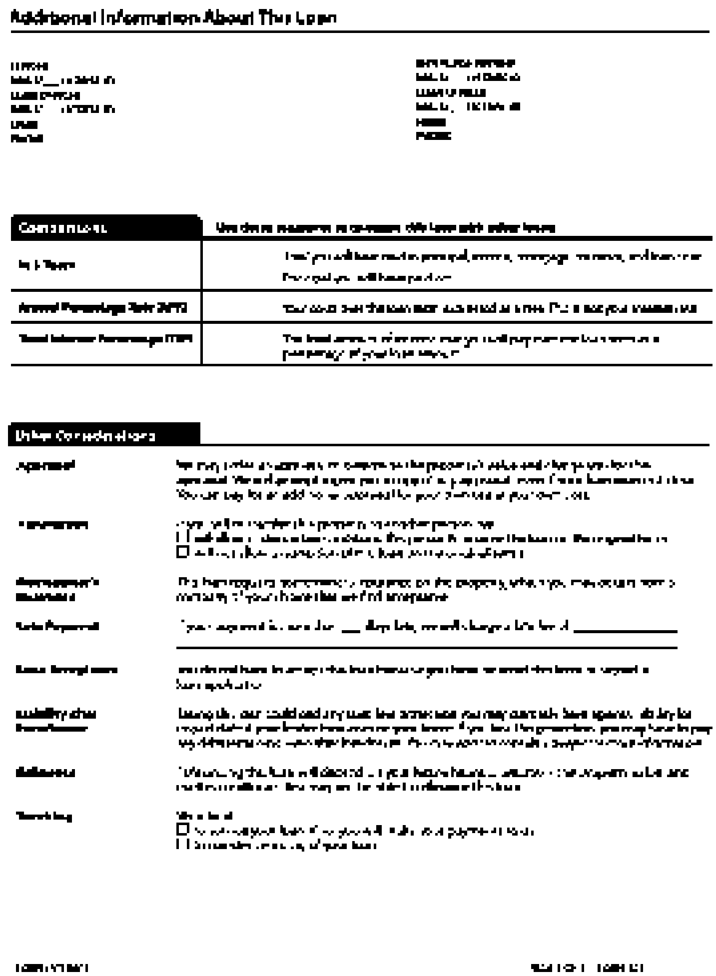
Comparisons	[illegible]
In 5 Years	[illegible]
Annual Percentage Rate (APR)	[illegible]
Total Interest Percentage (TIP)	[illegible]

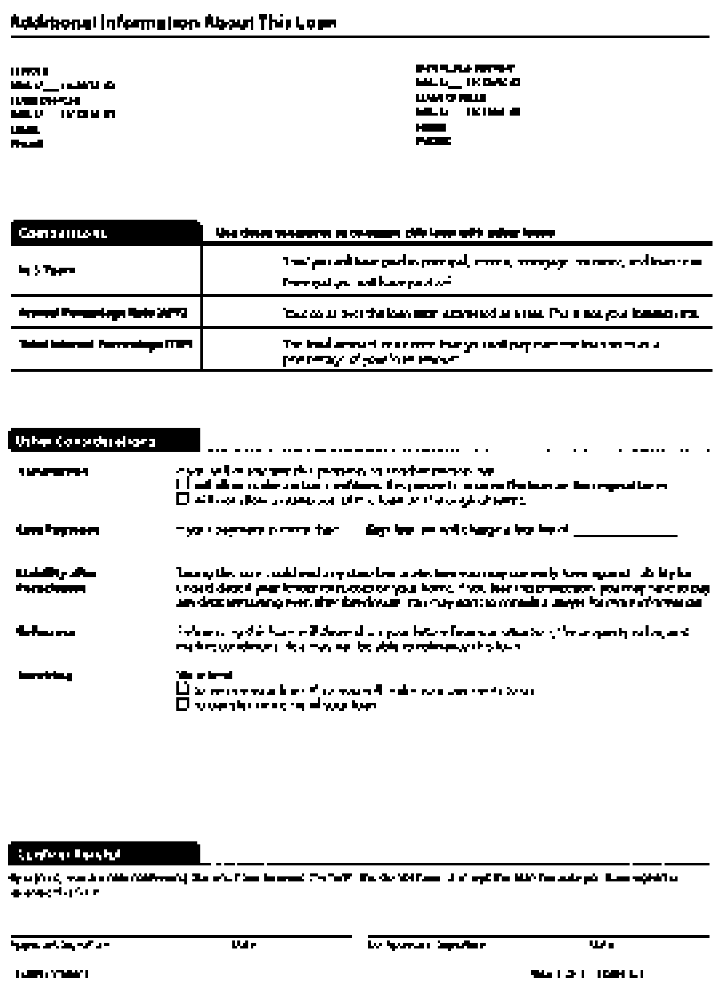
Other Considerations

[illegible]

Confirm Receipt

[illegible]


Additional Information About This Loan



Additional Information About This Loan

Comparisons

In 5 Years

Annual Percentage Rate (APR)

Total Interest Percentage (TIP)

Other Considerations

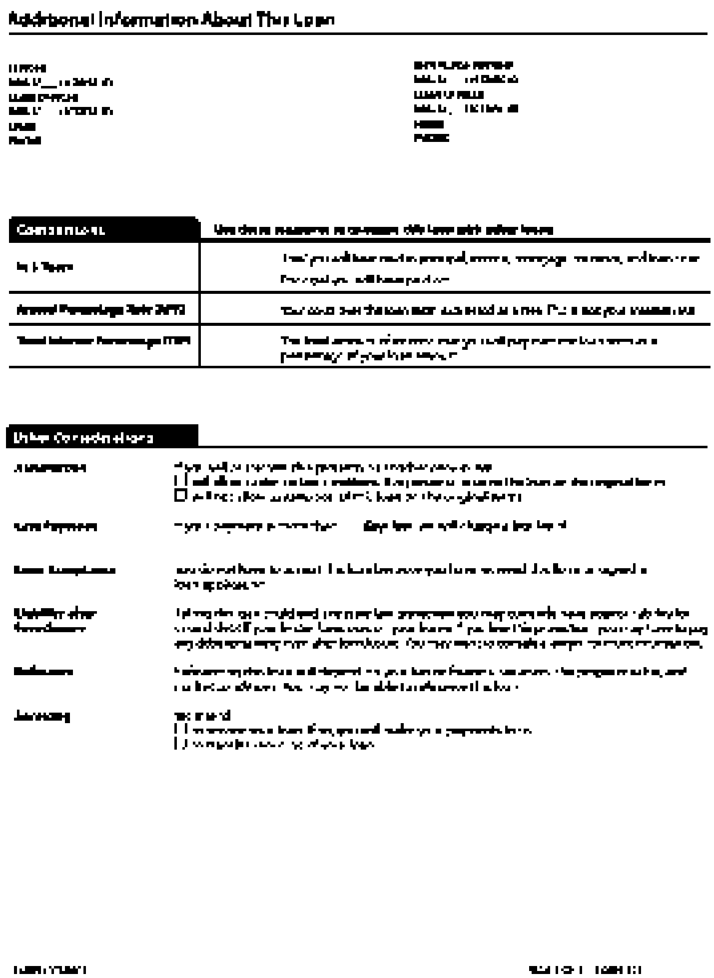
Late Payment

Liability after Foreclosure

Refinance

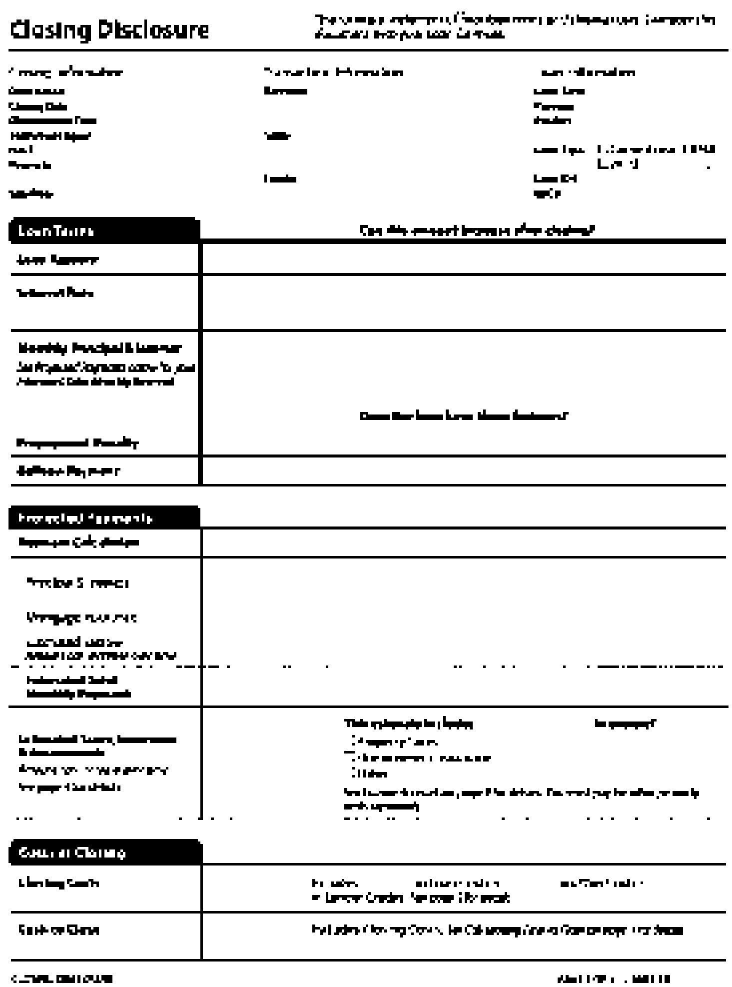
Servicing

Confirm Receipt


Additional Information About This Loan

H–25(A) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—MODEL FORM

Description: This is a blank model Closing Disclosure that illustrates the content requirements in § 1026.38. This form provides three variations of page one, one page two, one page three, four variations of page four, and four variations of page five, reflecting the variable content requirements in § 1026.38. This form does not reflect modifications permitted under § 1026.38(t).



Closing Disclosure

Loan Terms

Loan Amount

Interest Rate

Monthly Principal & Interest

Prepayment Penalty

Balloon Payment

Projected Payments

Payment Calculation

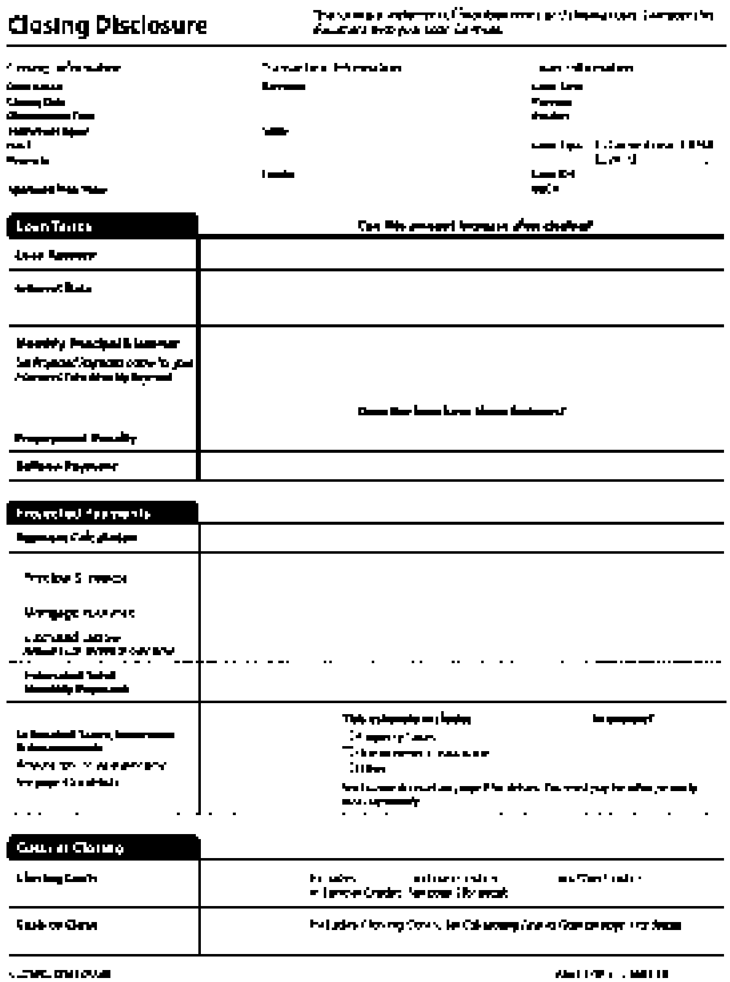
Principal & Interest

Mortgage Insurance

Costs at Closing

Closing Costs

Cash to Close



Closing Disclosure

Loan Terms

Loan Amount

Interest Rate

Monthly Principal & Interest

Prepayment Penalty

Balloon Payment

Projected Payments

Payment Calculation

Principal & Interest

Mortgage Insurance

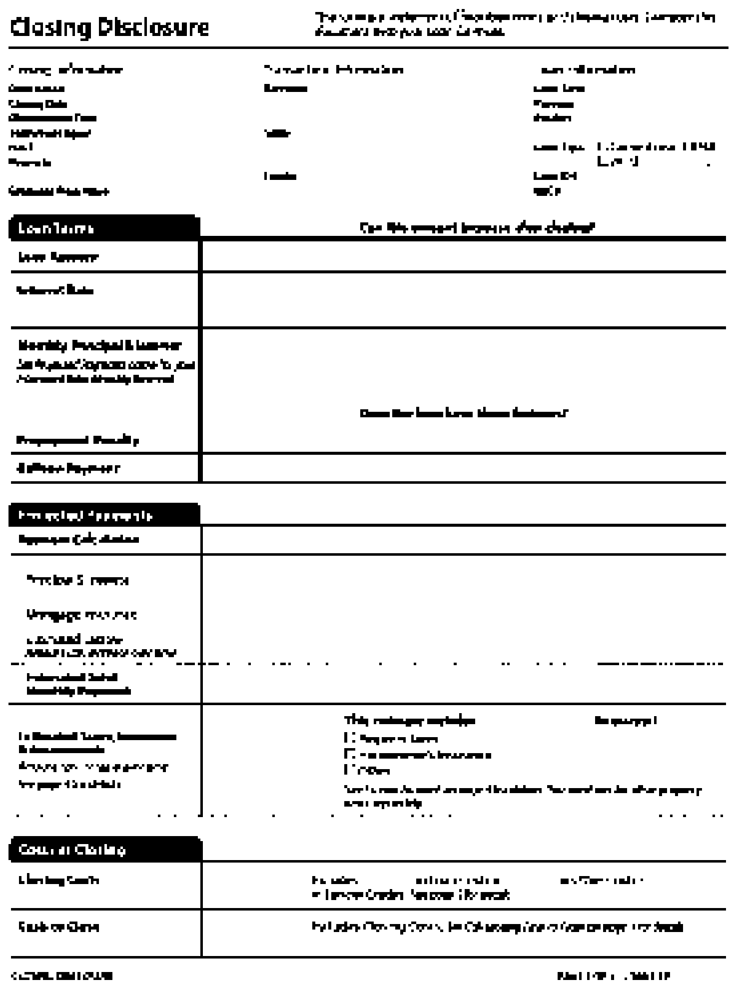
Estimated Escrow

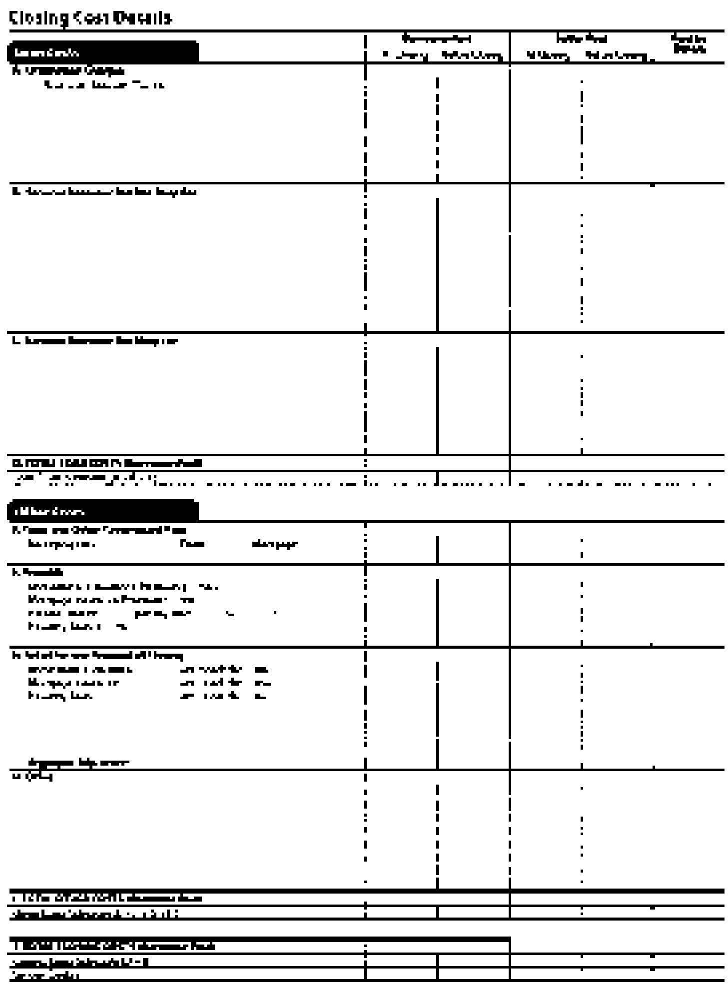
Estimated Total Monthly Payment

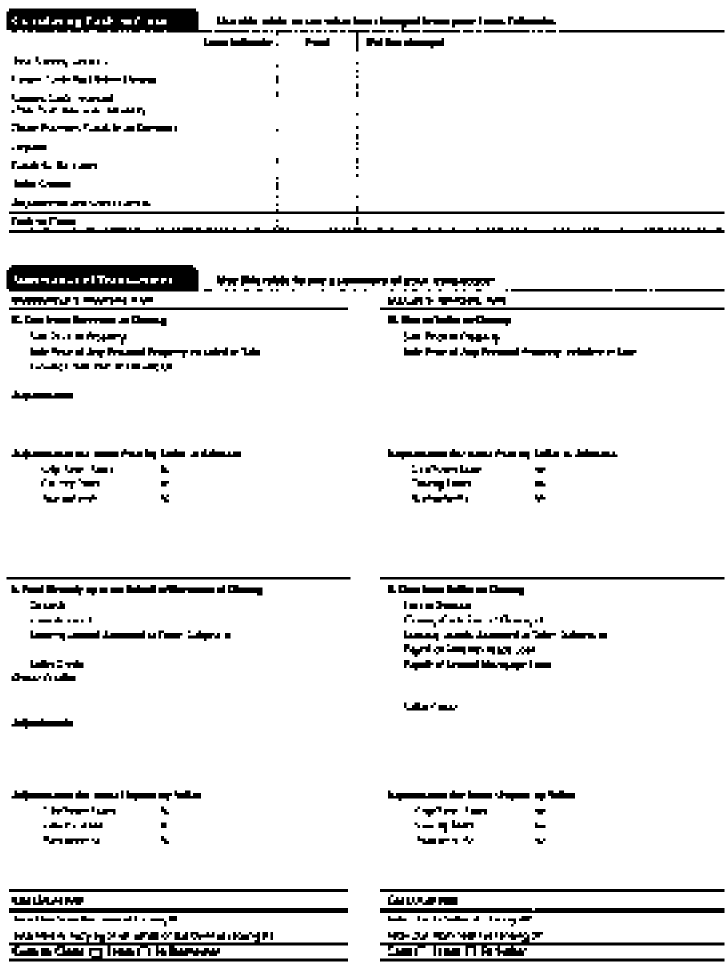
Costs at Closing

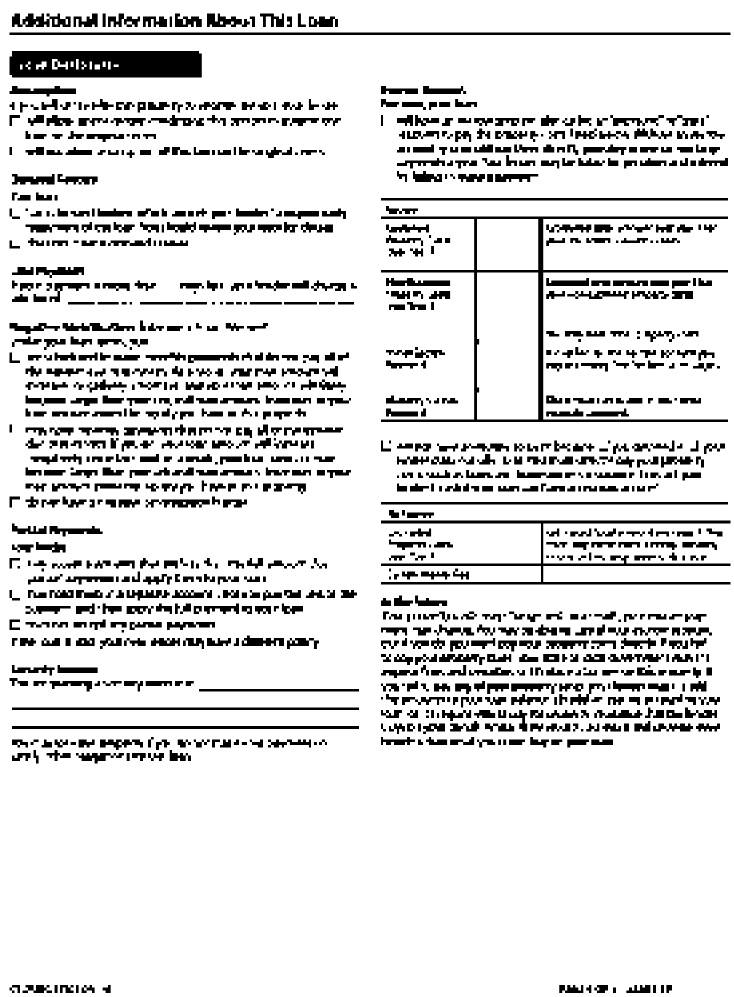
Closing Costs

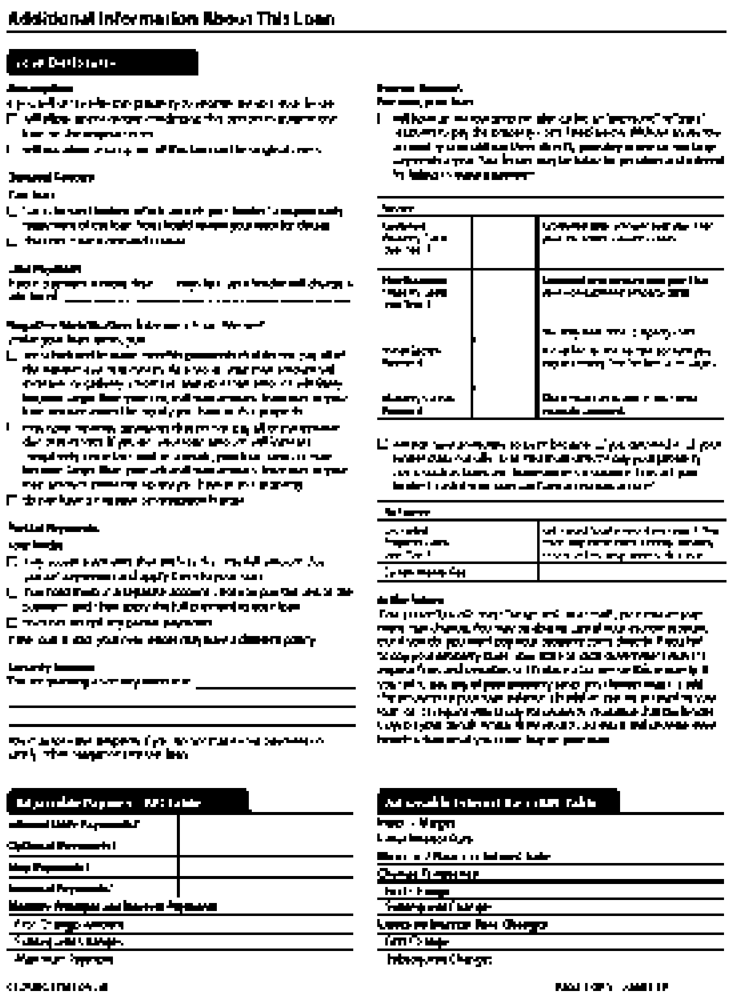
Cash to Close


Closing Disclosure
Loan Terms
Projected Payments
Costs at Closing
Closing Costs
Cash to Close


Closing Cost Details

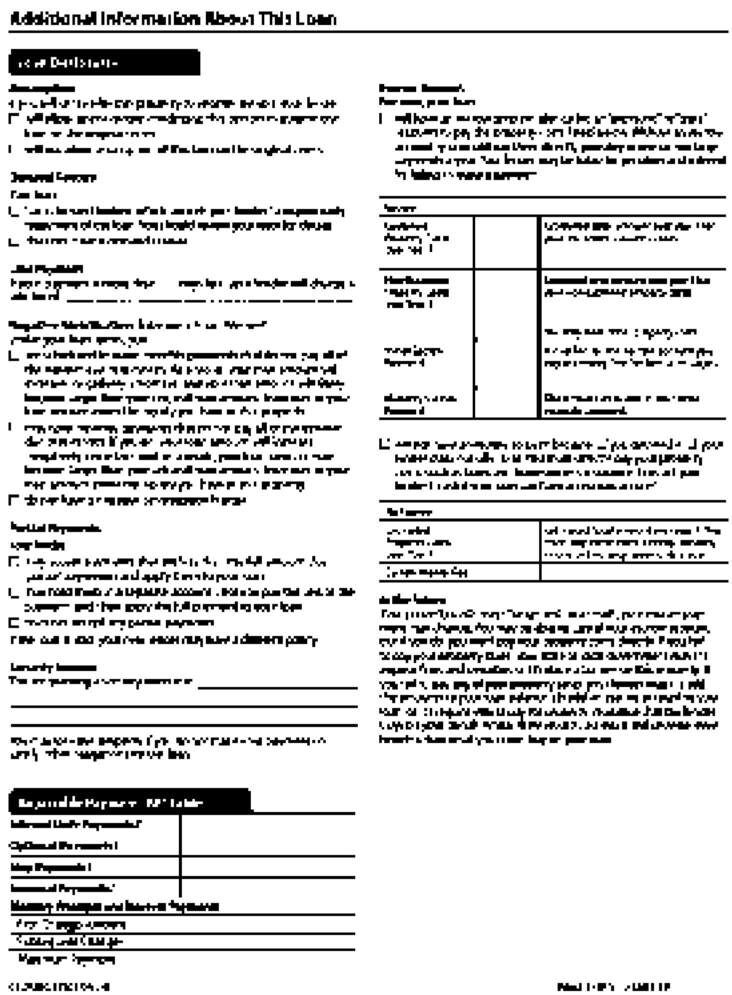



Additional Information About This Loan

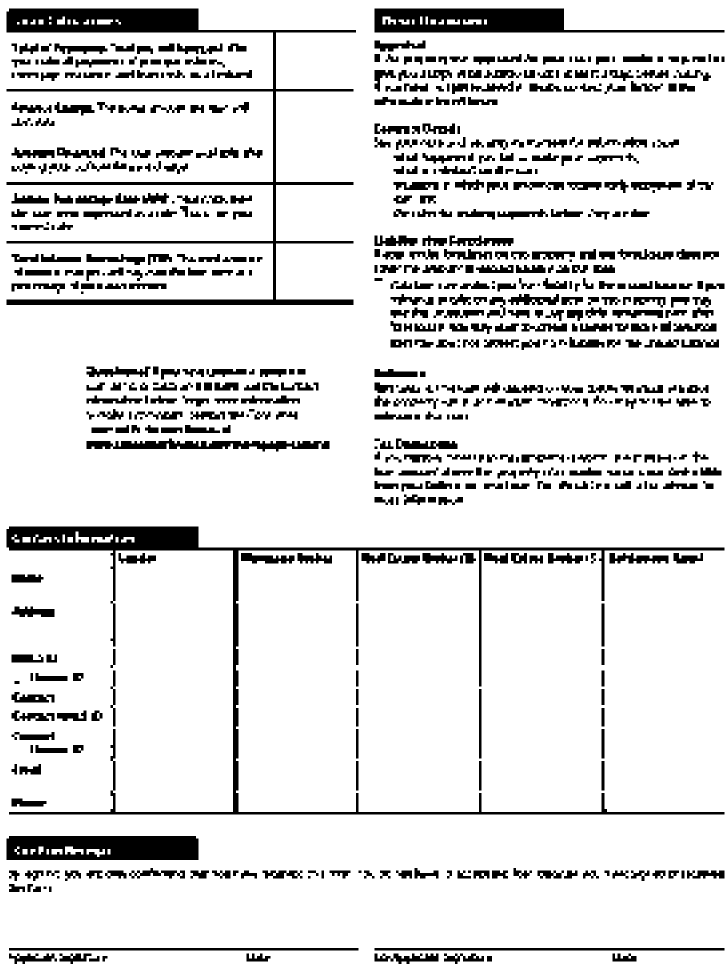

Additional Information About This Loan

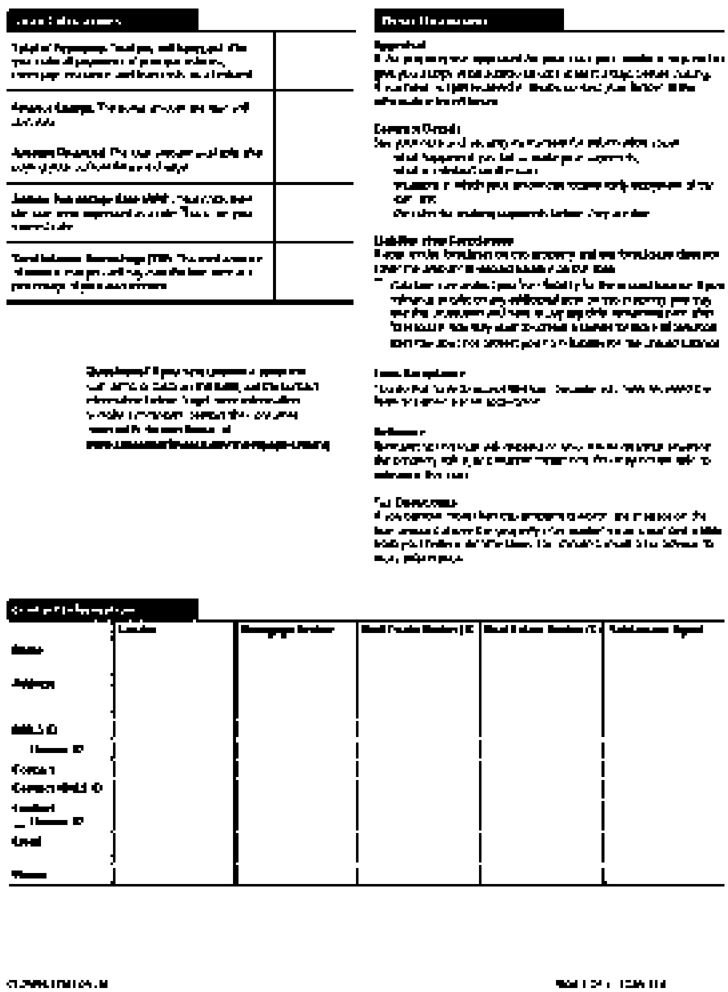
Change Frequency

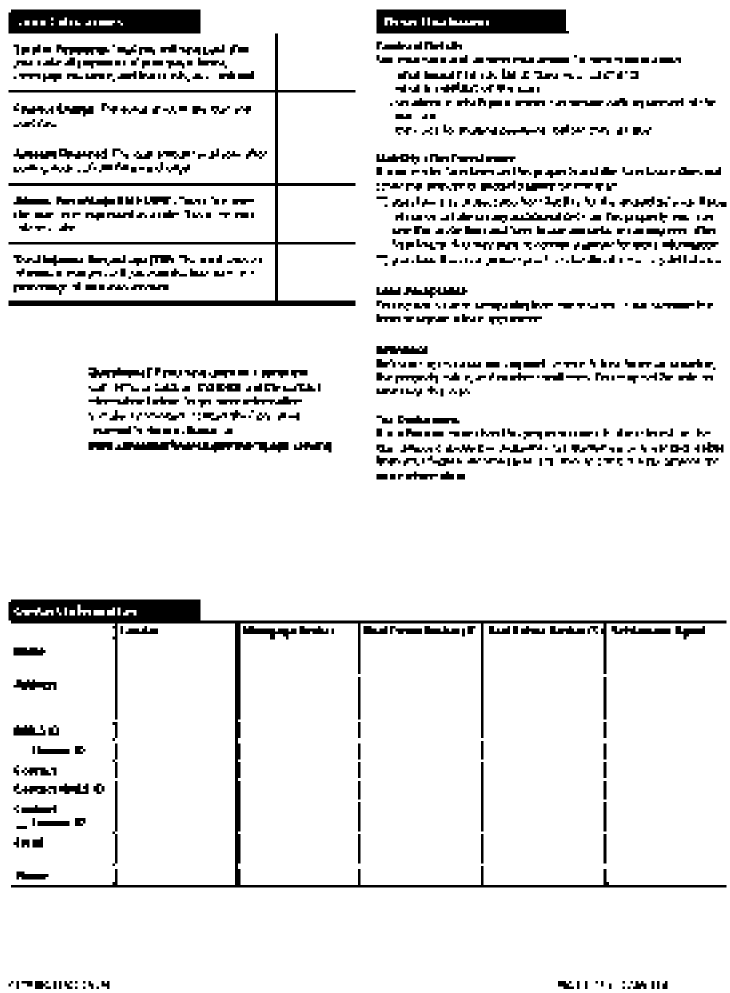
Subsequent Changes


Additional Information About This Loan

Additional Information About This Loan

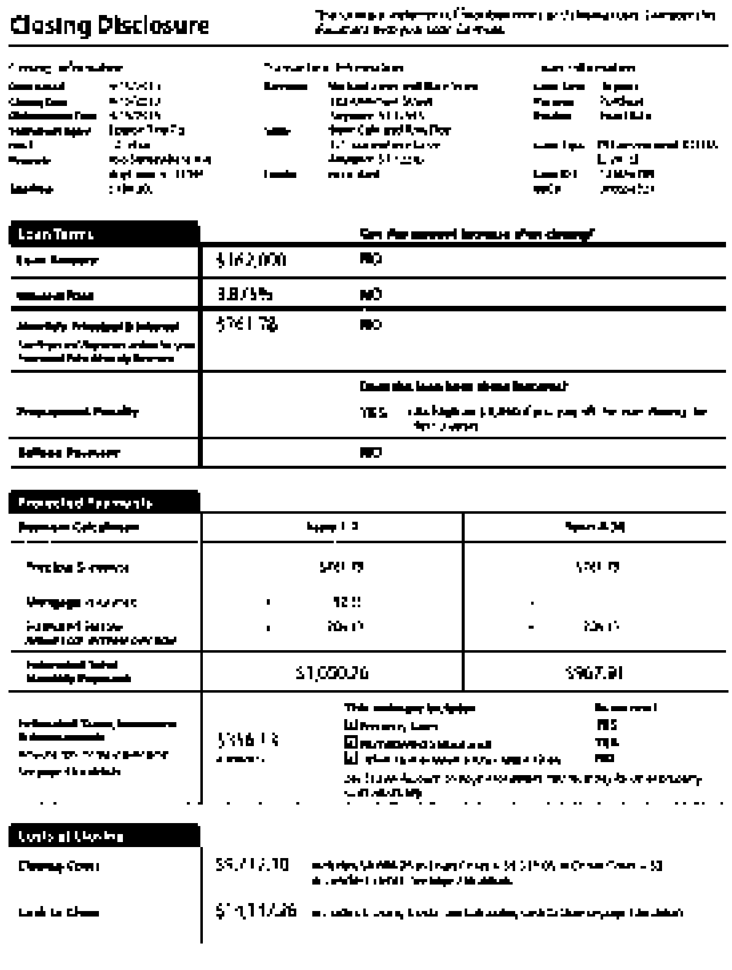


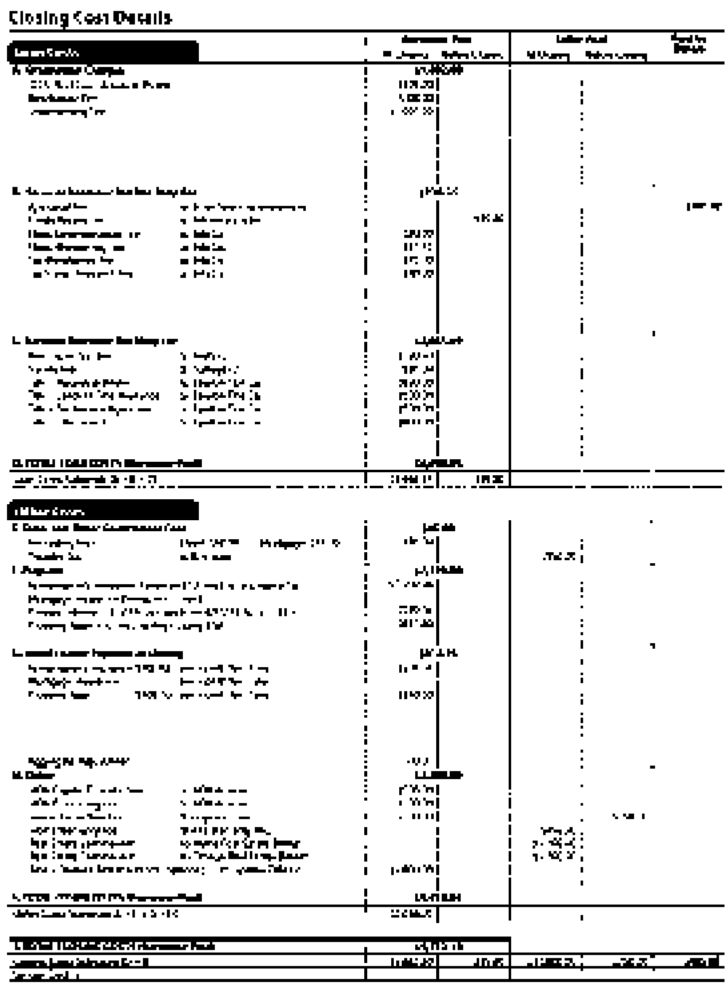


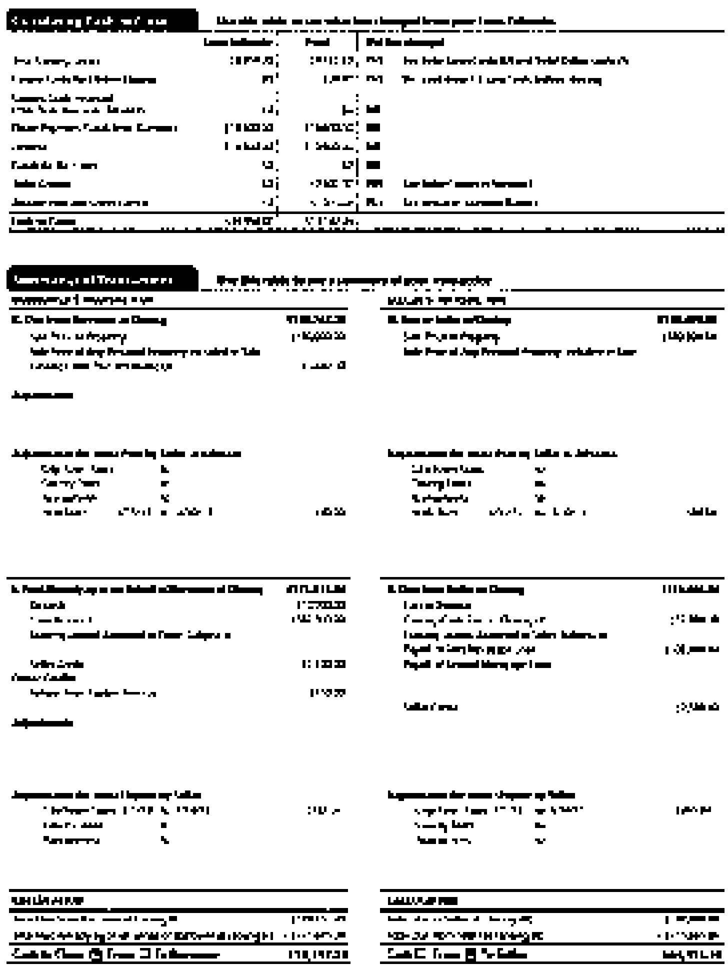


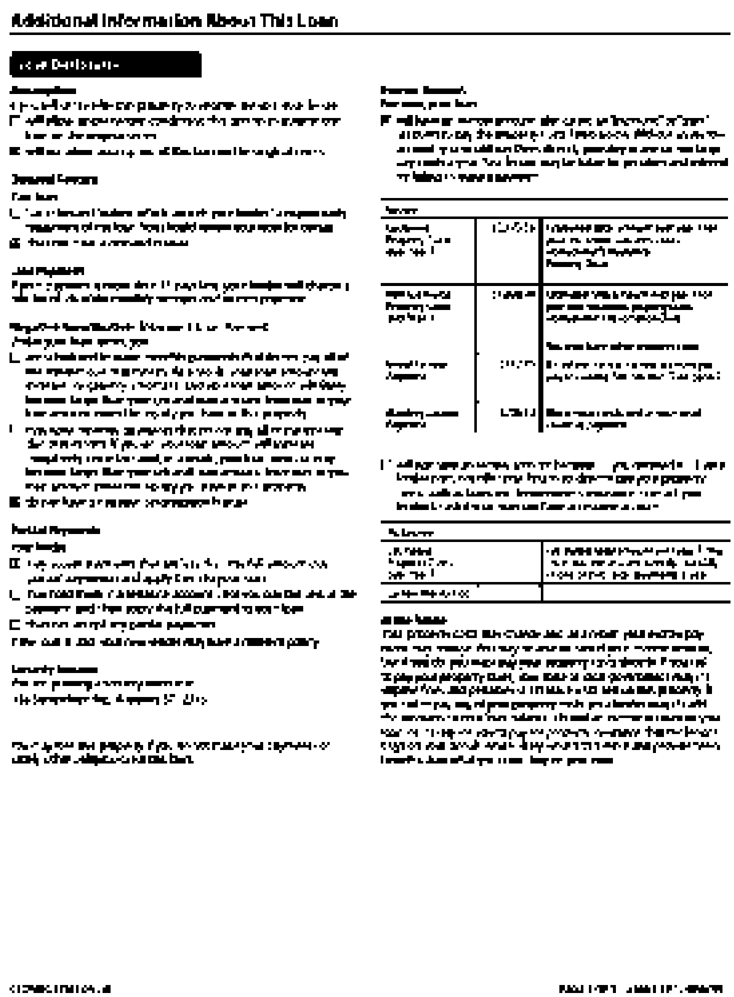
H–25(B) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—FIXED RATE LOAN SAMPLE

Description: This is a sample of a completed Closing Disclosure for the fixed rate loan illustrated by form H–24(B). The purpose, product, sale price, loan amount, loan term, and interest rate have not changed from the estimates provided on the Loan Estimate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance for the transaction.

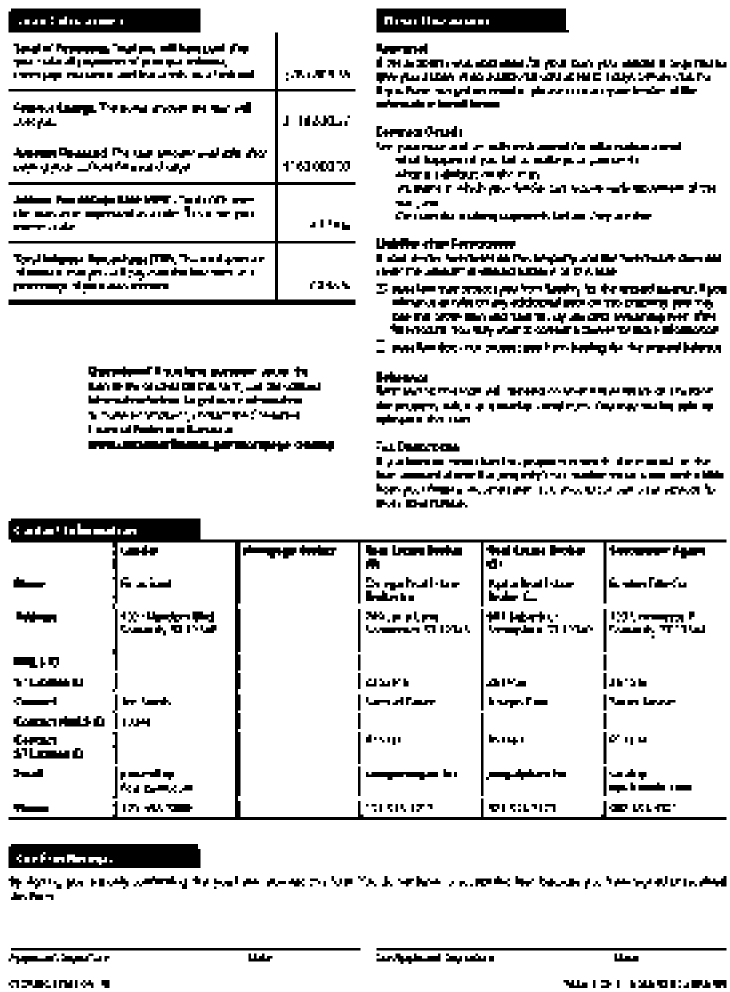

Closing Disclosure
$162,000
NO
NO
$761.78
NO
YES
NO
$1,050.26
$967.91
$356.13
$9,712.10


Closing Cost Details



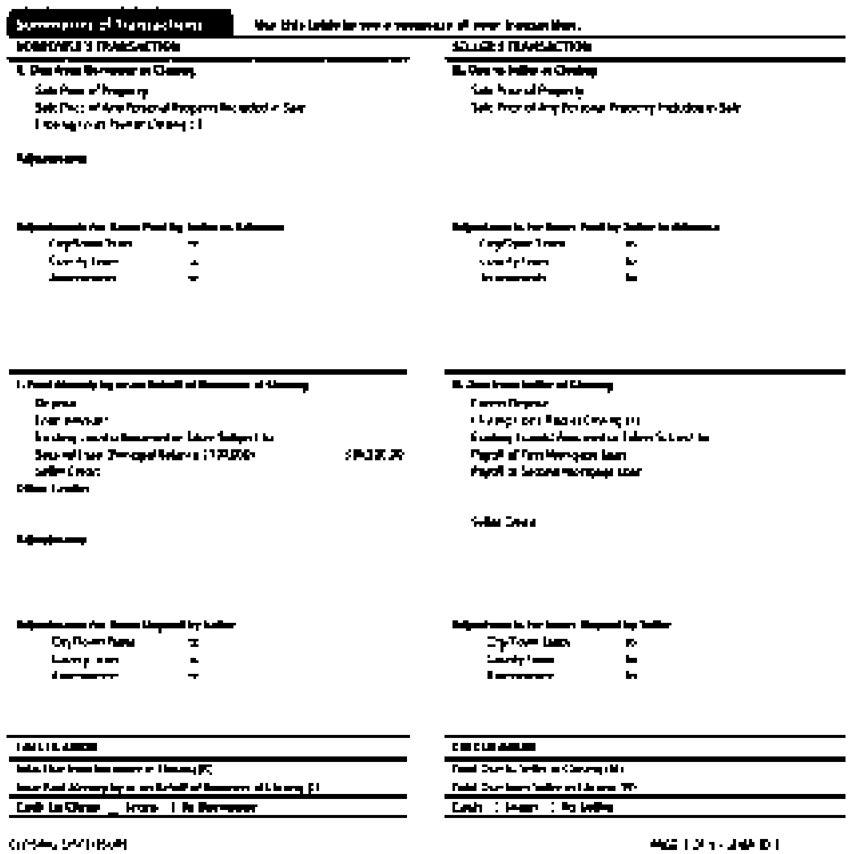


Additional Information About This Loan



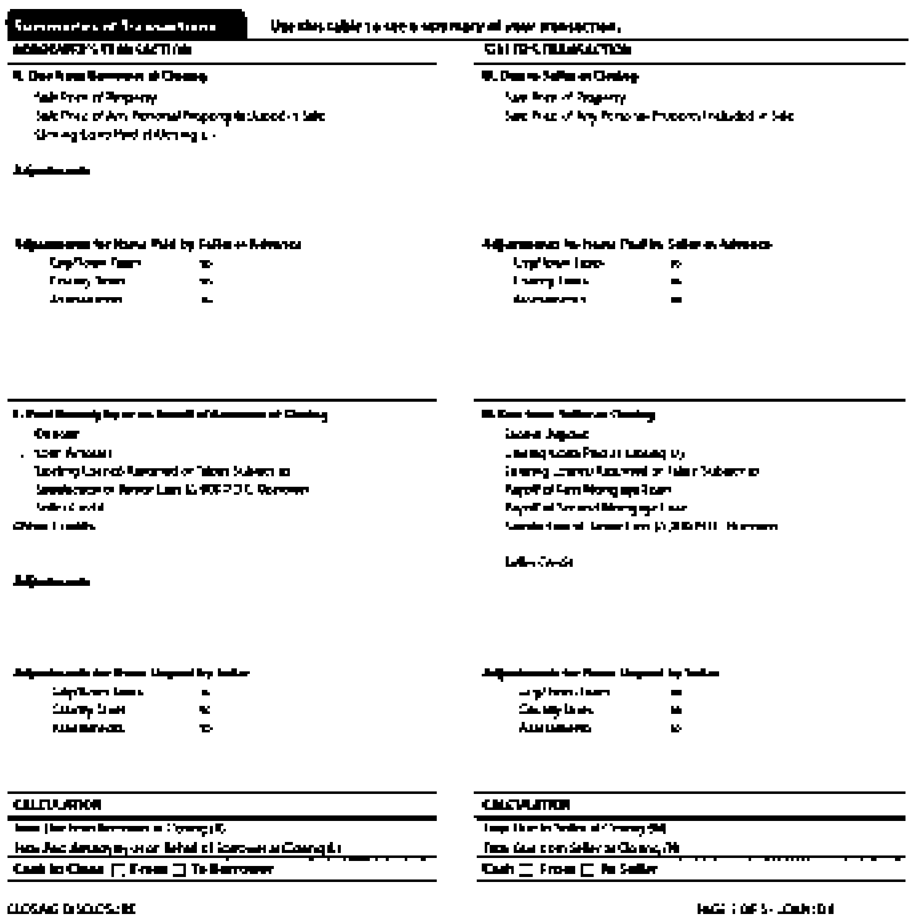
H–25(C) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—BORROWER FUNDS FROM SECOND-LIEN LOAN IN SUMMARIES OF TRANSACTIONS SAMPLE

Description: This is a sample of the information required on the Closing Disclosure by §1026.38(j) for disclosure of consumer funds from a simultaneous second-lien credit transaction not otherwise disclosed pursuant to §1026.38(j)(2)(iii) or (iv) that is used to finance part of the purchase price of the property subject to the transaction.



H–25(D) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—BORROWER SATISFACTION OF SELLER'S SECOND-LIEN LOAN OUTSIDE OF CLOSING IN SUMMARIES OF TRANSACTIONS SAMPLE

Description: This is a sample of the information required on the Closing Disclosure by §1026.38(j) and (k) for the satisfaction of a junior-lien transaction by the consumer, which was not paid from closing funds.



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

BORROWER'S TRANSACTION

K. Due from Borrower at Closing
Sale Price of Property
Sale Price of Any Personal Property Included in Sale
Closing Costs Paid at Closing (J)

Adjustments

Adjustments for Items Paid by Seller in Advance
City/Town Taxes to
County Taxes to
Assessments to

L. Paid Already by or on Behalf of Borrower at Closing
Deposit
Loan Amount
Existing Loan(s) Assumed or Taken Subject to
Satisfaction of Seller Loan(s) Paid by Borrower
Seller Credit
Other Credits

Adjustments

Adjustments for Items Unpaid by Seller
City/Town Taxes to
County Taxes to
Assessments to

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

SELLER'S TRANSACTION

M. Due to Seller at Closing
Sale Price of Property
Sale Price of Any Personal Property Included in Sale

Adjustments for Items Paid by Seller in Advance
City/Town Taxes to
County Taxes to
Assessments to

N. Due from Seller at Closing
Excess Deposit
Closing Costs Paid at Closing (J)
Existing Loan(s) Assumed or Taken Subject to
Payoff of First Mortgage Loan
Payoff of Second Mortgage Loan
Satisfaction of Seller Loan(s) Paid by Borrower

Seller Credit

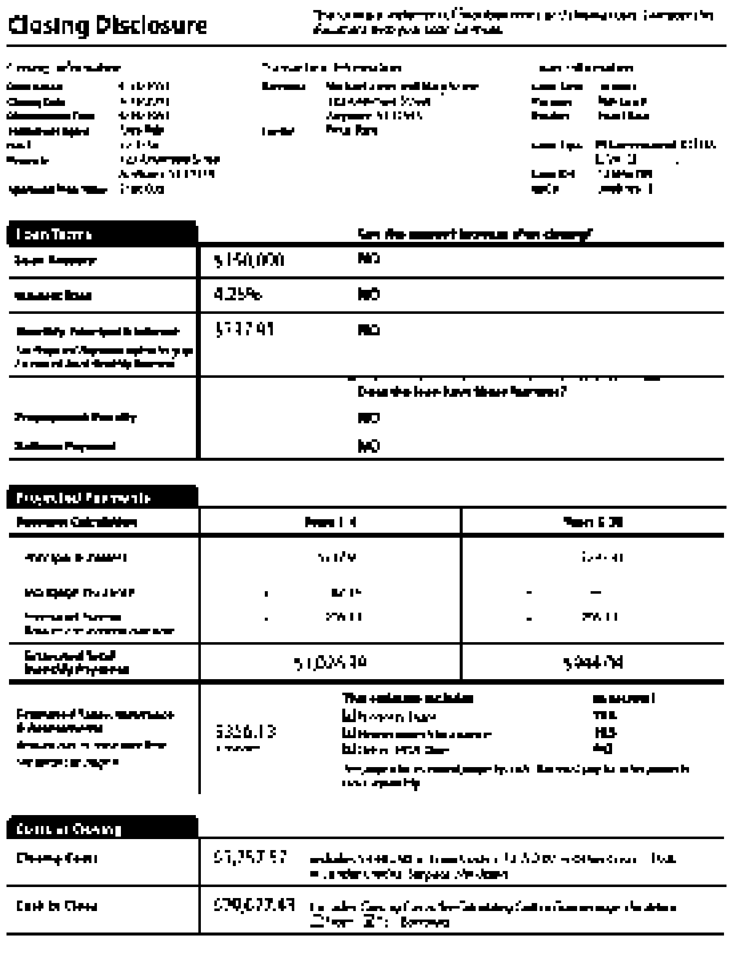
Adjustments for Items Unpaid by Seller
City/Town Taxes to
County Taxes to
Assessments to

CALCULATION
Total Due to Seller at Closing (M)
Total Due from Seller at Closing (N)
Cash ☐ From ☐ To Seller

CLOSING DISCLOSURE PAGE 3 OF 5 • LOAN ID #

H–25(E) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—REFINANCE TRANSACTION SAMPLE

Description: This is a sample of a completed Closing Disclosure for the refinance transaction illustrated by form H–24(D). The purpose, loan amount, loan term, and interest rate have not changed from the estimates provided on the Loan Estimate. The outstanding balance of the existing mortgage loan securing the property was less than estimated on the Loan Estimate. The creditor requires an escrow account and that the consumer pay for private mortgage insurance for the transaction.


Closing Disclosure

$150,000 NO

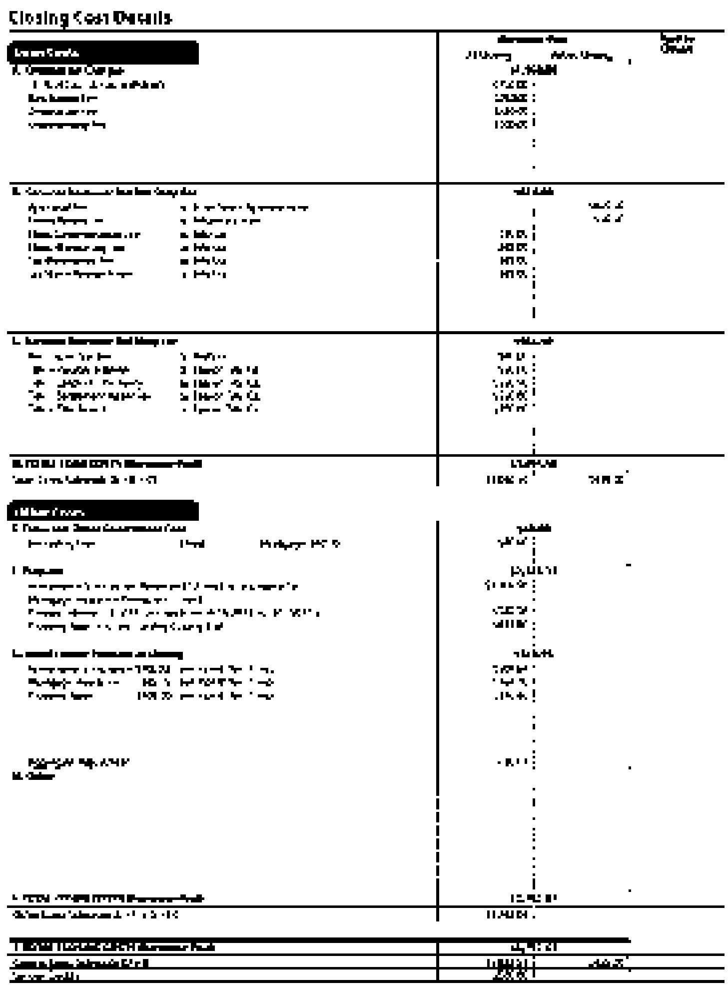
4.25% NO

NO

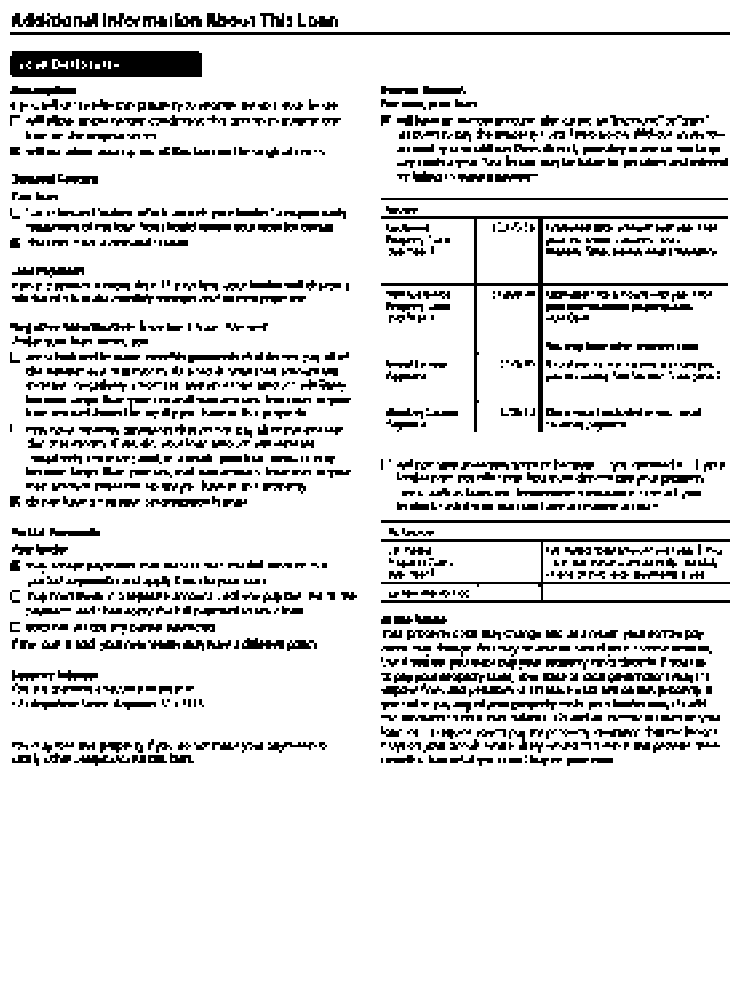
NO

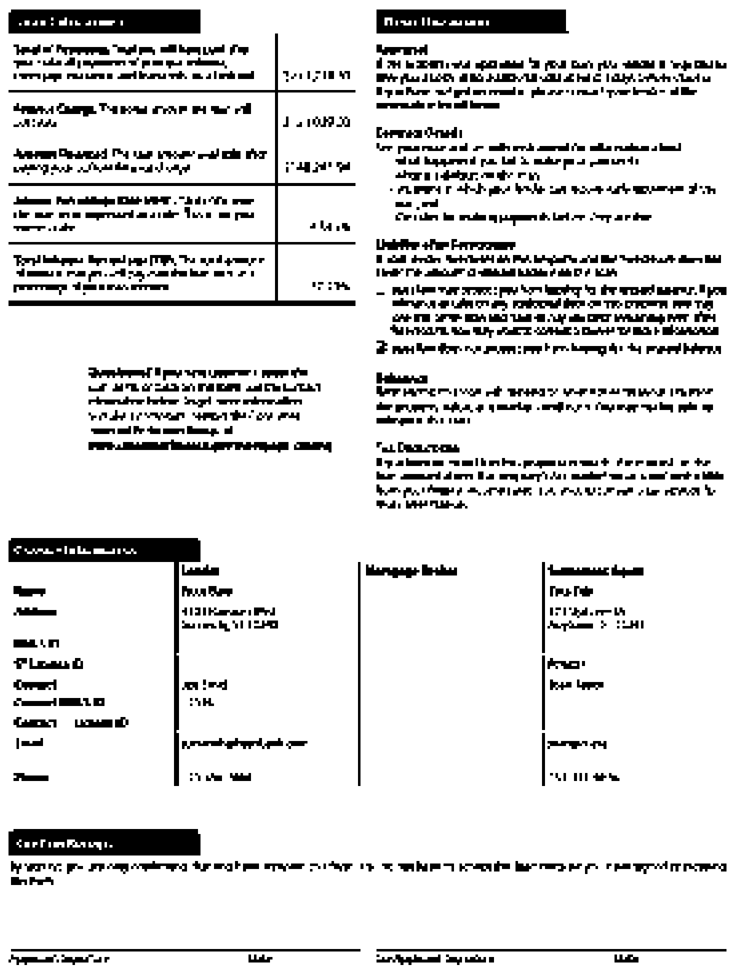
NO

$356.13



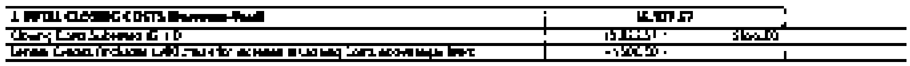
Closing Cost Details

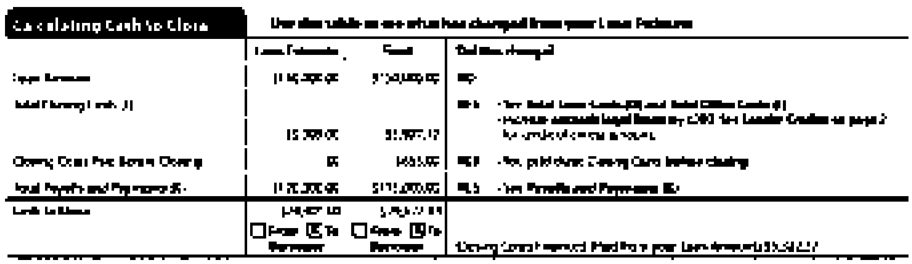

Additional Information About This Loan



H–25(F) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—REFINANCE TRANSACTION SAMPLE (AMOUNT IN EXCESS OF § 1026.19(E)(3))

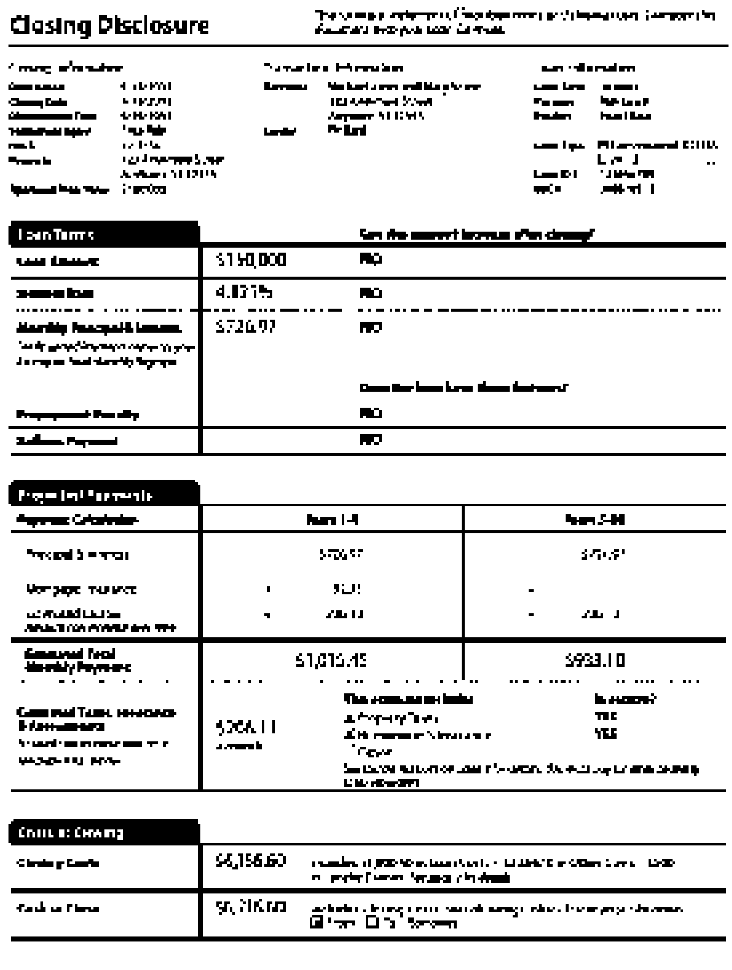
Description: This is a sample of the completed disclosures required by § 1026.38(e) and (h) for a completed Closing Disclosure for the refinance transaction illustrated by form H–24(D). The Closing Costs have increased in excess of the good faith requirements of § 1026.19(e)(3) by $200, for which the creditor has provided a refund under § 1026.19(f)(2)(v).





H–25(G) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—REFINANCE TRANSACTION WITH CASH FROM CONSUMER AT CONSUMMATION

Description: This is a sample of a completed Closing Disclosure for a refinance transaction in which the consumer must pay additional funds to satisfy the existing mortgage loan securing the property and other existing debt to consummate the transaction.

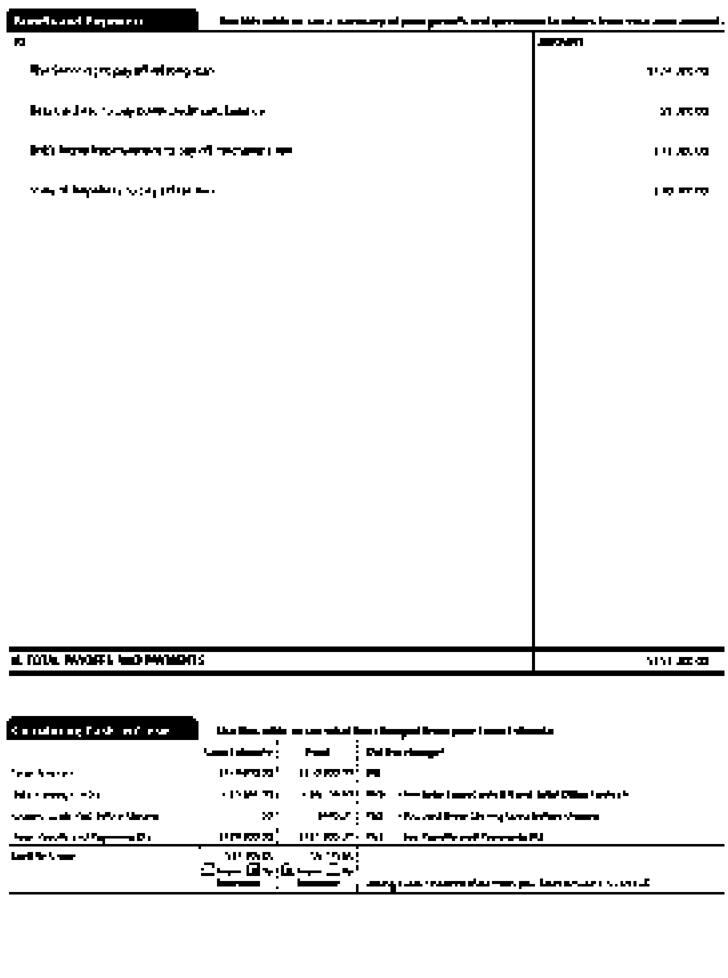


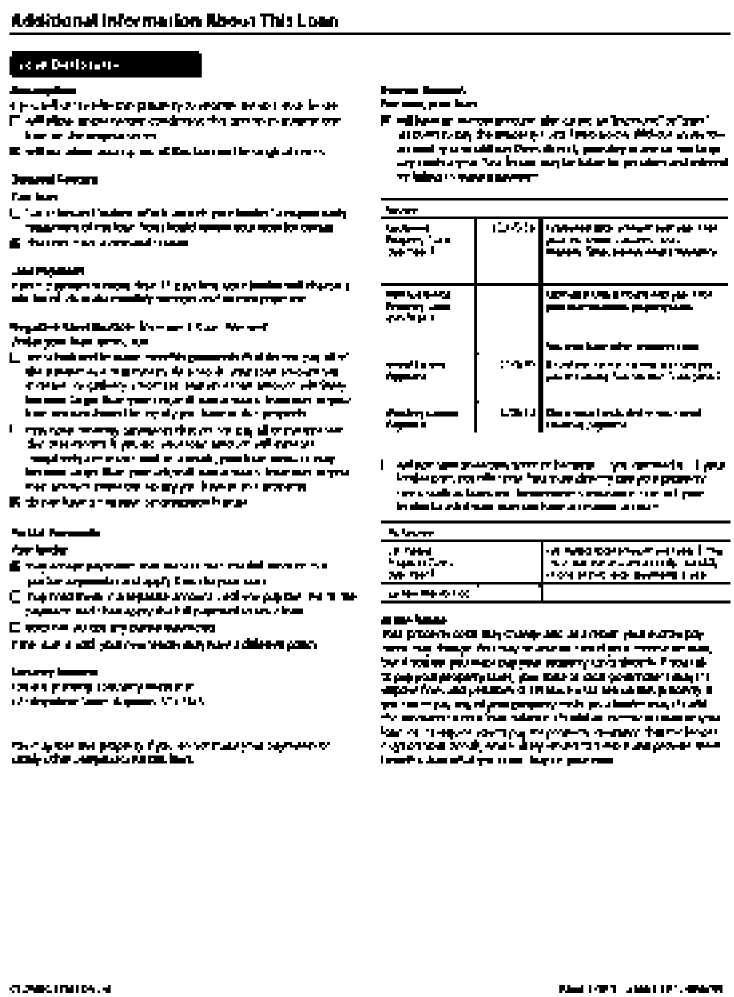
Closing Disclosure

Loan Terms

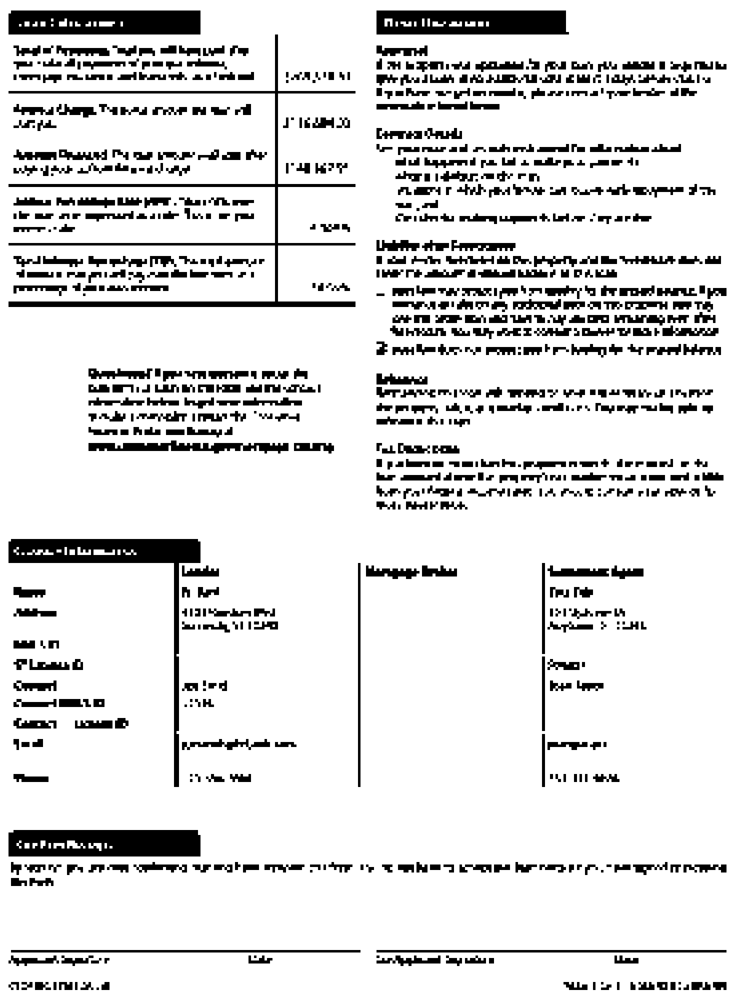
[illegible]	$150,000	NO
[illegible]	[illegible]	NO
[illegible]	[illegible]	NO
[illegible]		NO
[illegible]		NO

Closing Cost Details





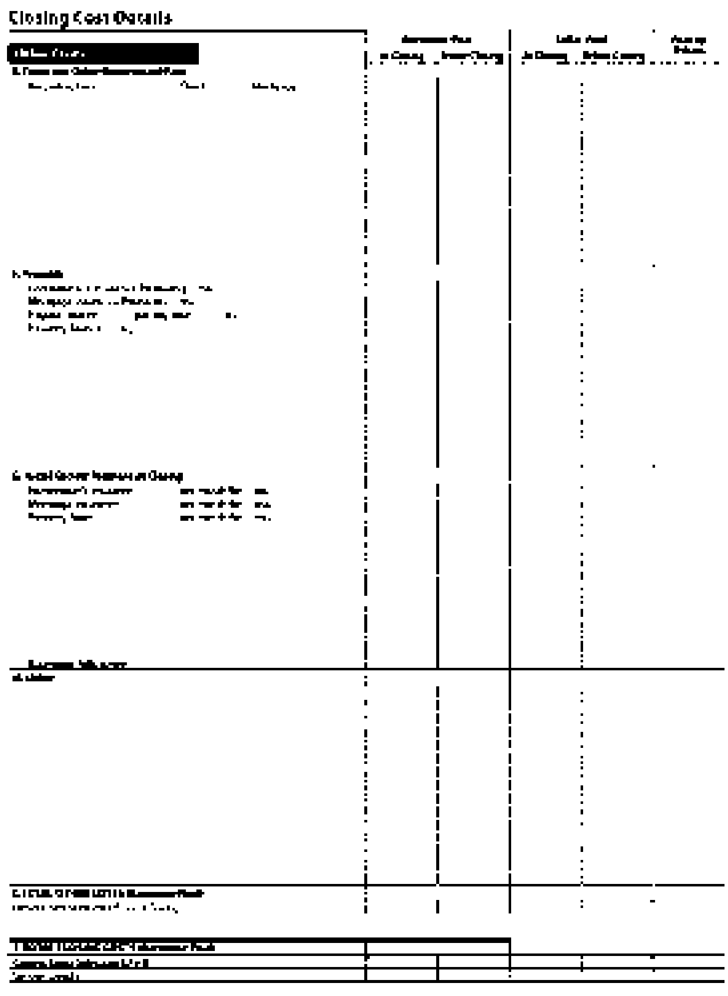
Additional Information About This Loan



H–25(H) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—MODIFICATION TO CLOSING COST DETAILS—MODEL FORM

Description: This is a blank model form of the modification to Closing Cost Details permitted by §1026.38(t)(5)(iv)(B).

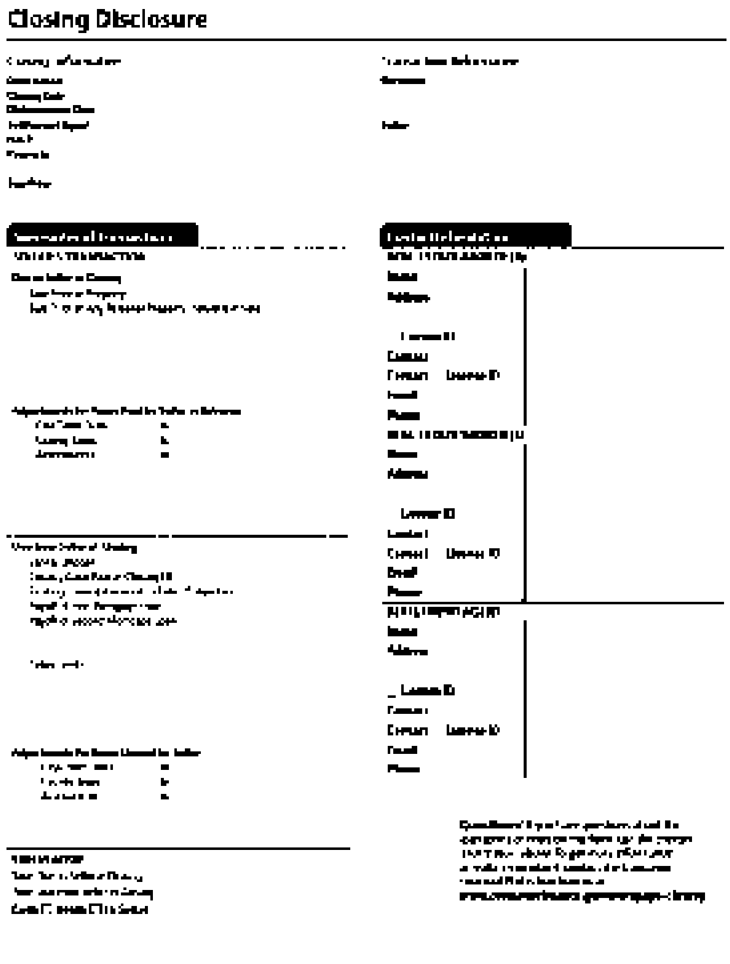
Closing Cost Details



Closing Cost Details

H–25(I) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—MODIFICATION TO CLOSING DISCLOSURE FOR DISCLOSURE PROVIDED TO SELLER—MODEL FORM

Description: This is a blank model form of the modification permitted by §1026.38(t)(5)(vi).

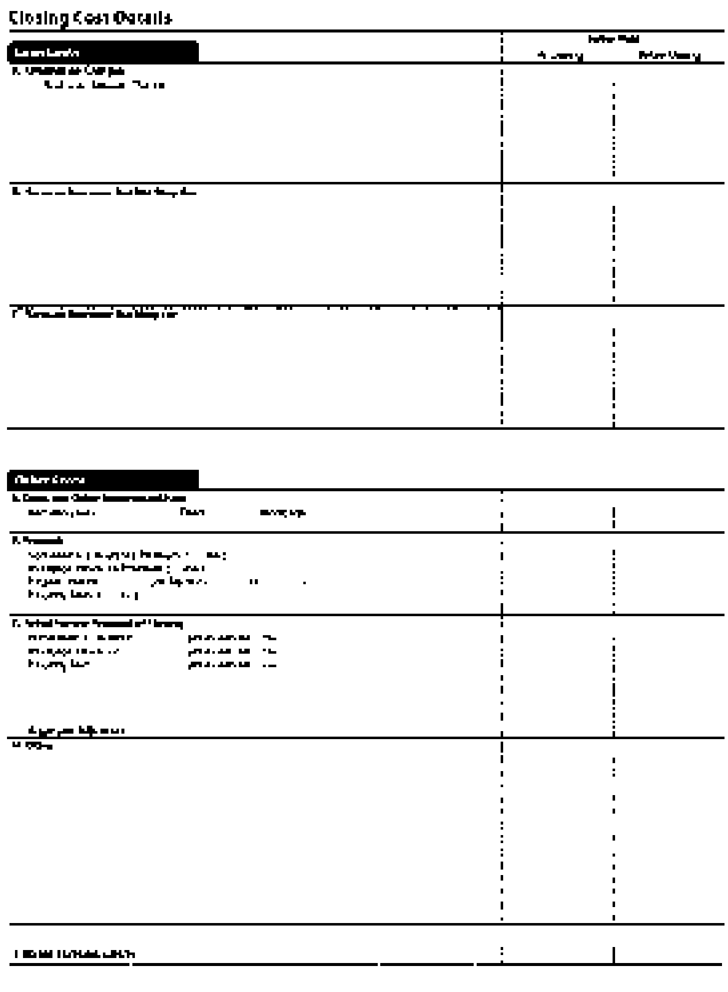


Closing Disclosure

Name
Address
License ID
Contact
Contact License ID
Email
Phone

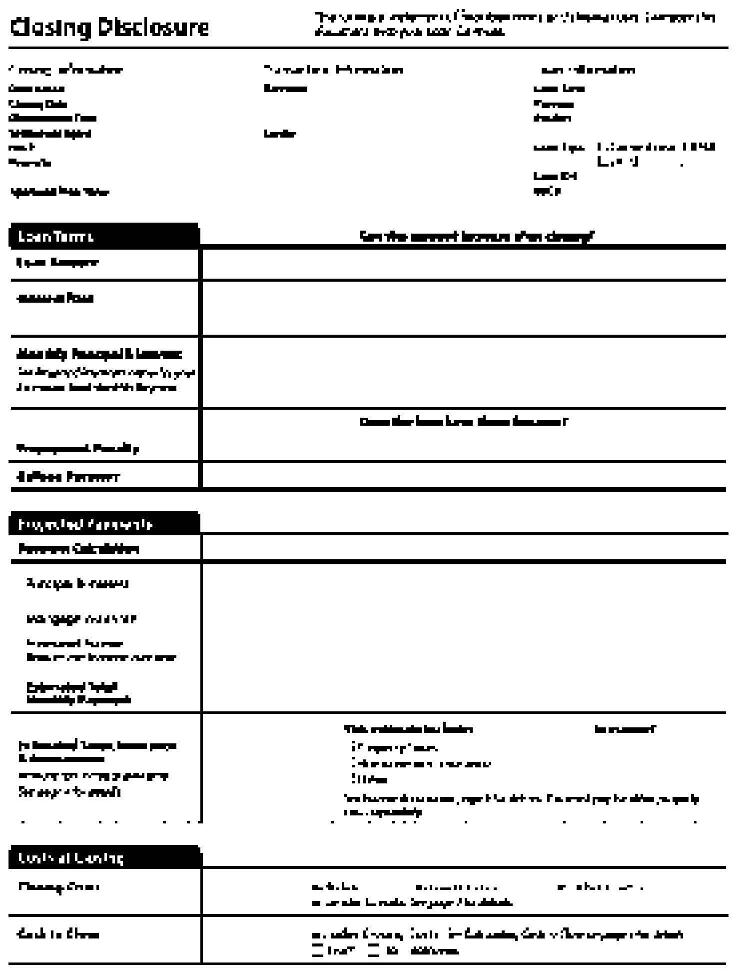
Name
Address
License ID
Contact
Contact License ID
Email
Phone

Name
Address
License ID
Contact
Contact License ID
Email
Phone


Closing Cost Details

H–25(J) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—MODIFICATION TO CLOSING DISCLOSURE FOR TRANSACTION NOT INVOLVING SELLER—MODEL FORM

Description: This is a blank model form of the alternative disclosures and modifications permitted by § 1026.38(d)(2), (e), and (t)(5)(vii) for transactions without a seller.


Closing Disclosure

Loan Terms

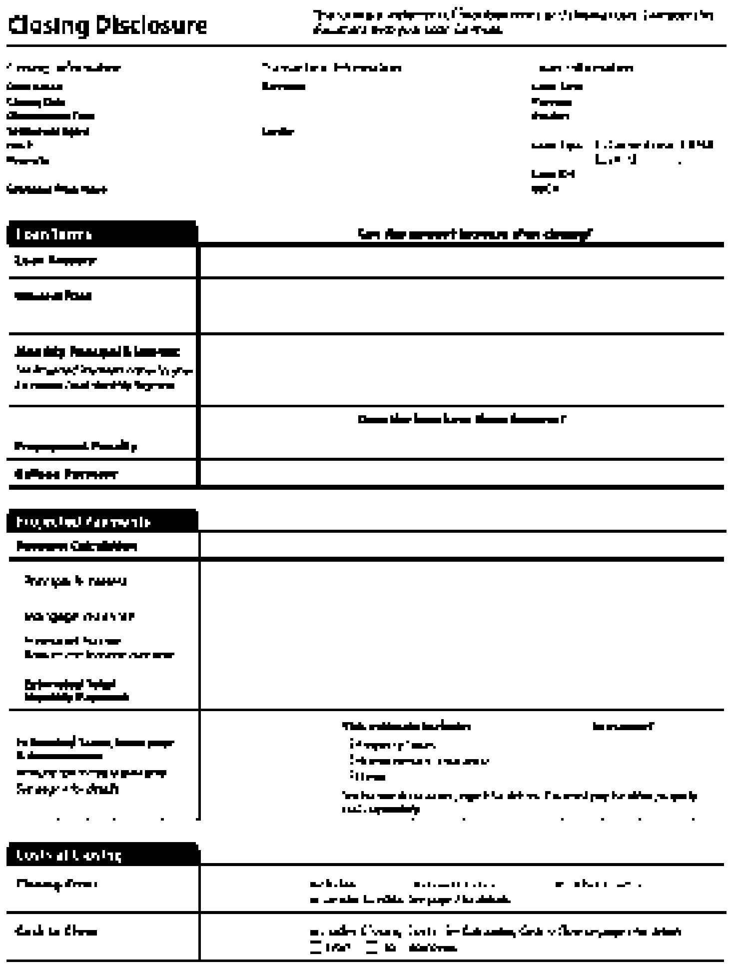
Projected Payments

Payment Calculation

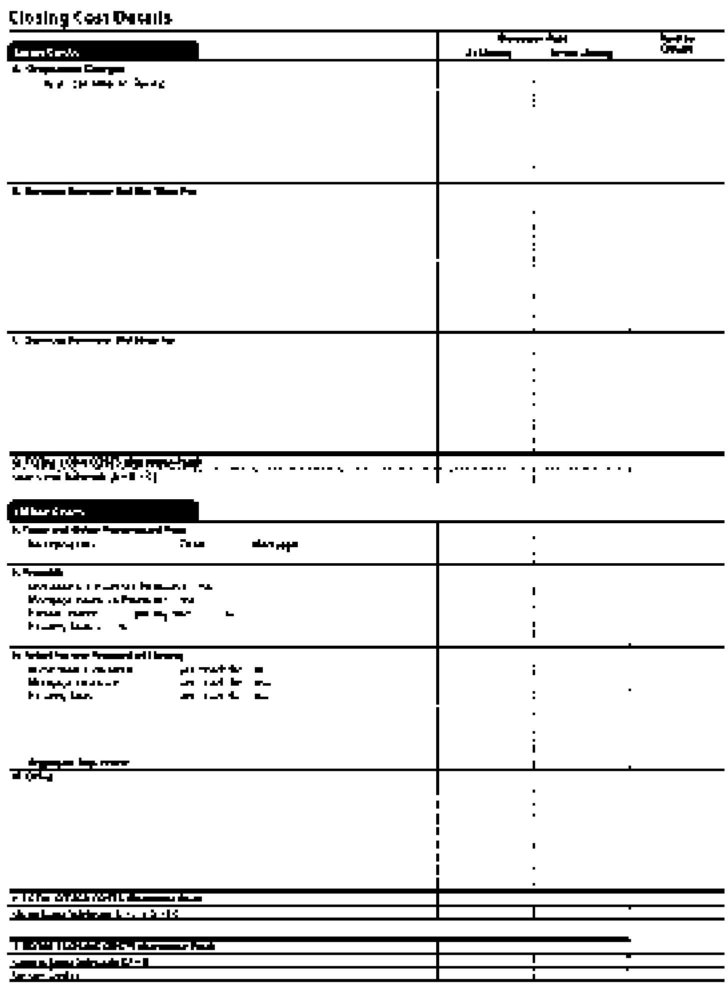
Costs at Closing

Closing Costs

Cash to Close

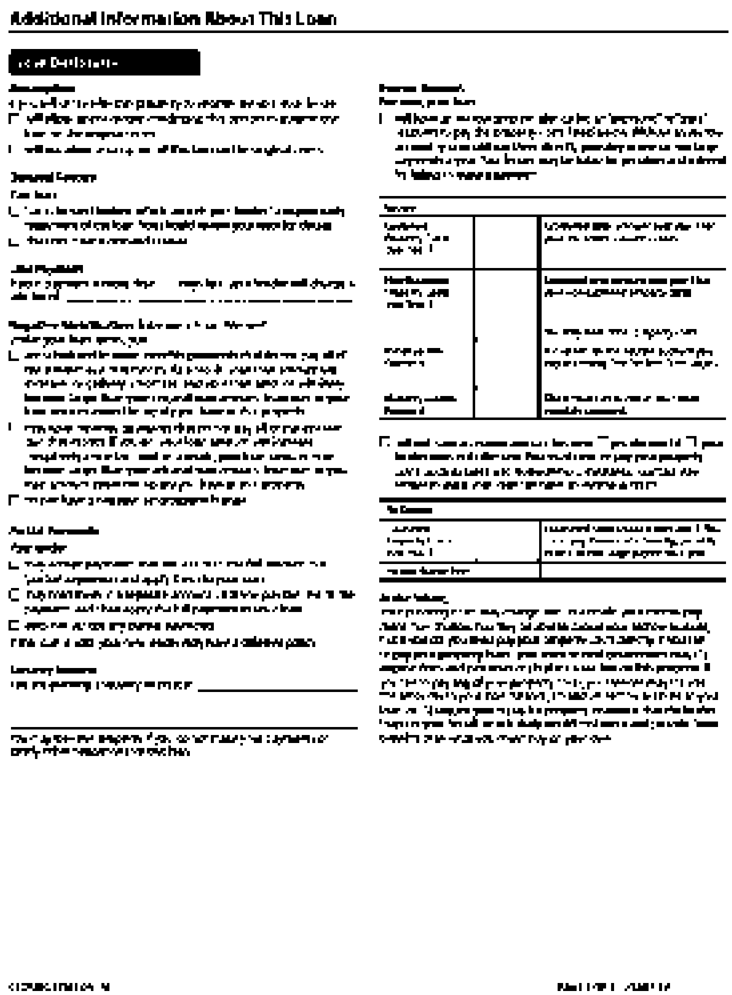


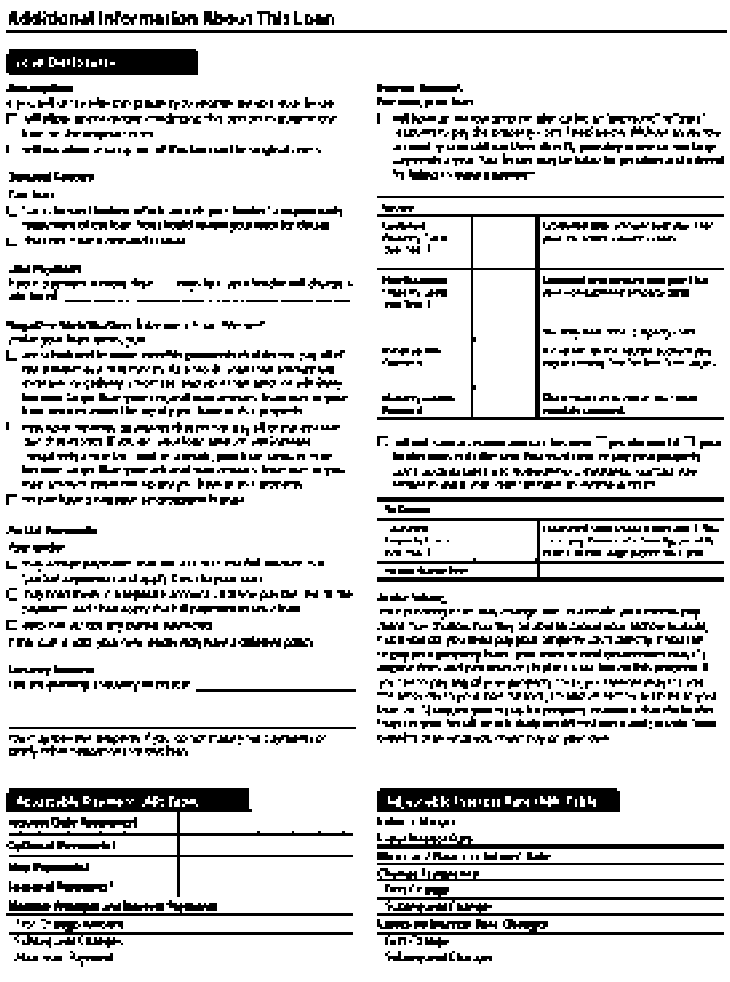
Closing Disclosure

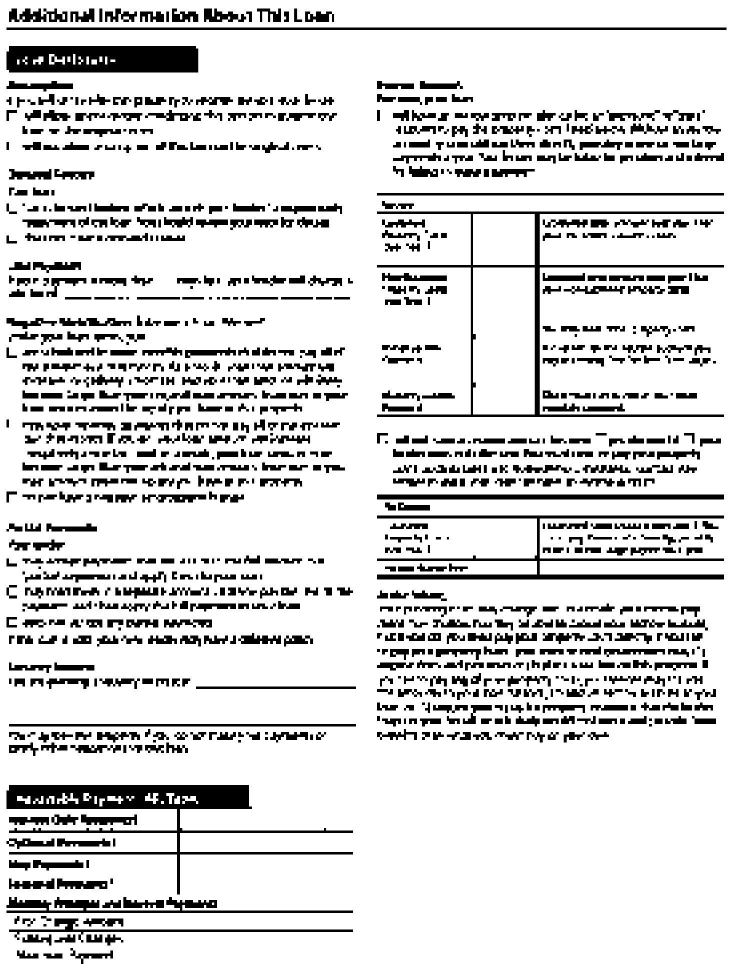

Closing Cost Details

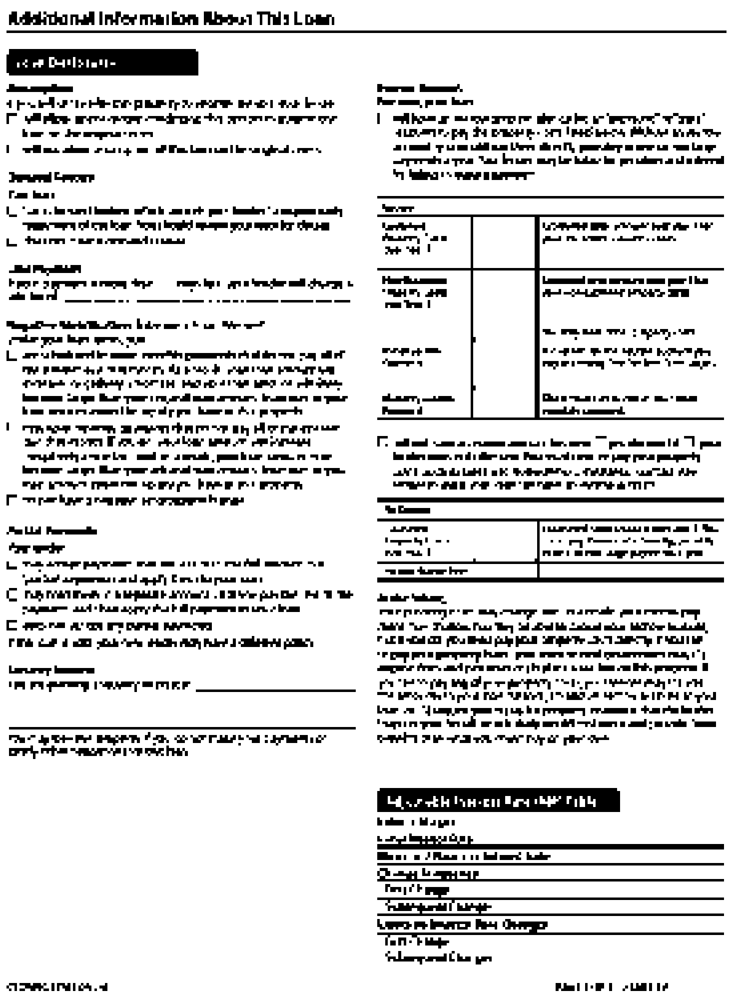
TO	AMOUNT
K. TOTAL PAYOFFS AND PAYMENTS	

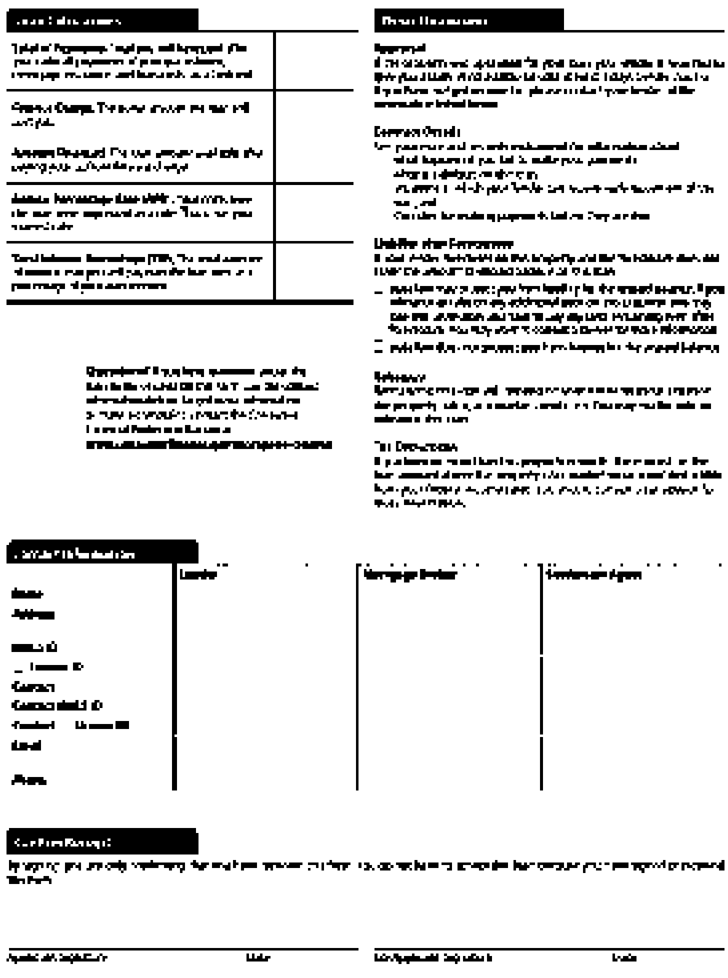
	Loan Estimate	Final	Did this change?
Loan Amount			
Total Closing Costs (J)			
Closing Costs Paid Before Closing			
Total Payoffs and Payments (K)			
Cash to Close			

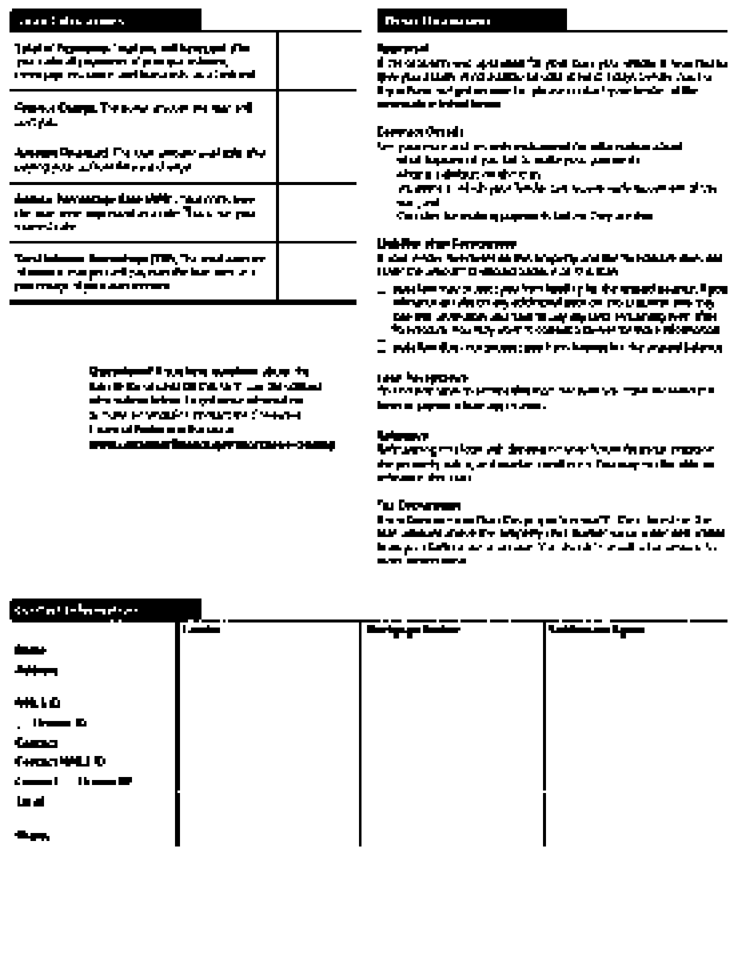

Additional Information About This Loan

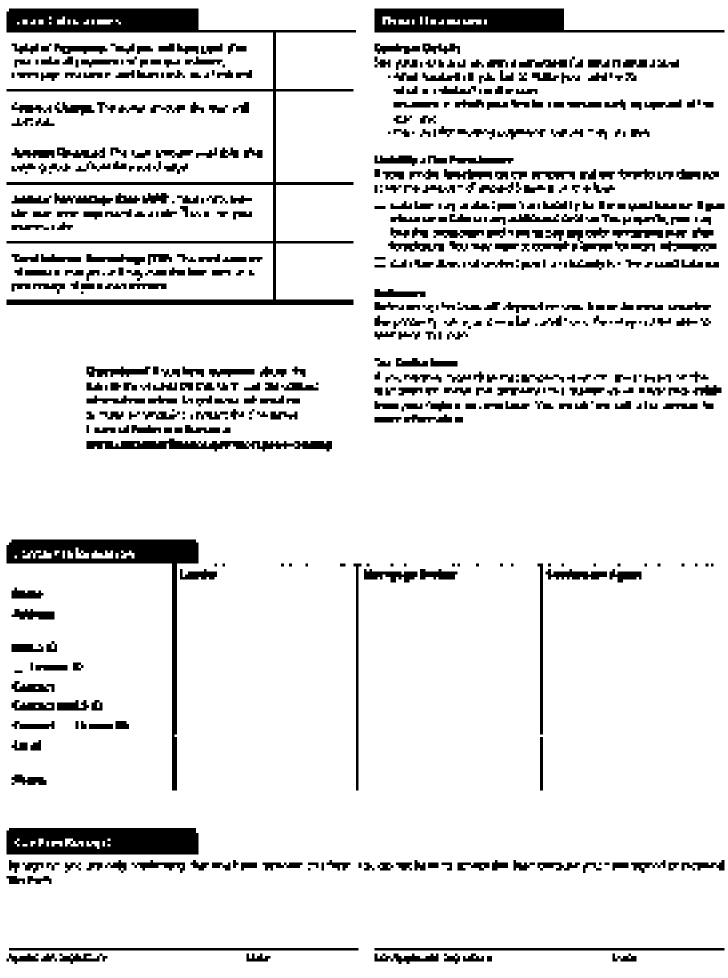

Additional Information About This Loan
Loan Disclosures
Interest Only Payments?
Optional Payments?
Step Payments?
Seasonal Payments?
Monthly Principal and Interest Payments
First Change/Amount
Subsequent Changes
Maximum Payment
Index + Margin
Initial Interest Rate
Minimum/Maximum Interest Rate
Change Frequency
First Change
Subsequent Changes
Limits on Interest Rate Changes
First Change
Subsequent Changes

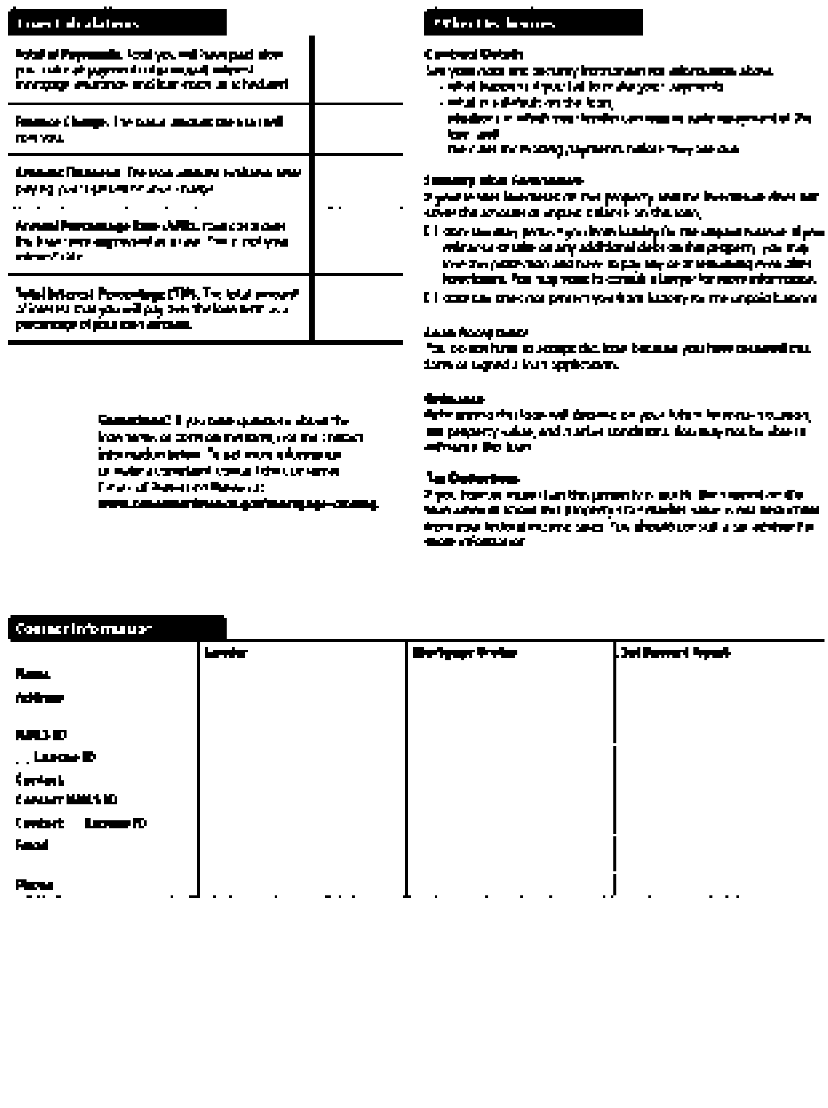

Additional Information About This Loan


Additional Information About This Loan









H–26 MORTGAGE LOAN TRANSACTION—PRE-LOAN ESTIMATE STATEMENT—MODEL FORM

Description: This is a model of the statement required by § 1026.19(e)(2)(ii) to be stated at the top of the front of the first page of a written estimate of terms or costs specific to a consumer that is provided to a consumer before the consumer receives the disclosures required under § 1026.19(e)(1)(i).

Your actual rate, payment, and costs could be higher.
Get an official Loan Estimate before choosing a loan.

H–27(A) MORTGAGE LOAN TRANSACTION—WRITTEN LIST OF PROVIDERS—MODEL FORM

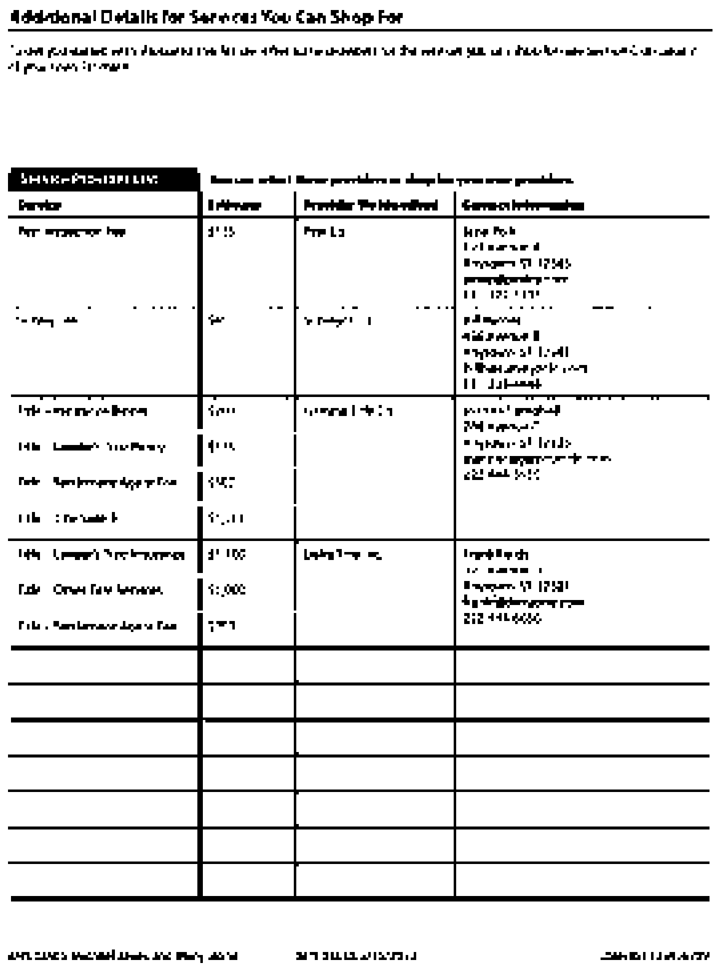
Description: This is a blank model form for the written list of settlement service providers required by §1026.19(e)(1)(vi) and the statement required by §1026.19(e)(1)(vi)(C) that the consumer may select a settlement service provider that is not on the list.

Additional Details for Services You Can Shop For

Service	Estimate	Provider We Identified	Contact Information

H–27(B) MORTGAGE LOAN TRANSACTION—SAMPLE OF WRITTEN LIST OF PROVIDERS

Description: This is a sample of the Written List of Providers for the transaction in the sample Loan Estimate illustrated by form H–24(B).



H–27(C) MORTGAGE LOAN TRANSACTION—SAMPLE OF WRITTEN LIST OF PROVIDERS WITH SERVICES YOU CANNOT SHOP FOR

Description: This is a sample of the Written List of Providers with information about the providers selected by the creditor for the charges disclosed pursuant to § 1026.37(f)(2).

Additional Details for Services You Can Shop For

Service Provider List You can select these providers or shop for your own providers.

Service	Estimate	Provider We Identified	Contact Information

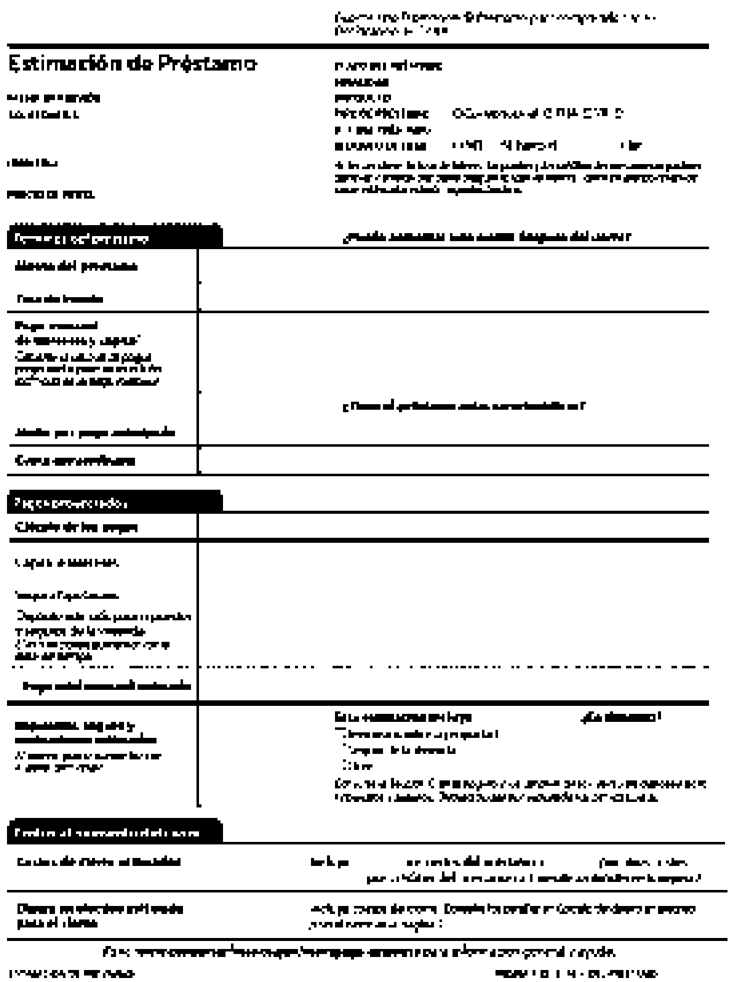
Additional Details for Services You Cannot Shop For

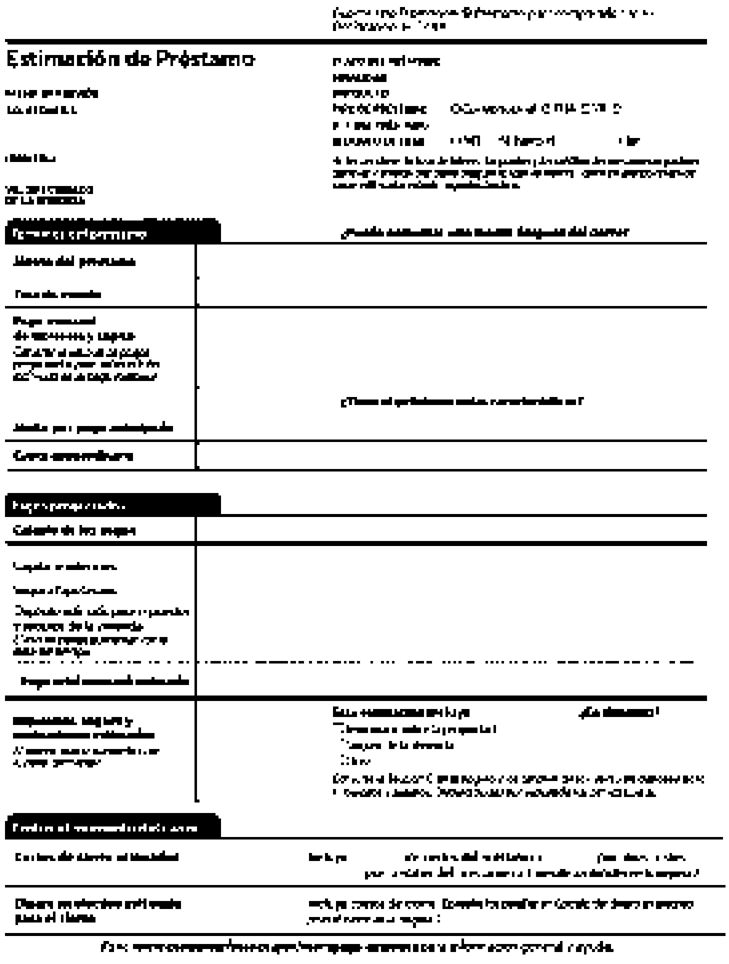
Service Provider List You can only select from these providers for these services.

Service	Estimate	Provider We Identified	Contact Information

H–28(A) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—SPANISH LANGUAGE MODEL FORM

Description: This is a blank model Loan Estimate that illustrates the application of the content requirements in § 1026.37, and is translated into the Spanish language as permitted by § 1026.37(o)(5)(ii). This form provides two variations of page one, four variations of page two, and four variations of page three, reflecting the variable content requirements in § 1026.37.


Estimación de Préstamo


Estimación de Préstamo

Detalles de los costos del cierre

Costos del préstamo

A. Cargos por originación

[illegible]

B. Servicios que usted no puede [illegible]

C. Servicios que usted puede [illegible]

D. COSTOS TOTALES DEL PRÉSTAMO (A + B + C)

Otros costos

E. Impuestos y otros cargos gubernamentales

[illegible]

F. Pagos anticipados

[illegible]

G. Pago inicial de la cuenta de depósito en garantía al cierre

[illegible]

H. Otros

I. TOTAL DE OTROS COSTOS (E + F + G + H)

J. TOTAL DE COSTOS DE CIERRE

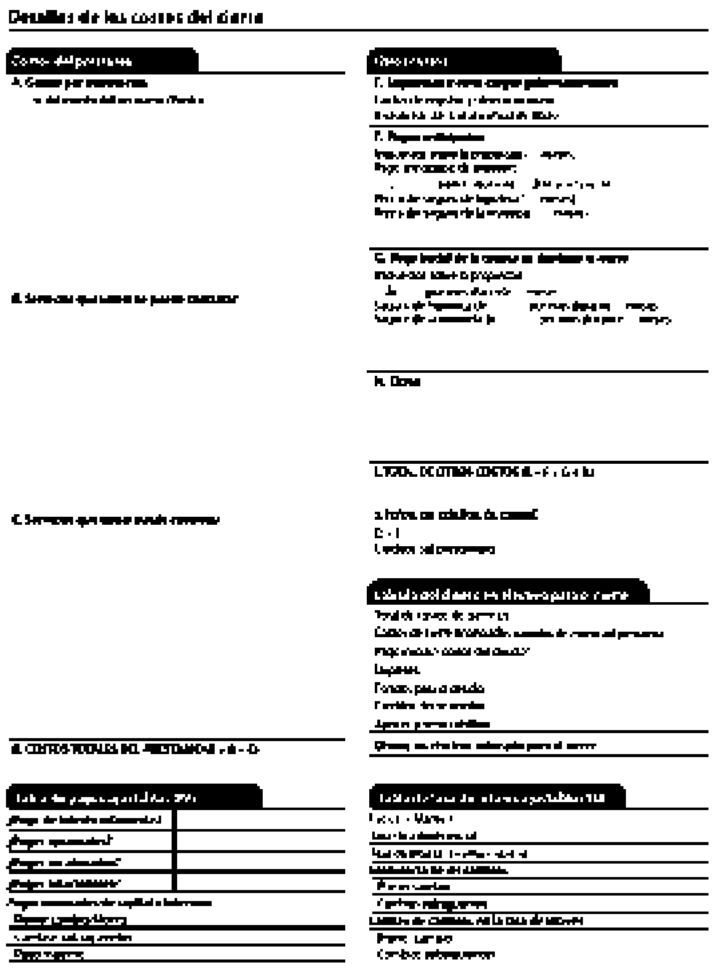
D + I

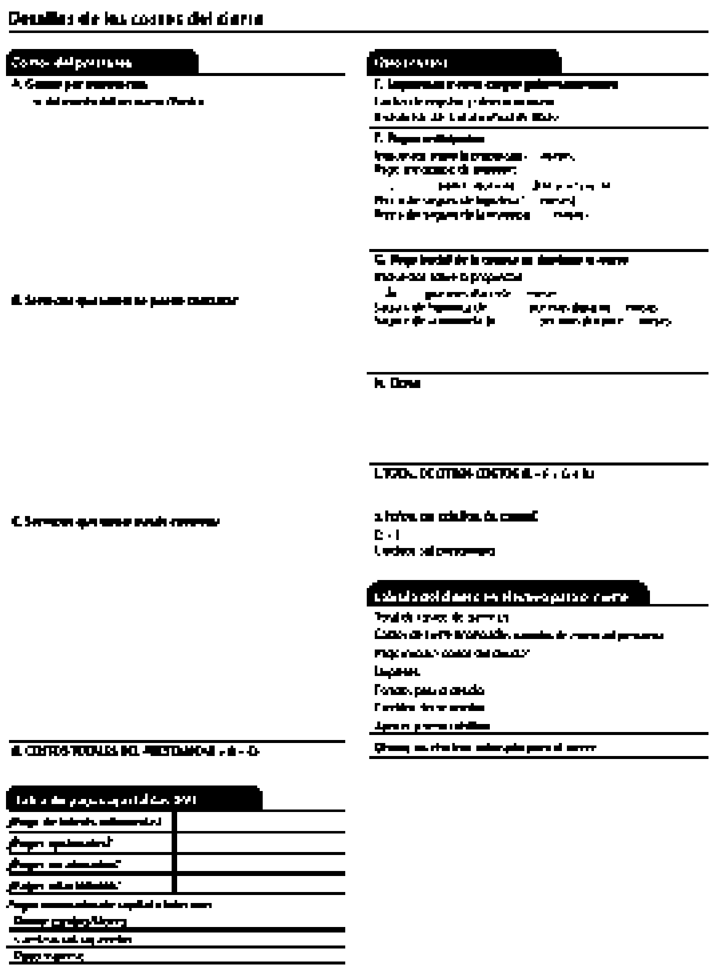
[illegible]

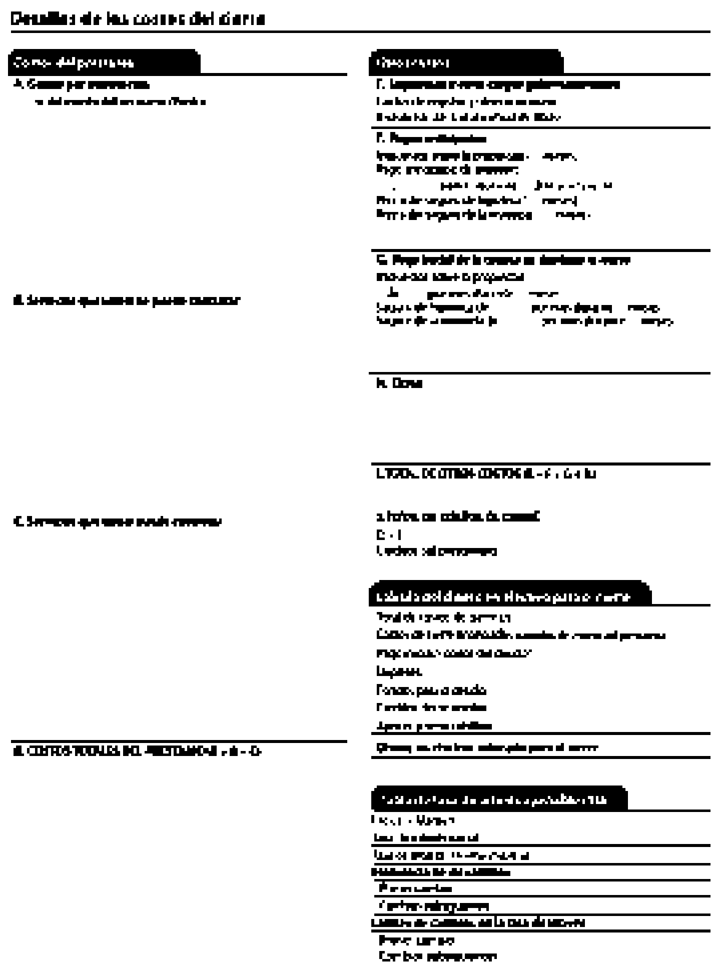
Cálculo del dinero en efectivo para el cierre

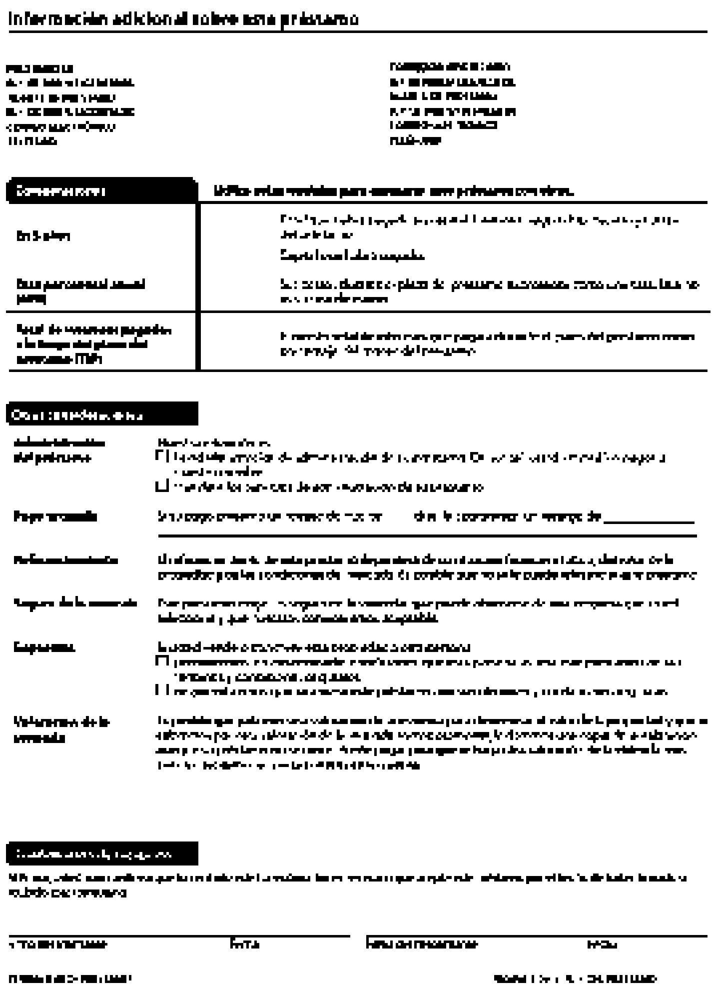
[illegible]

[illegible] [illegible]






Detalles de los costos del cierre
H. Otros

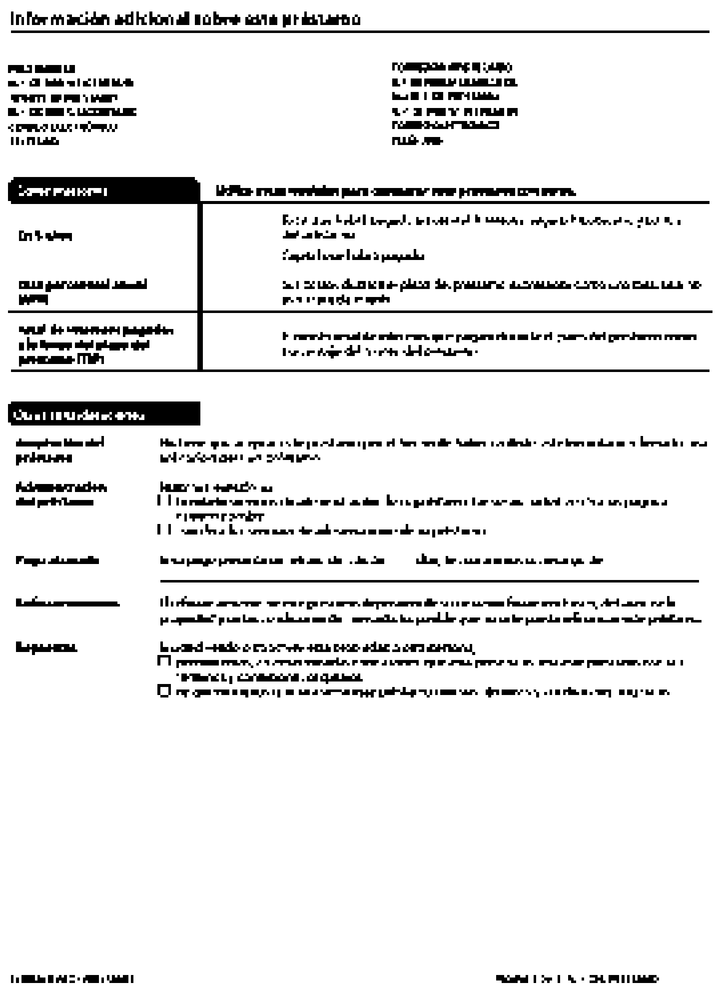


Información adicional sobre este préstamo

Información adicional sobre este préstamo

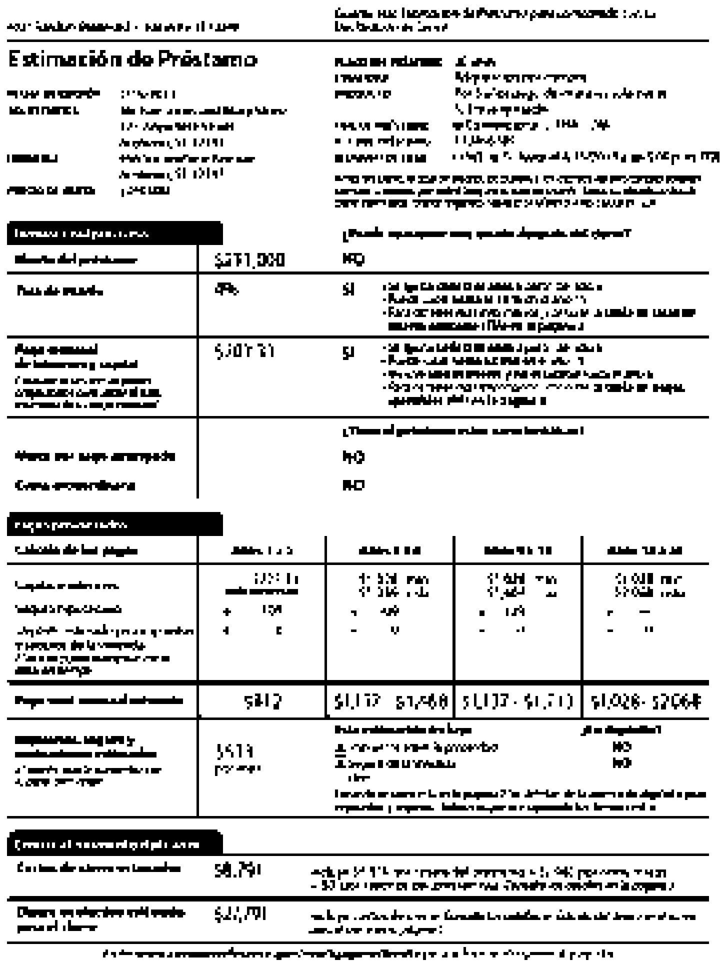
Información adicional sobre este préstamo

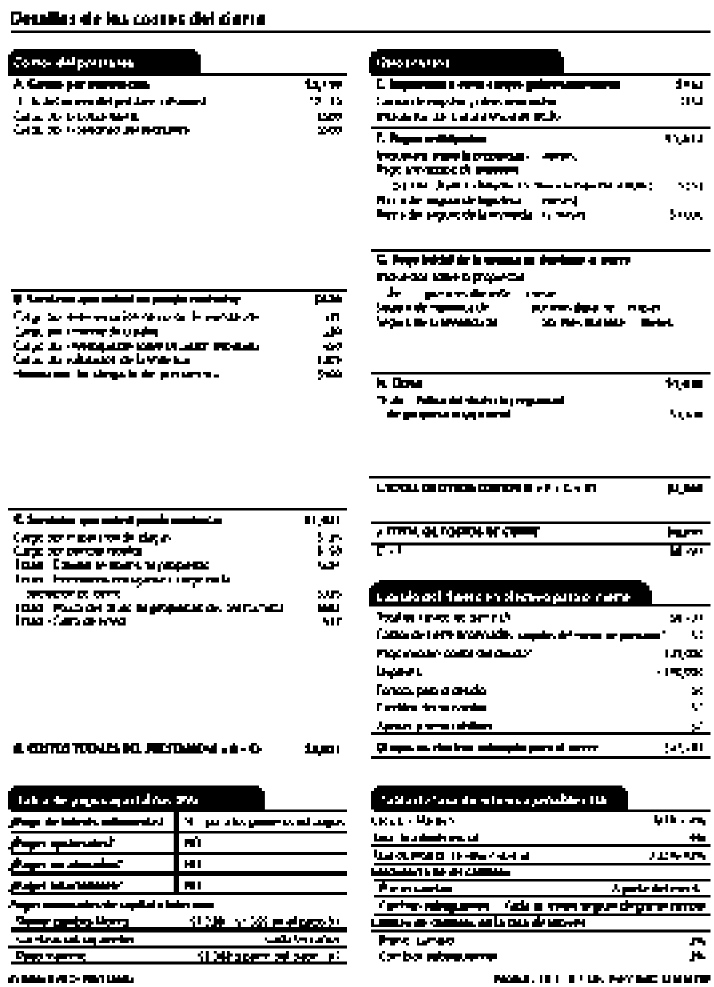
En 5 años	
Tasa porcentual anual (APR)	
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	

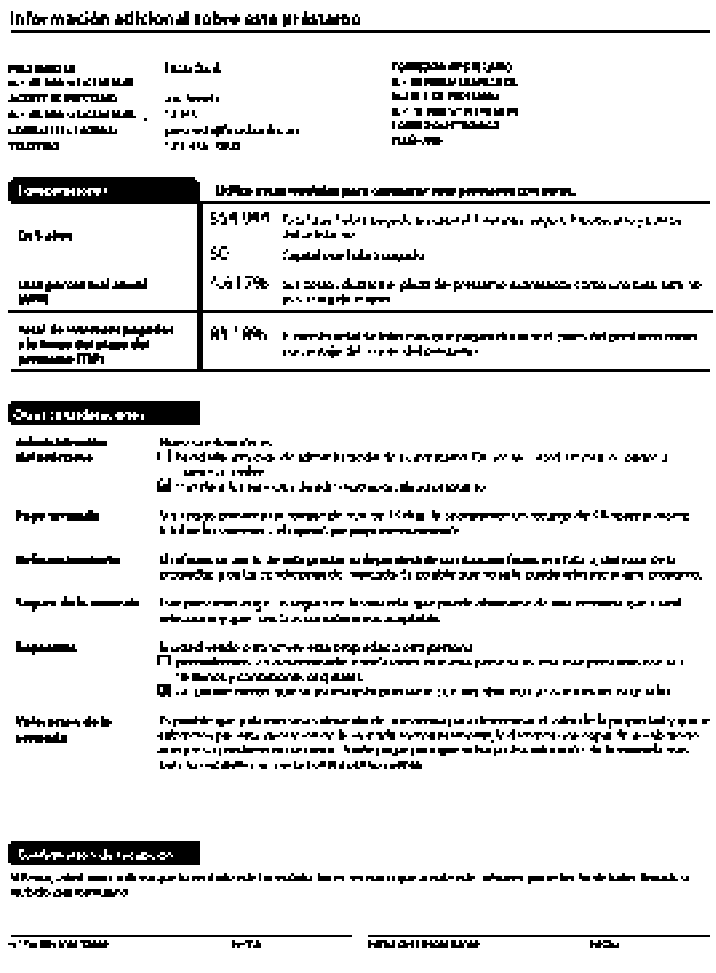


H–28(B) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—SPANISH LANGUAGE PURCHASE SAMPLE

Description: This is a sample of the Loan Estimate illustrated by form H–24(C) for a 5 Year Interest Only, 5/3 Adjustable Rate loan, translated into the Spanish language as permitted by §1026.37(o)(5)(ii).

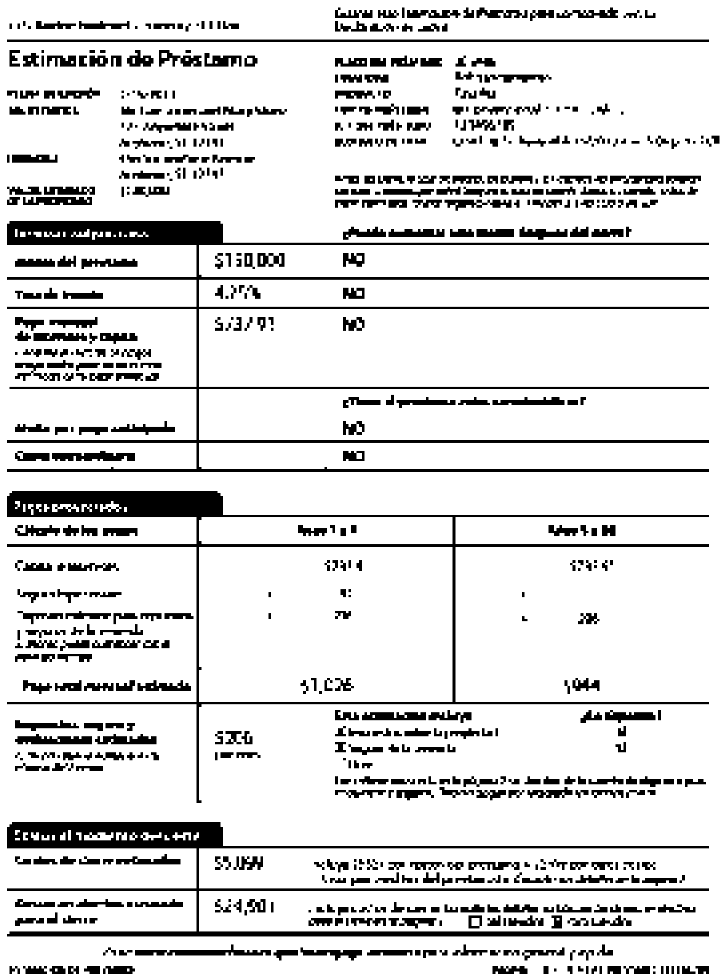

Estimación de Préstamo

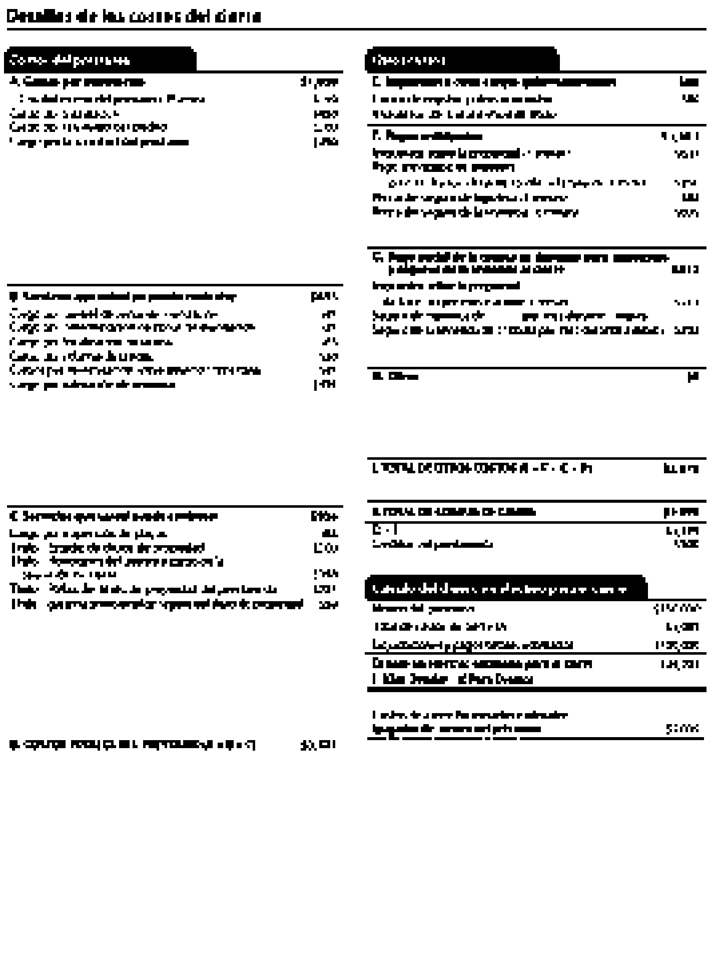


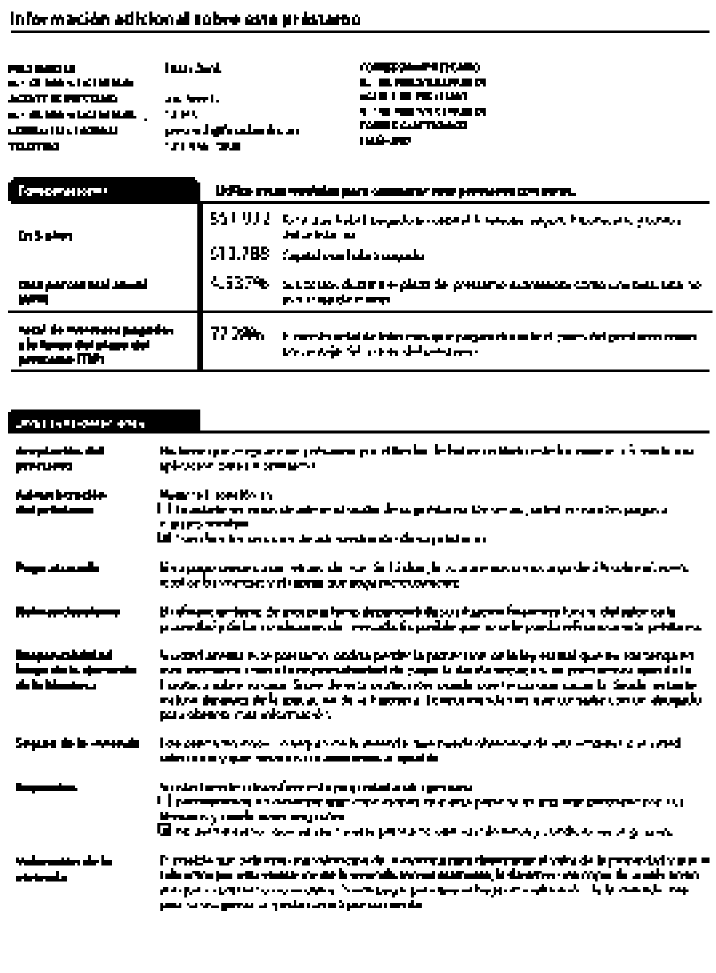

Información adicional sobre este préstamo

H–28(C) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—SPANISH LANGUAGE REFINANCE SAMPLE

Description: This is a sample of the Loan Estimate illustrated by form H–24(D) for a refinance transaction in which the consumer is estimated to receive funds from the transaction, translated into the Spanish language as permitted by §1026.37(o)(5)(ii).


Estimación de Préstamo
$150,000
NO
NO
NO
NO
NO
$1,026
$5,099
$24,901





H–28(D) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—SPANISH LANGUAGE BALLOON PAYMENT SAMPLE

Description: This is a sample of the information required by §1026.37(a) through (c) for a transaction with a loan term of seven years that includes a final balloon payment illustrated by form H–24(E), translated into the Spanish language as permitted by §1026.37(o)(5)(ii).

[illegible] | [illegible]

Estimación de Préstamo

[illegible]	[illegible]
SOLICITANTES	Michael Jones and Mary Stone
	123 Anywhere Street
	Anytown, ST 12345
[illegible]	456 Somewhere Avenue
	Anytown, ST 12345
[illegible]	[illegible]

[illegible]	[illegible]
FINALIDAD	Adquisición por compra
PRODUCTO	[illegible]
TIPO DE PRÉSTAMO	[illegible]
[illegible]	123456789
BLOQUEO DE TASA	[illegible]

[illegible]

Términos del préstamo

		¿Puede aumentar este monto después del cierre?
Monto del préstamo	$171,000	NO
Tasa de interés	4.375%	NO
Pago mensual de intereses y capital [illegible]	$853.78	NO
		¿Tiene el préstamo estas características?
Multa por pago anticipado		NO
Costo extraordinario		SÍ • [illegible] $149,263 [illegible]

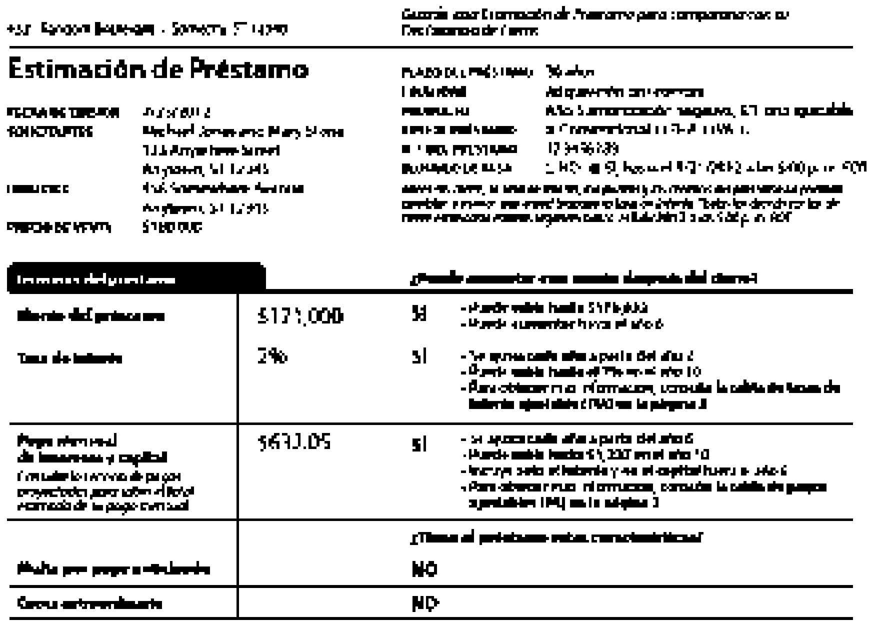
Pagos proyectados

Cálculo de los pagos	Años 1 a 7	Pago final pactado
Capital e intereses	$853.78	$149,262.56
Seguro hipotecario	+ 87	+ —
Depósito estimado para impuestos y seguros de la vivienda [illegible]	+ 309	+ —
Pago total mensual estimado	$1,250	$149,262.95

Impuestos, seguros y evaluaciones estimados [illegible]	$309 por mes	Esta estimación incluye	¿En depósito?
		☒ Impuestos sobre la propiedad	SÍ
		☒ Seguro de la vivienda	SÍ
		☐ Otro:	
		[illegible]	

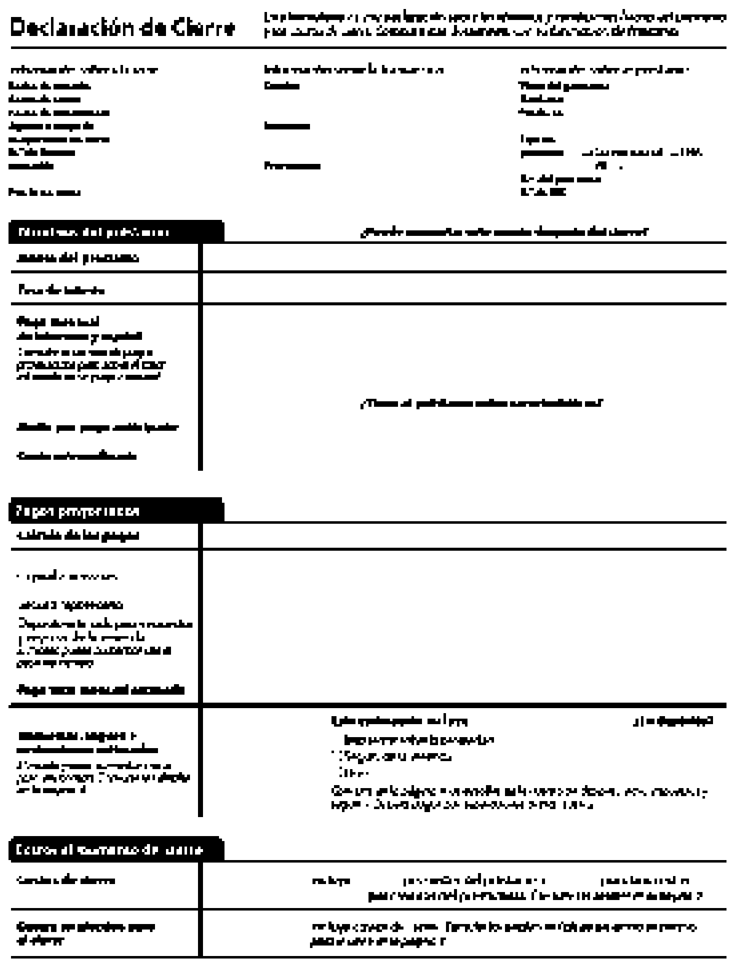
H–28(E) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—SPANISH LANGUAGE NEGATIVE AMORTIZATION SAMPLE

Description: This is a sample of the information required by §1026.37(a) and (b) for a transaction with negative amortization illustrated by form H–24(F), translated into the Spanish language as permitted by §1026.37(o)(5)(ii).



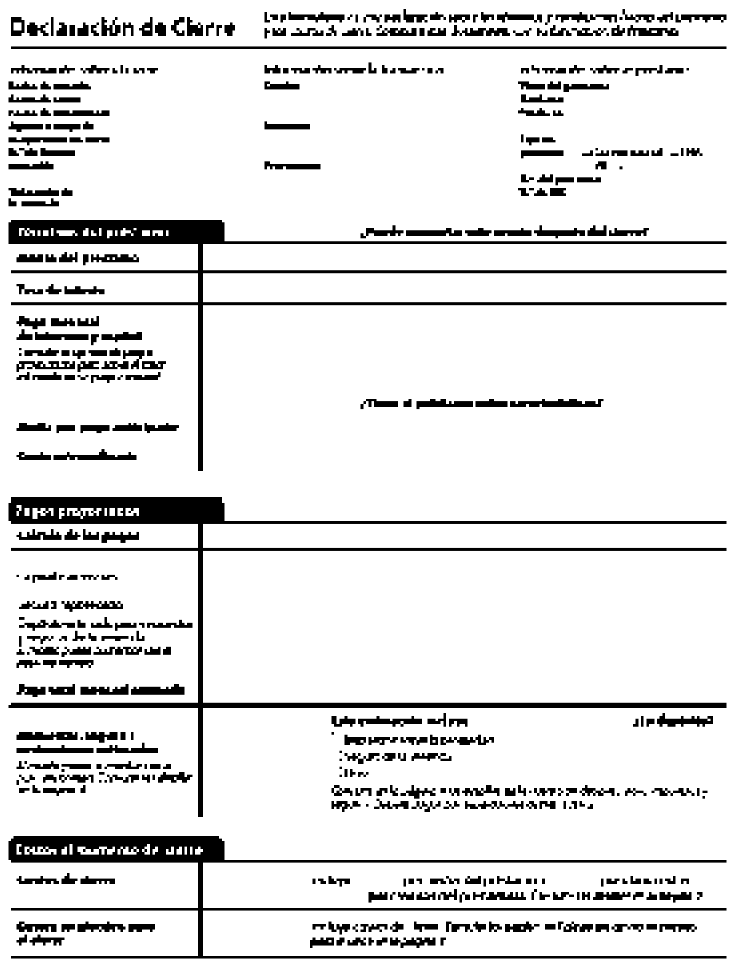
H–28(F) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—SPANISH LANGUAGE MODEL FORM

Description: This is a blank model Closing Disclosure that illustrates the content requirements in §1026.38, and is translated into the Spanish language as permitted by §1026.38(t)(5)(viii). This form provides three variations of page one, one page two, one page three, four variations of page four, four variations of page five, and two variations of page six reflecting the variable content requirements in §1026.38. This form does not reflect any other modifications permitted under §1026.38(t).

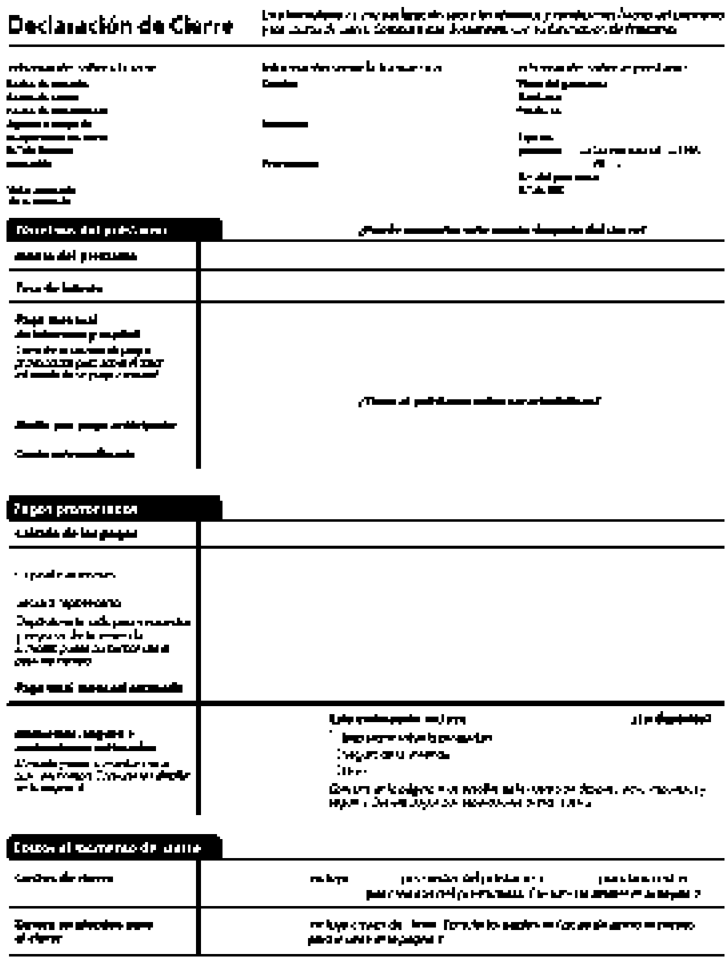

Declaración de Cierre

Pagos proyectados

Costos al momento de cierre

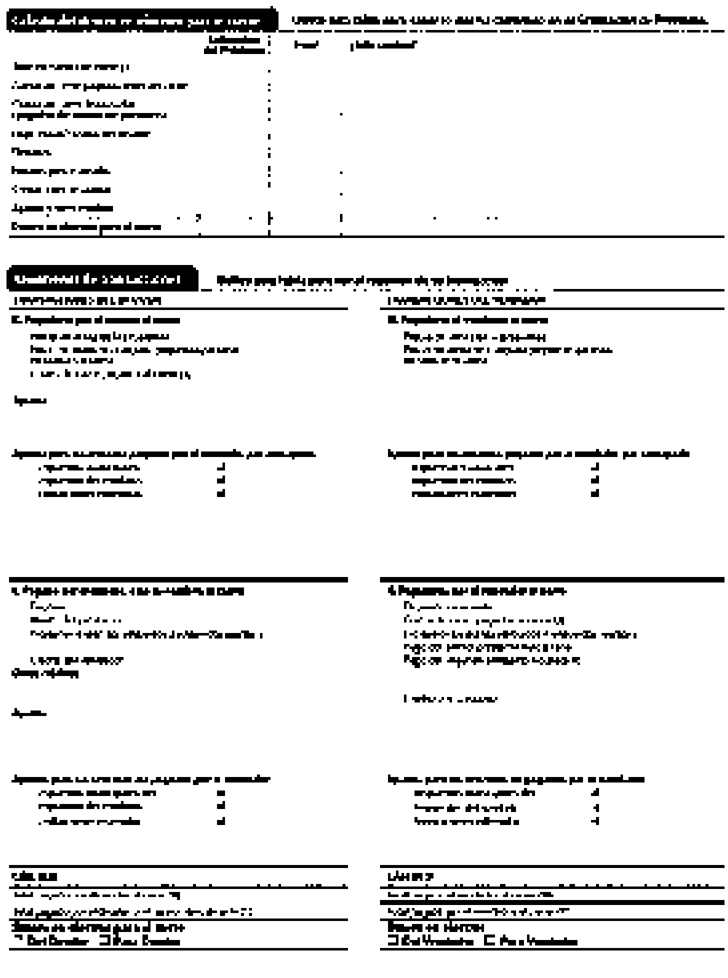


Declaración de Cierre



Declaración de Cierre

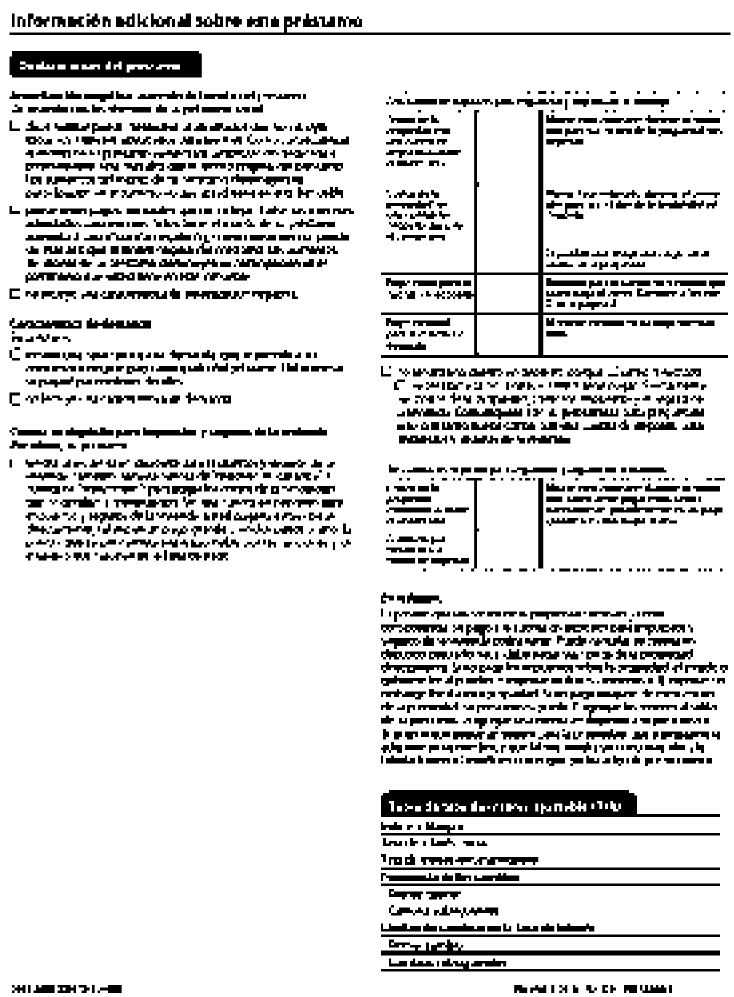
Detalles de los costos de cierre

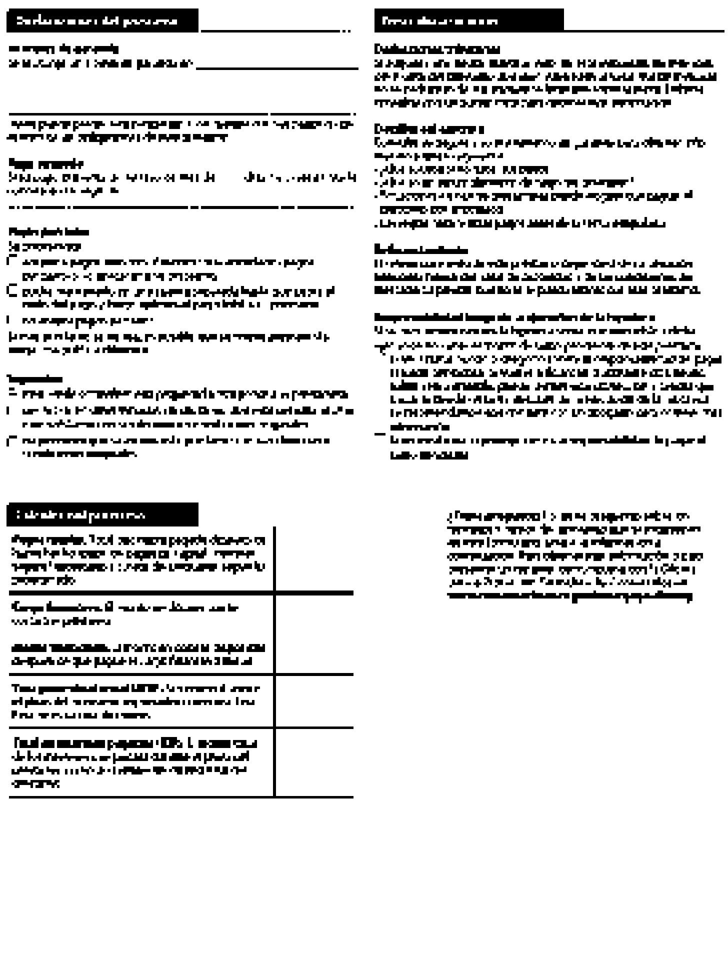


Información adicional sobre este préstamo

Información adicional sobre este préstamo

Información adicional sobre este préstamo


Información adicional sobre este préstamo



[illegible]

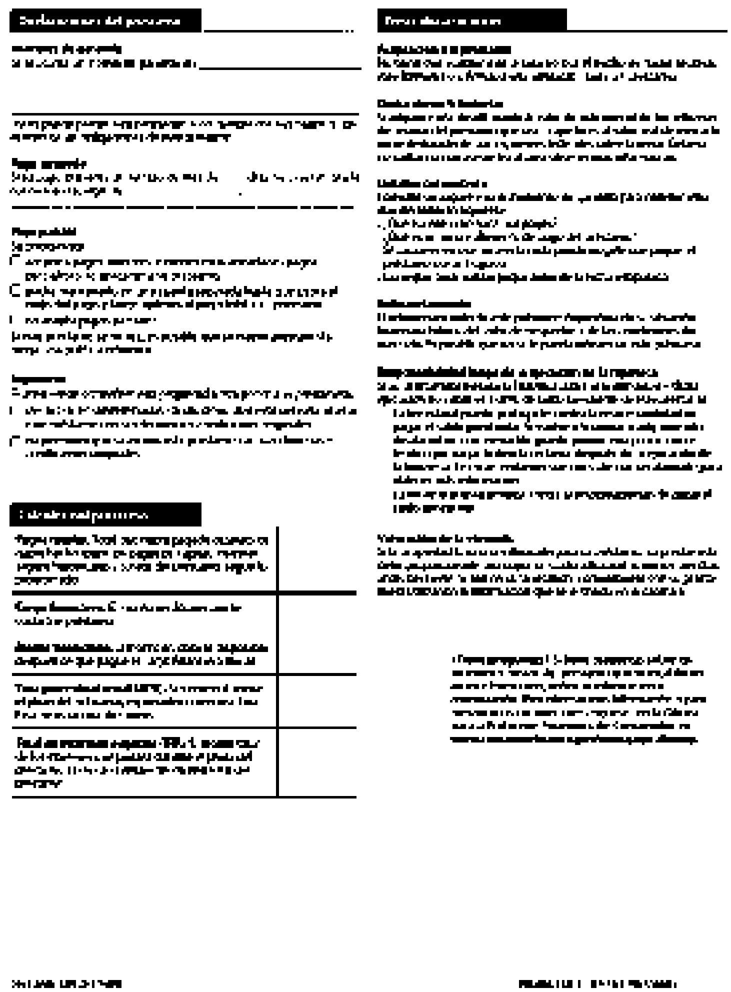
	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					

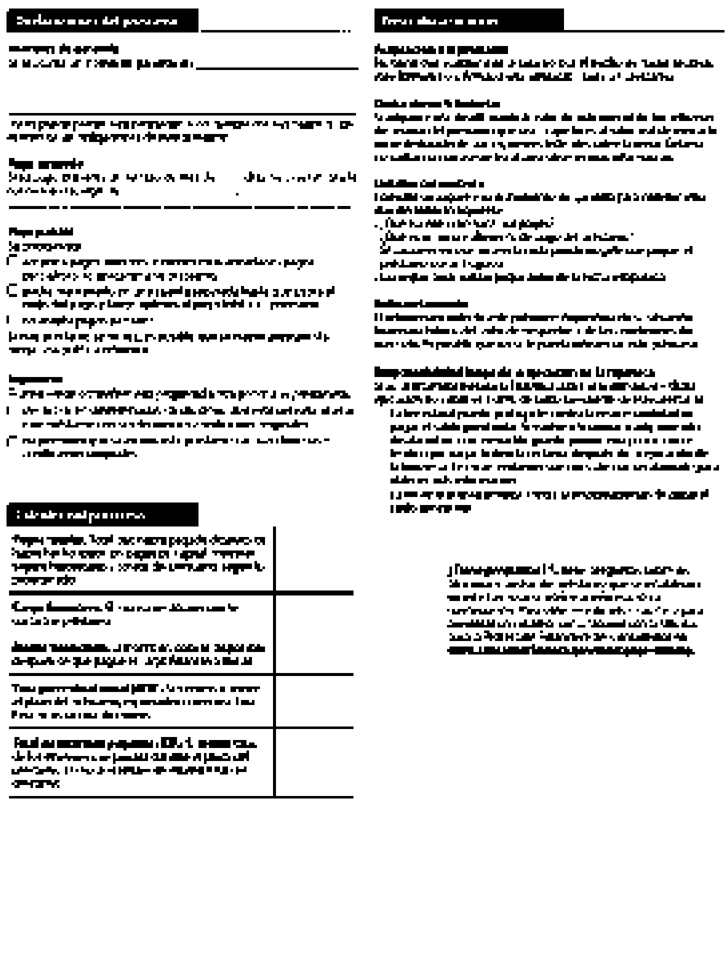
[illegible]

[illegible]

[illegible] [illegible] [illegible] [illegible]

[illegible] [illegible]



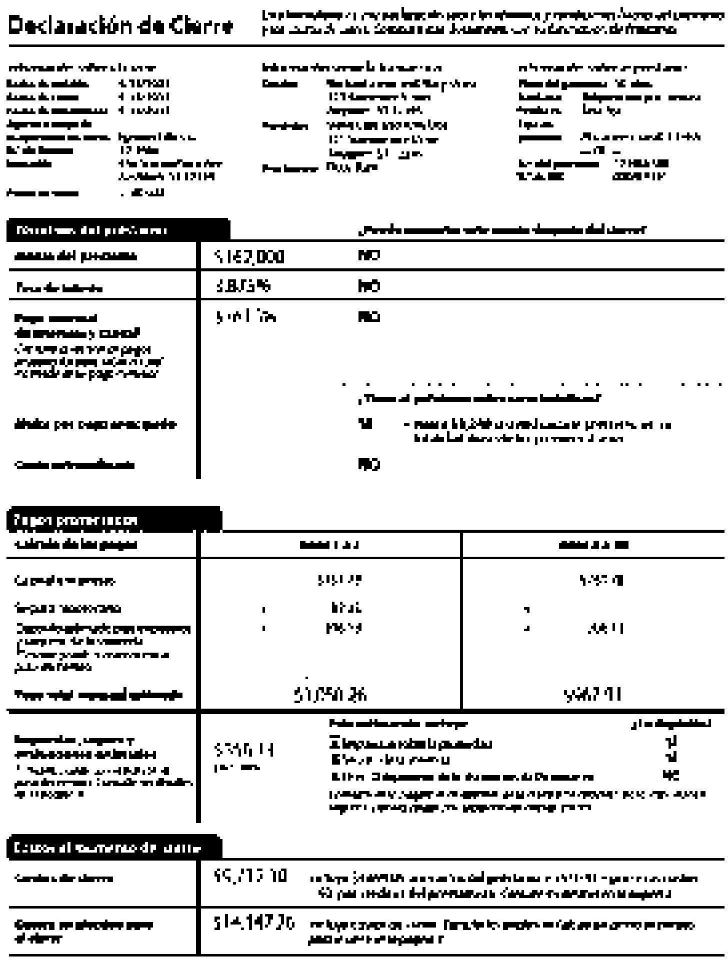


[illegible]

	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					
[illegible]					

H–28(G) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—SPANISH LANGUAGE PURCHASE SAMPLE

Description: This is a sample of the Closing Disclosure illustrated by form H–25(B) translated into the Spanish language as permitted by § 1026.38(t)(5)(viii).



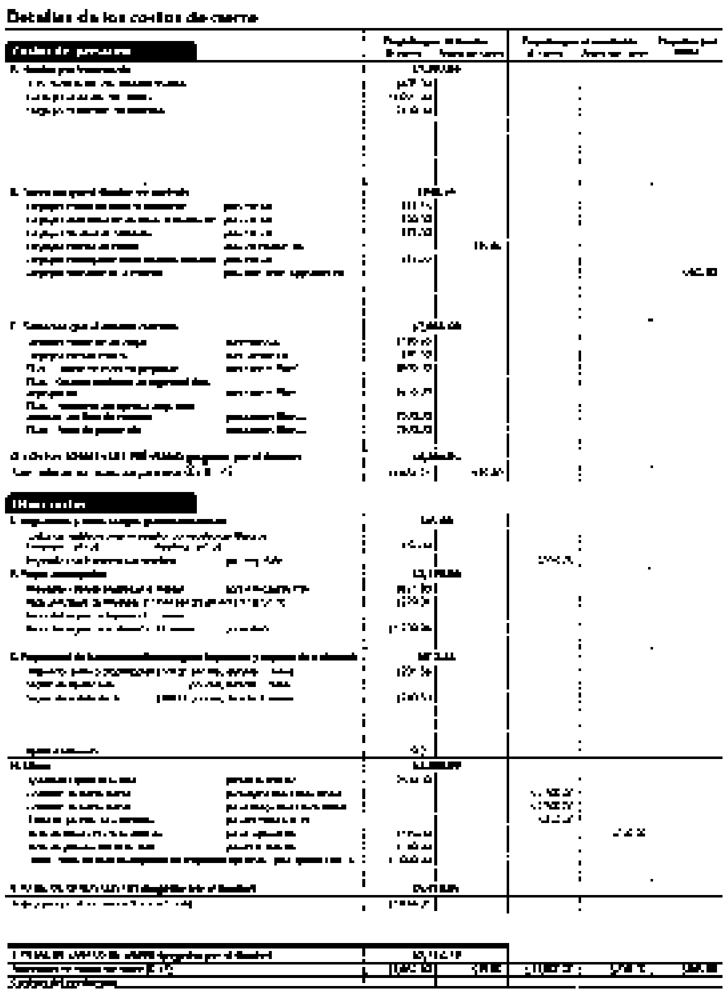
Declaración de Cierre

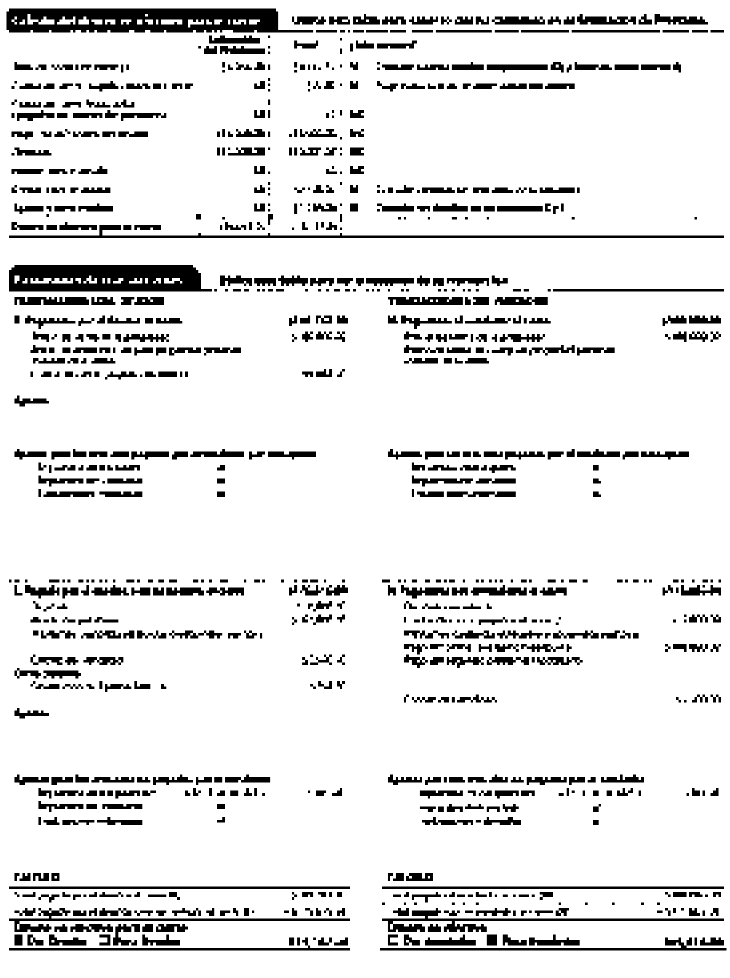
$162,000 NO

NO

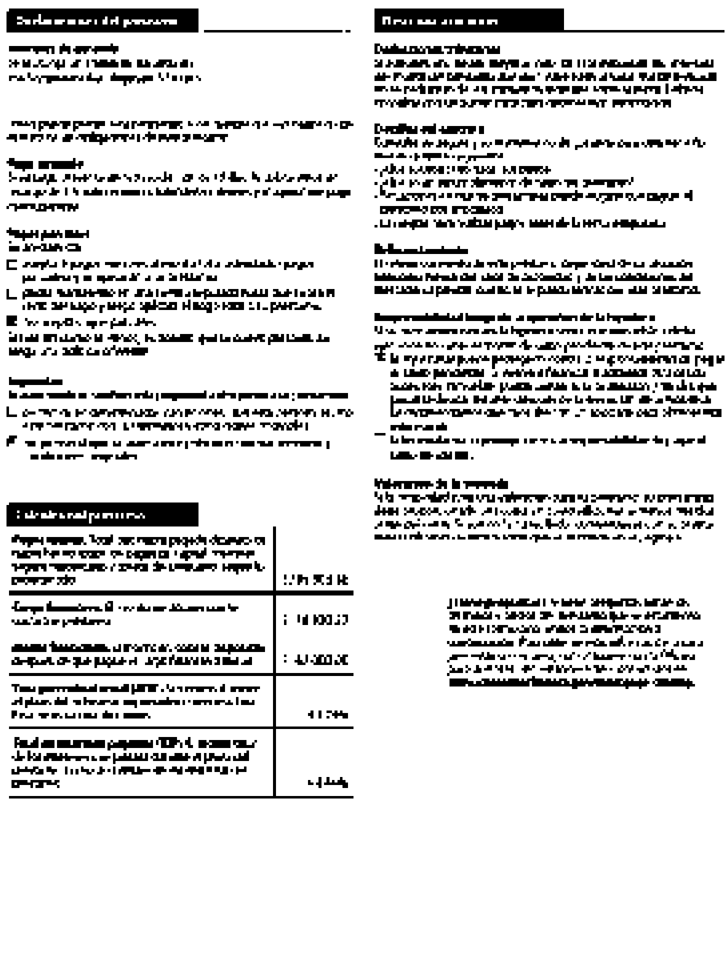
NO

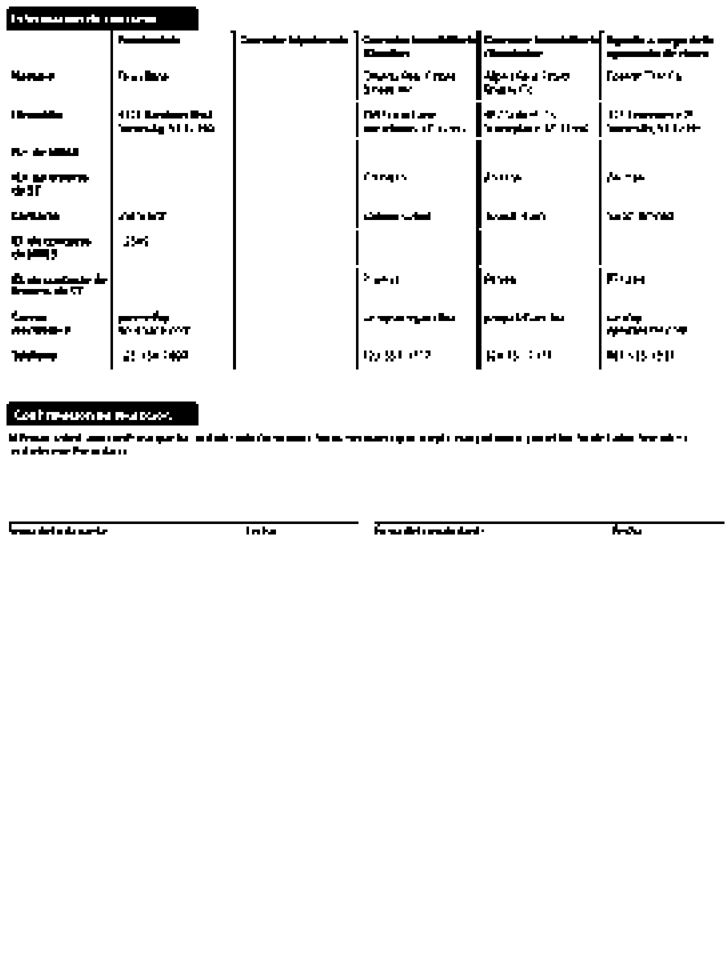
NO


Detalles de los costos de cierre



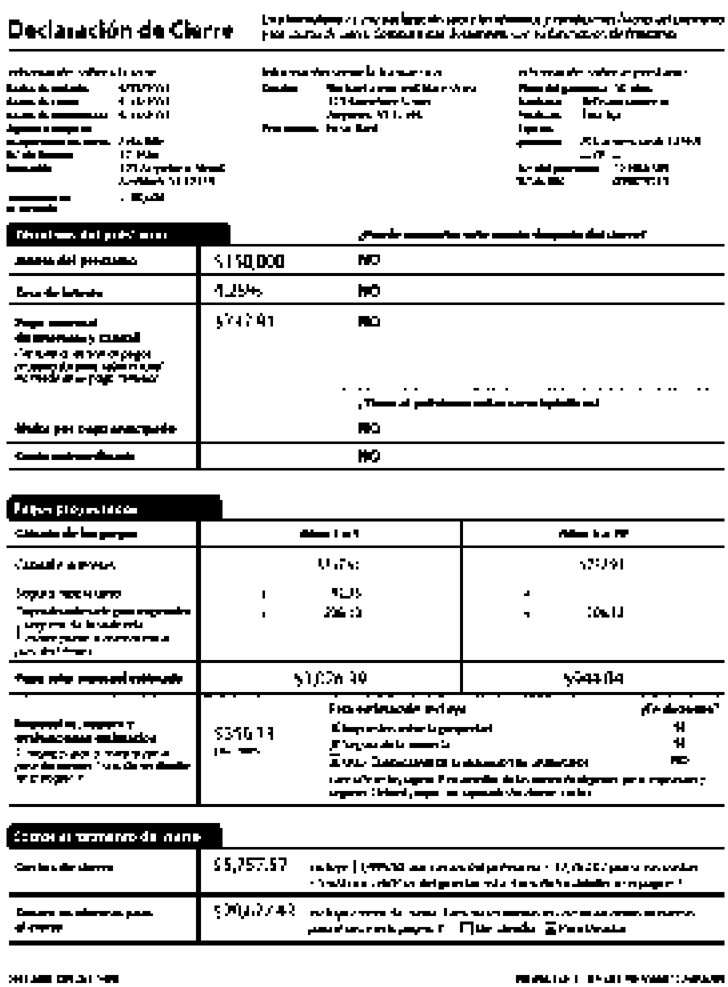
Información adicional sobre este préstamo





H–28(H) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—SPANISH LANGUAGE REFINANCE SAMPLE

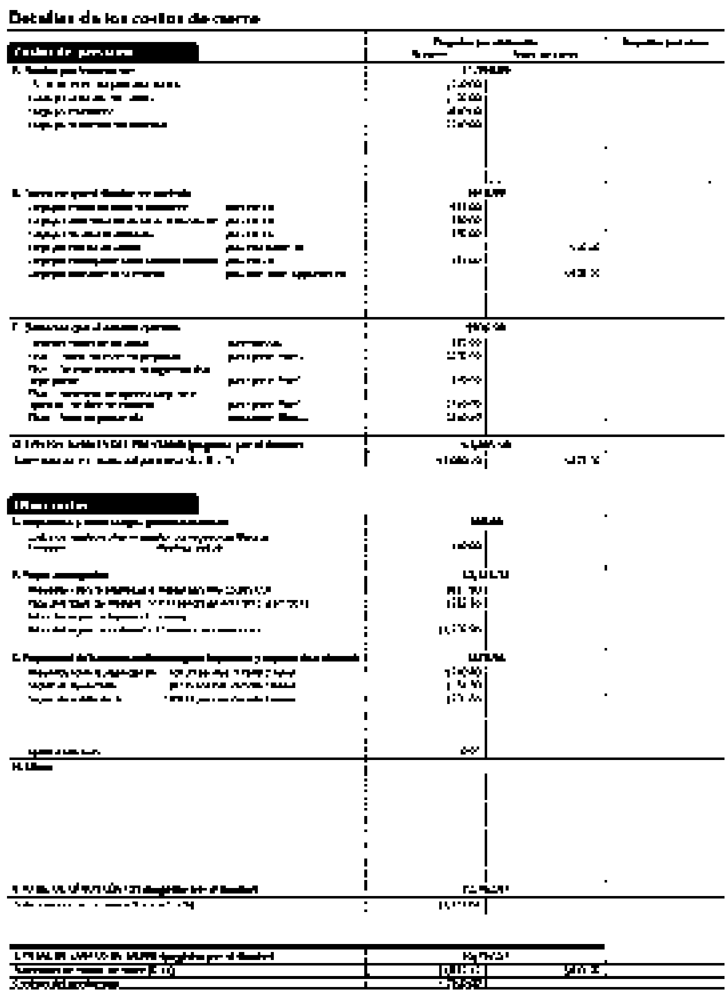
Description: This is a sample of the Closing Disclosure illustrated by form H–25(E) translated into the Spanish language as permitted by §1026.38(t)(5)(viii).



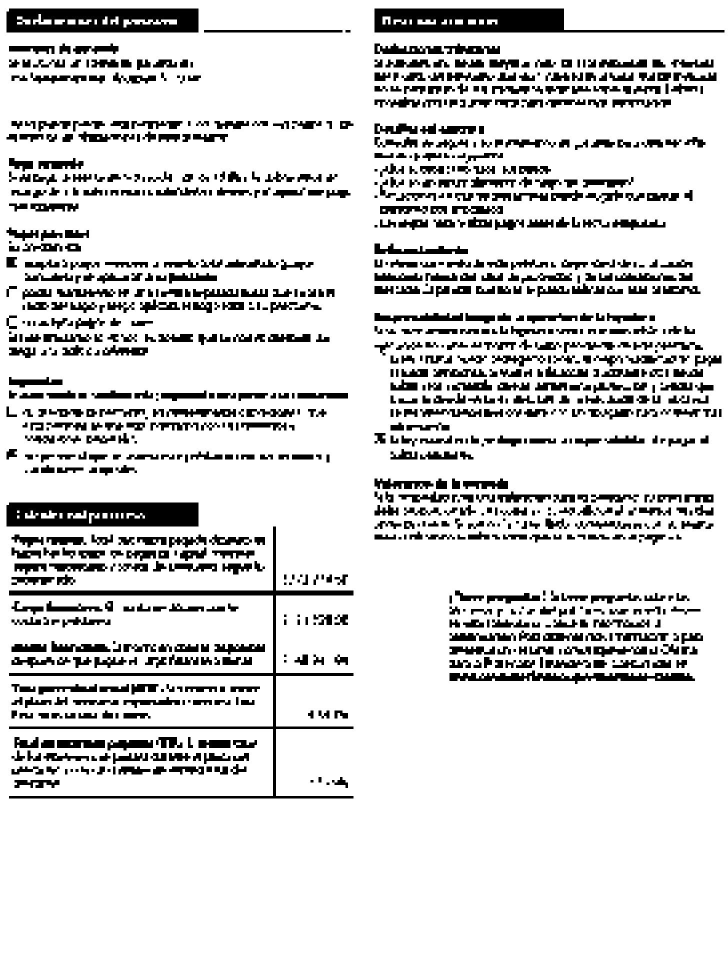
Declaración de Cierre

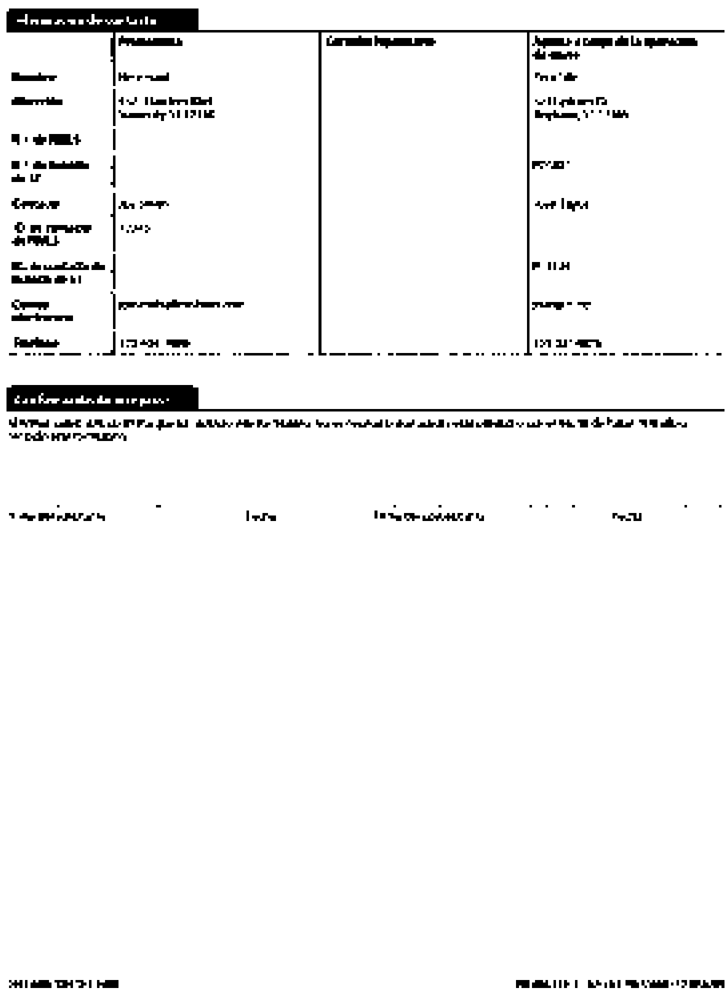
[illegible]	$150,000	NO
[illegible]	[illegible]	NO
[illegible]	[illegible]	NO
[illegible]		NO
[illegible]		NO

[illegible]	$5,757.57
[illegible]	[illegible]


Detalles de los costos de cierre

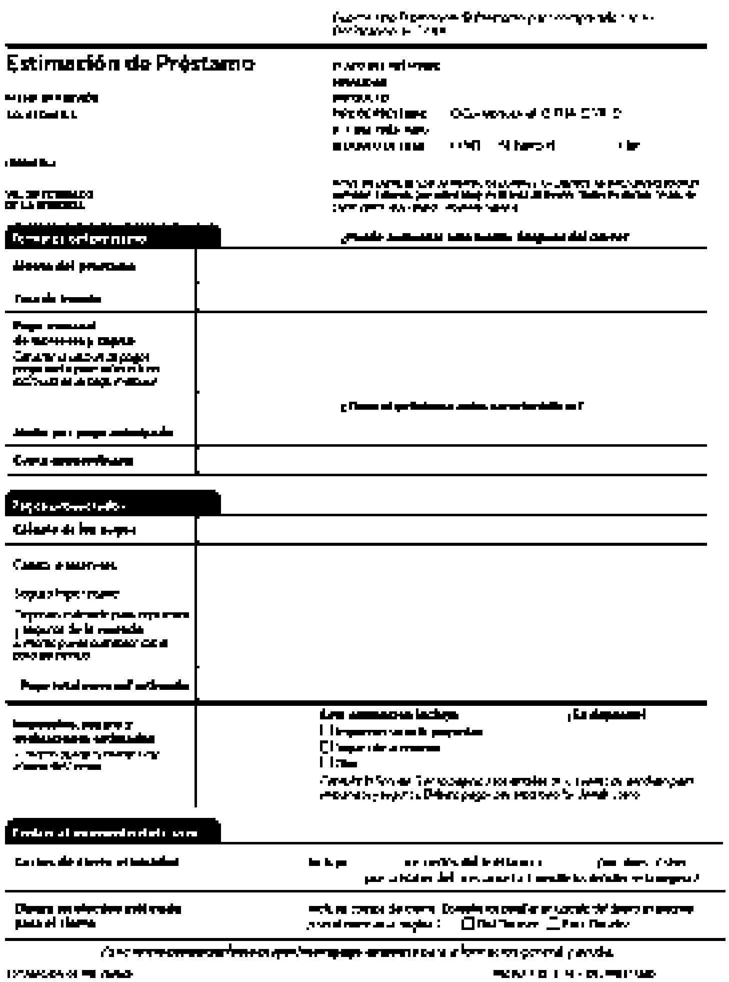
Información adicional sobre este préstamo

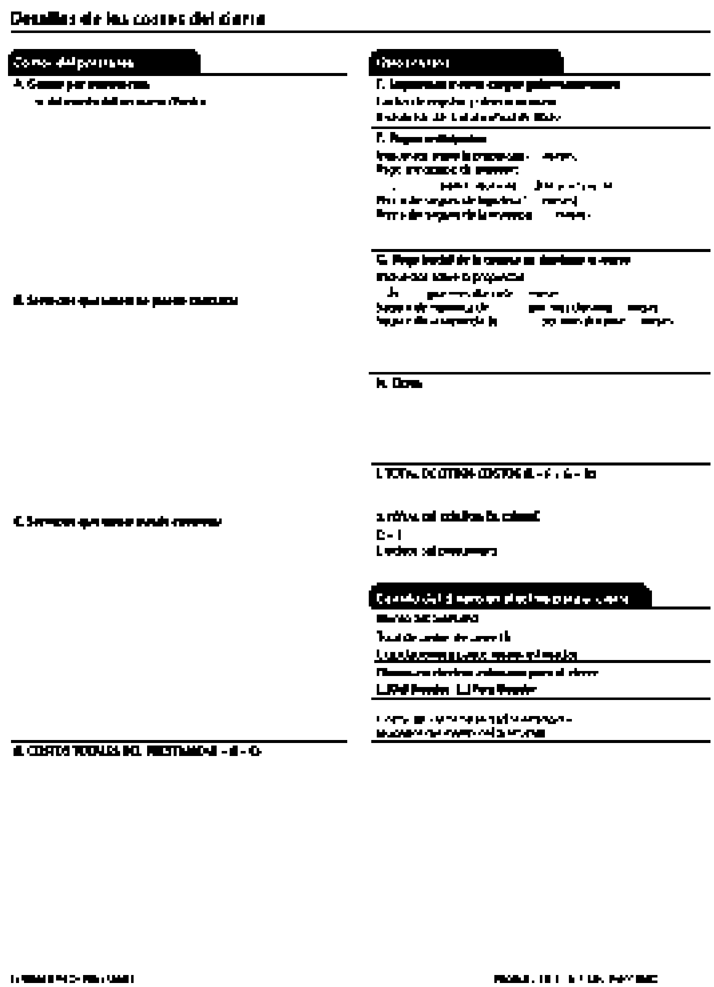




H–28(I) MORTGAGE LOAN TRANSACTION LOAN ESTIMATE—MODIFICATION TO LOAN ESTIMATE FOR TRANSACTION NOT INVOLVING SELLER—SPANISH LANGUAGE MODEL FORM

Description: This is a blank model Loan Estimate that illustrates form H–24(G), with the optional alternative disclosures permitted by §1026.37(d)(2) and (h)(2) for transactions without a seller, translated into the Spanish language as permitted by §1026.37(o)(5)(ii).


Estimación de Préstamo



Detalles de los costos del cierre

Costos del préstamo

A. Cargos por originación

B. Servicios que usted no puede obtener

C. Servicios que usted puede obtener

D. COSTOS TOTALES DEL PRÉSTAMO (A + B + C)

Otros costos

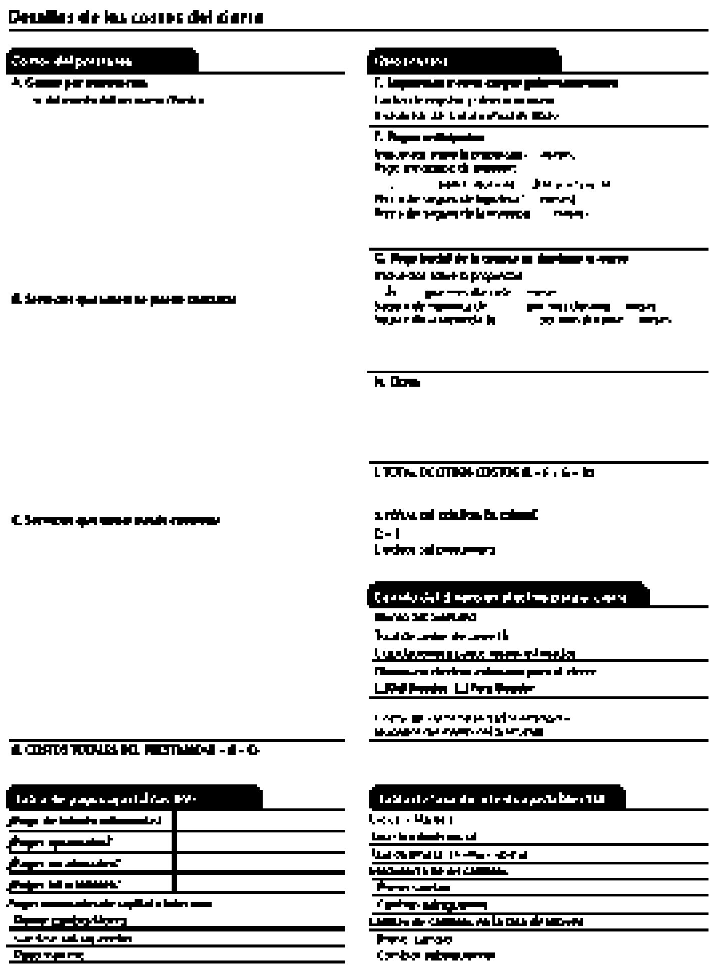
E. Impuestos y otros cargos gubernamentales

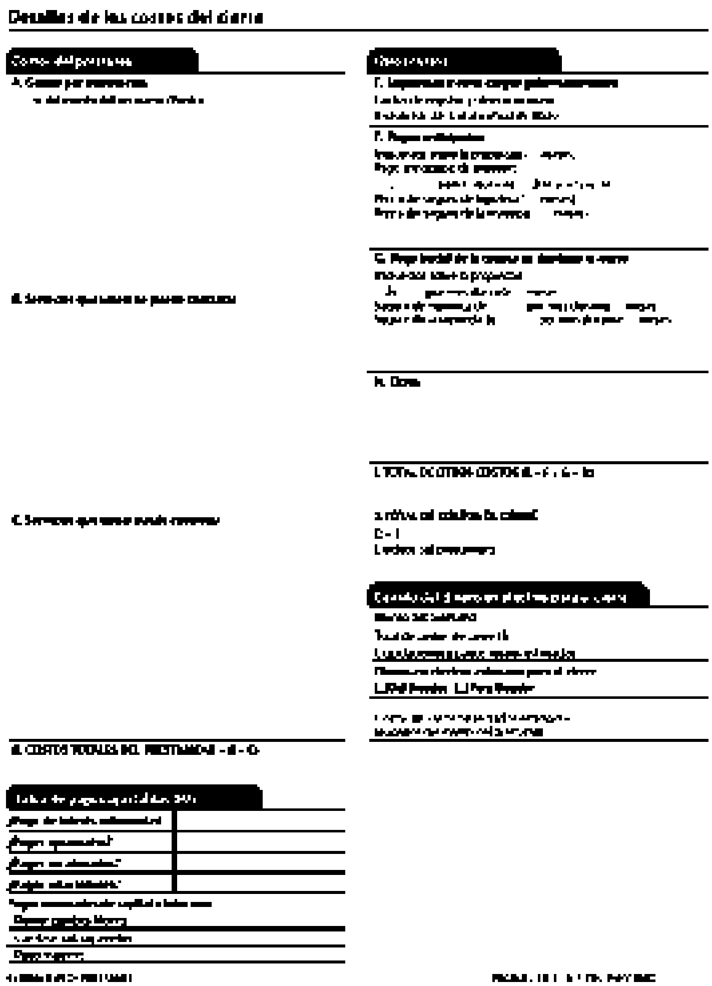
F. Pagos anticipados

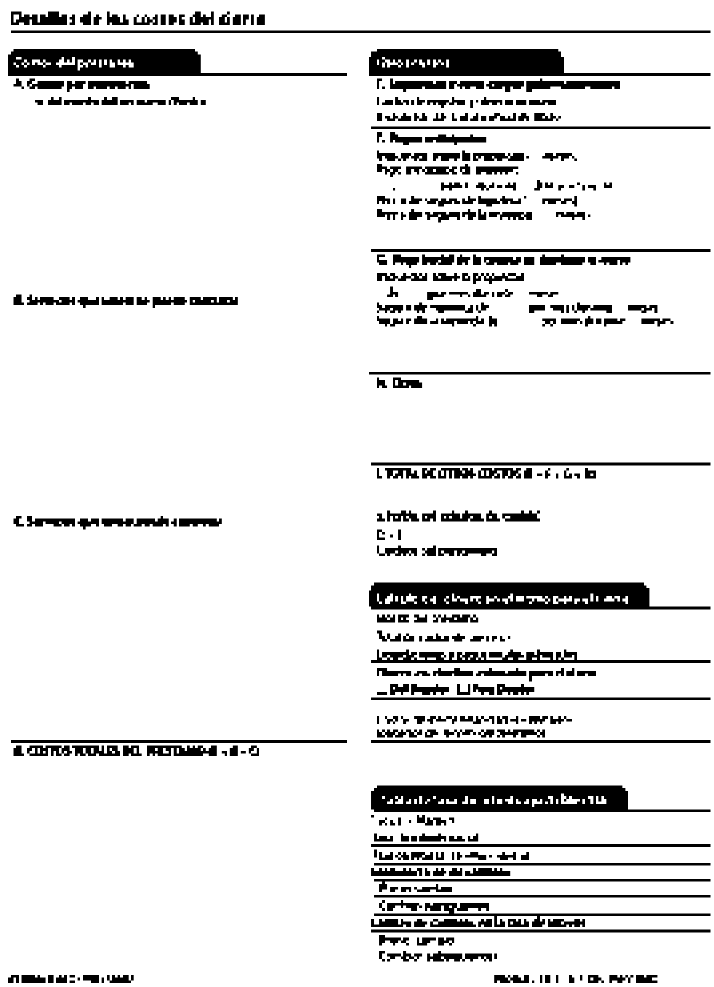
G. Pago inicial de la cuenta en depósito en garantía

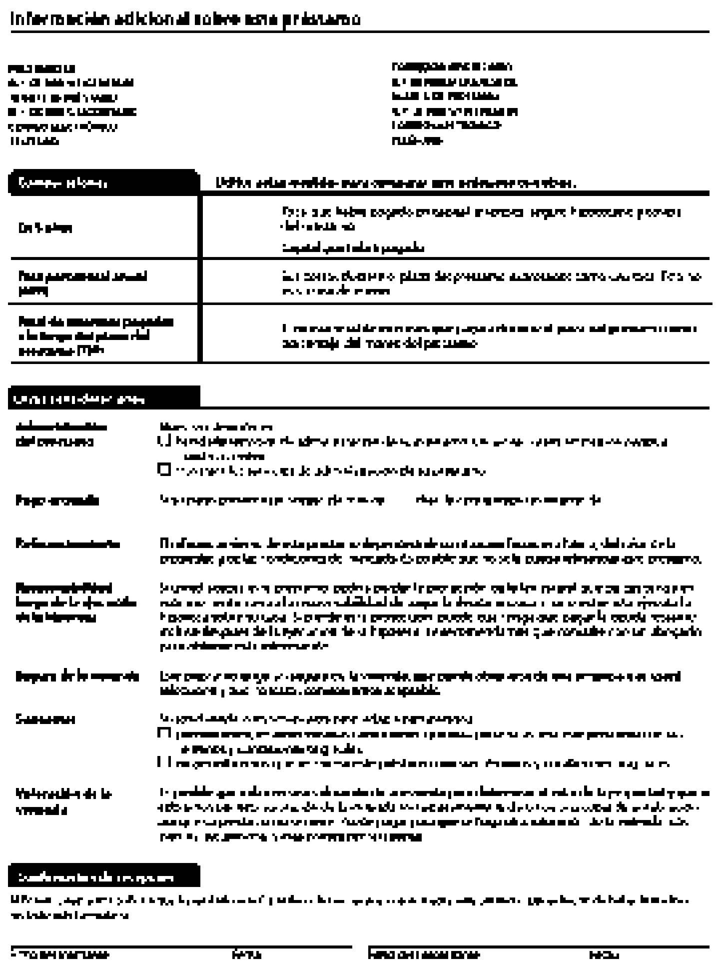
H. Otros

I. TOTAL DE OTROS COSTOS








Información adicional sobre este préstamo

Información adicional sobre este préstamo

[illegible]

Comparaciones	Utilice estas medidas para comparar este préstamo con otros.
En 5 años	[illegible]
Tasa porcentual anual (APR)	[illegible]
Total de intereses pagados a lo largo del plazo del préstamo (TIP)	[illegible]

Otras consideraciones

Aceptación del préstamo [illegible]

Administración del préstamo [illegible]

Pago atrasado [illegible]

Refinanciamiento [illegible]

Responsabilidad luego de la ejecución de la hipoteca [illegible]

Seguro de la vivienda [illegible]

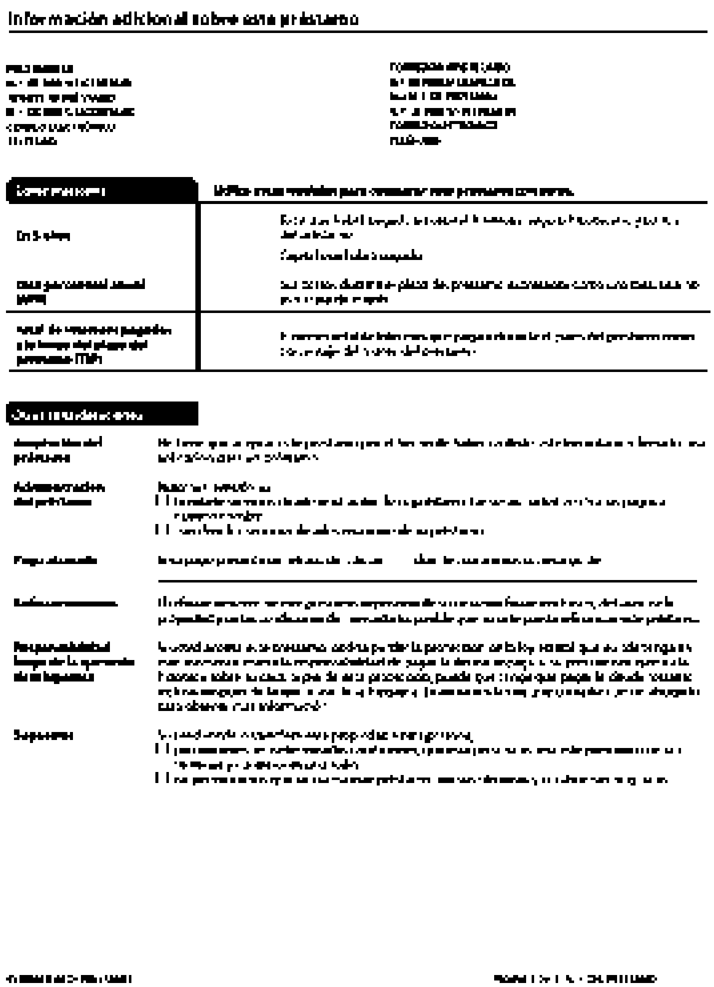
Suposición [illegible]

Valuación de la vivienda [illegible]

[illegible]

Información adicional sobre este préstamo

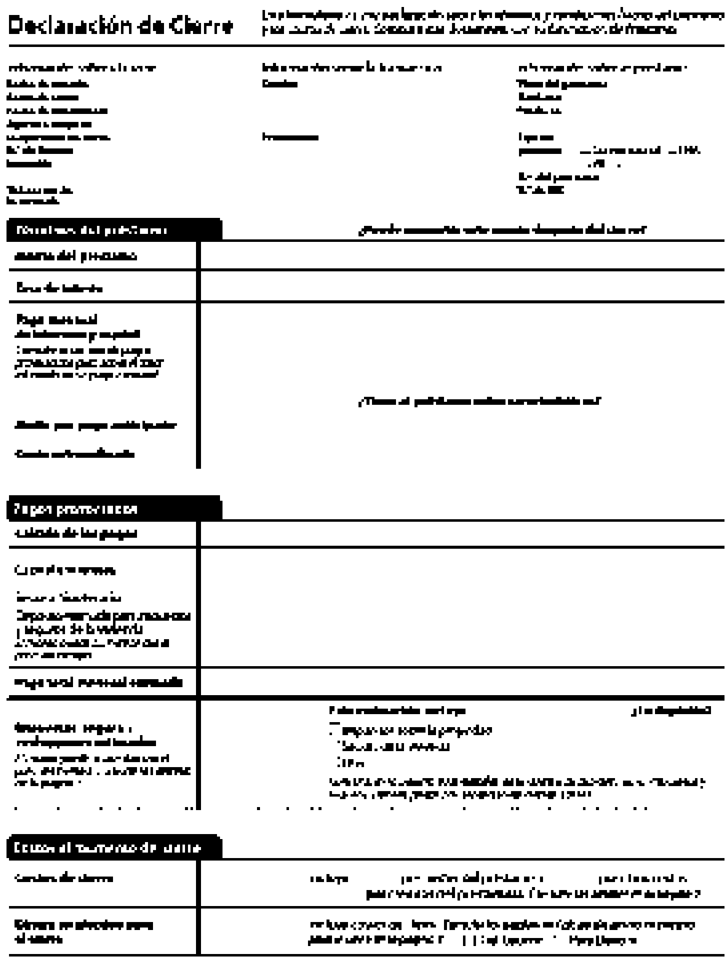
[illegible]



Información adicional sobre este préstamo

H–28(J) MORTGAGE LOAN TRANSACTION CLOSING DISCLOSURE—MODIFICATION TO CLOSING DISCLOSURE FOR TRANSACTION NOT INVOLVING SELLER—SPANISH LANGUAGE MODEL FORM

Description: This is a blank model Closing Disclosure that illustrates form H–25(J), with the alternative disclosures under §1026.38(d)(2), (e), and (t)(5)(vii) for transactions without a seller, translated into the Spanish language as permitted by §1026.38(t)(5)(viii).

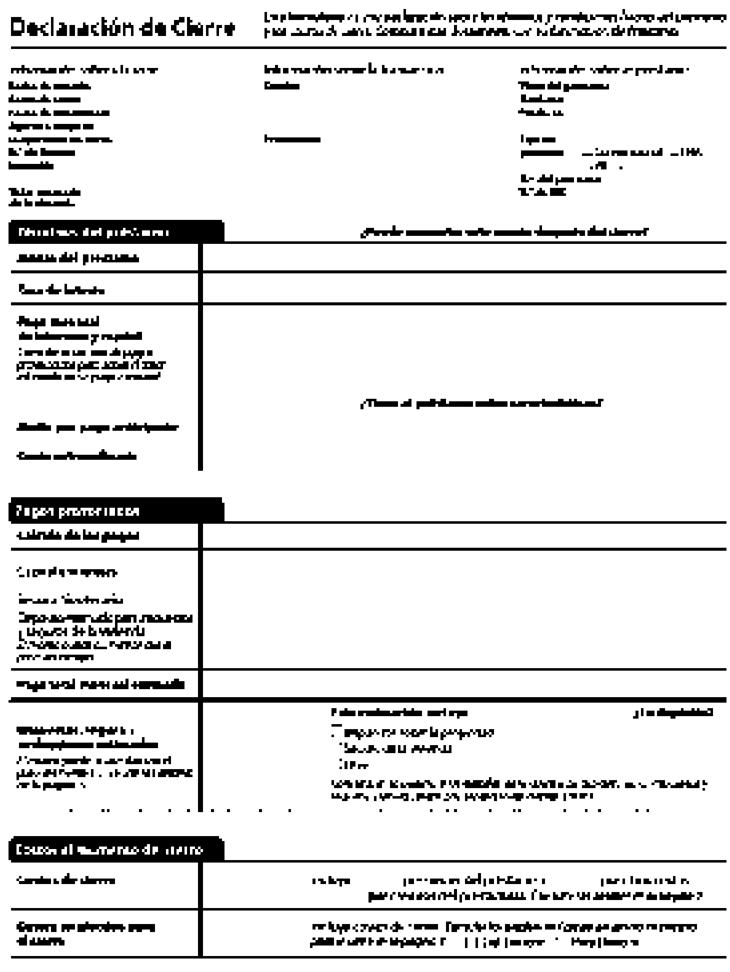


Declaración de Cierre

Términos del préstamo

Pagos proyectados

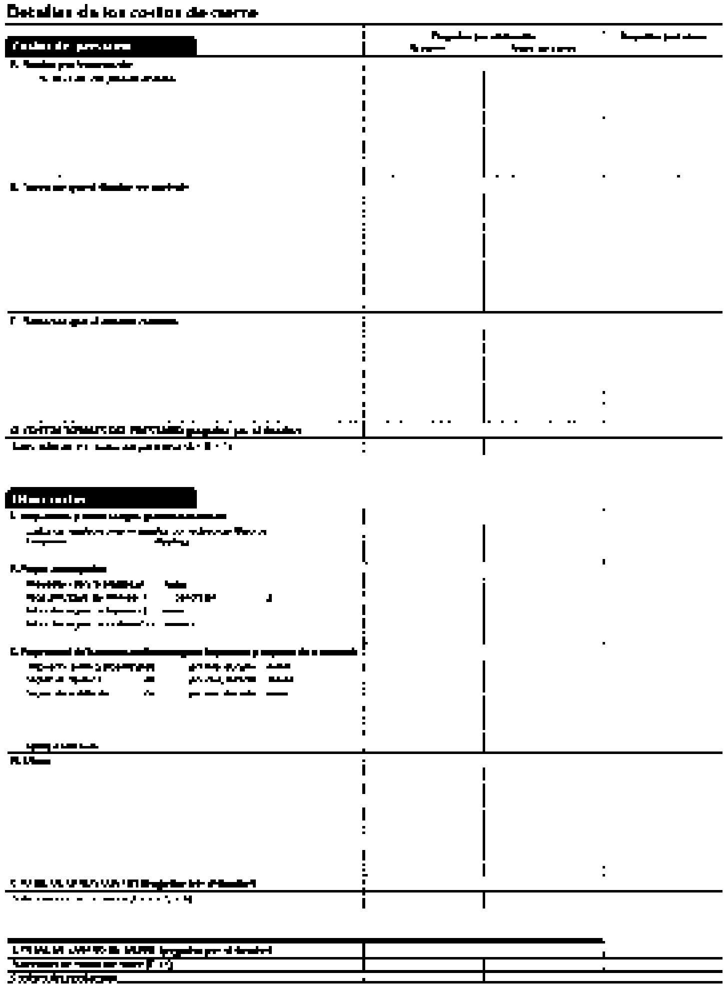
Costos al momento de cierre

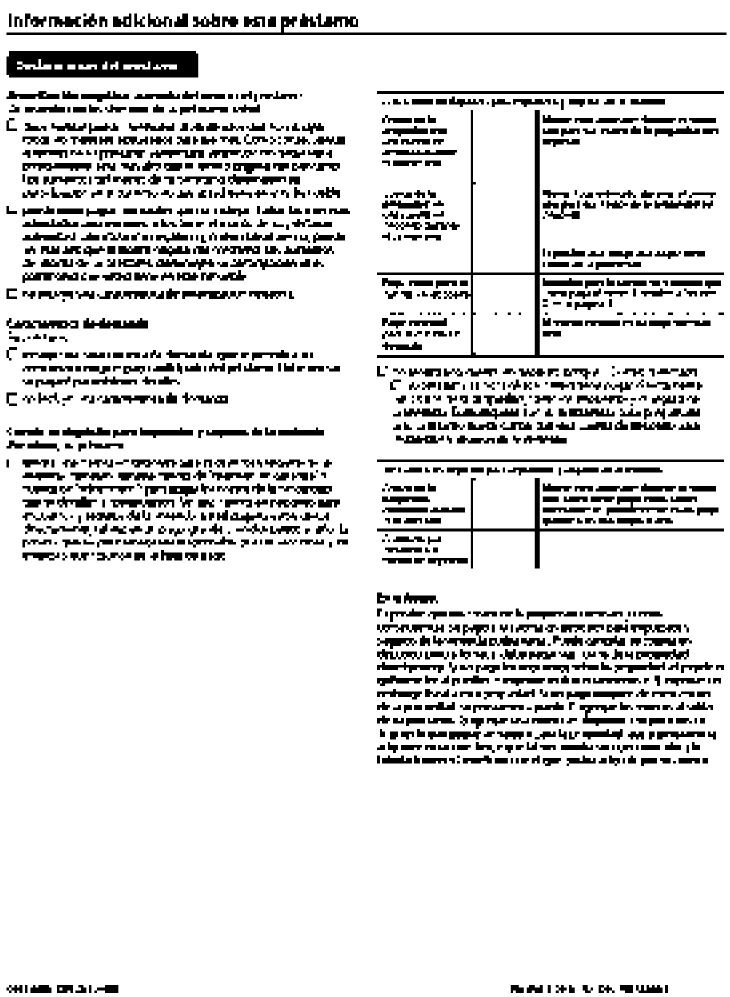


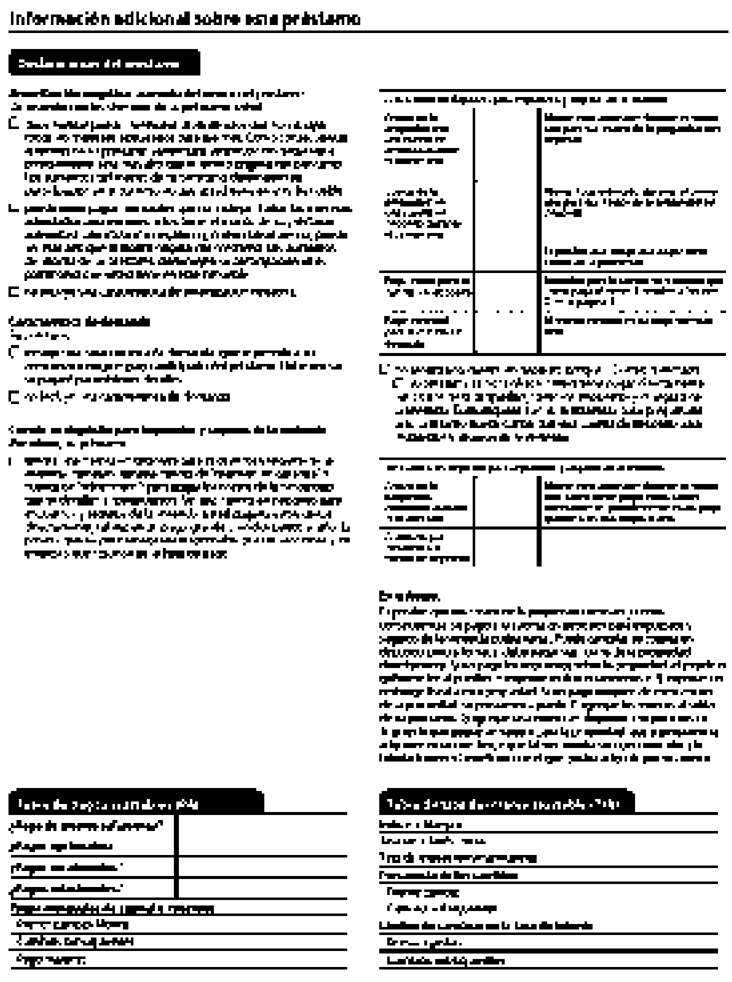
Declaración de Cierre

Pagos proyectados

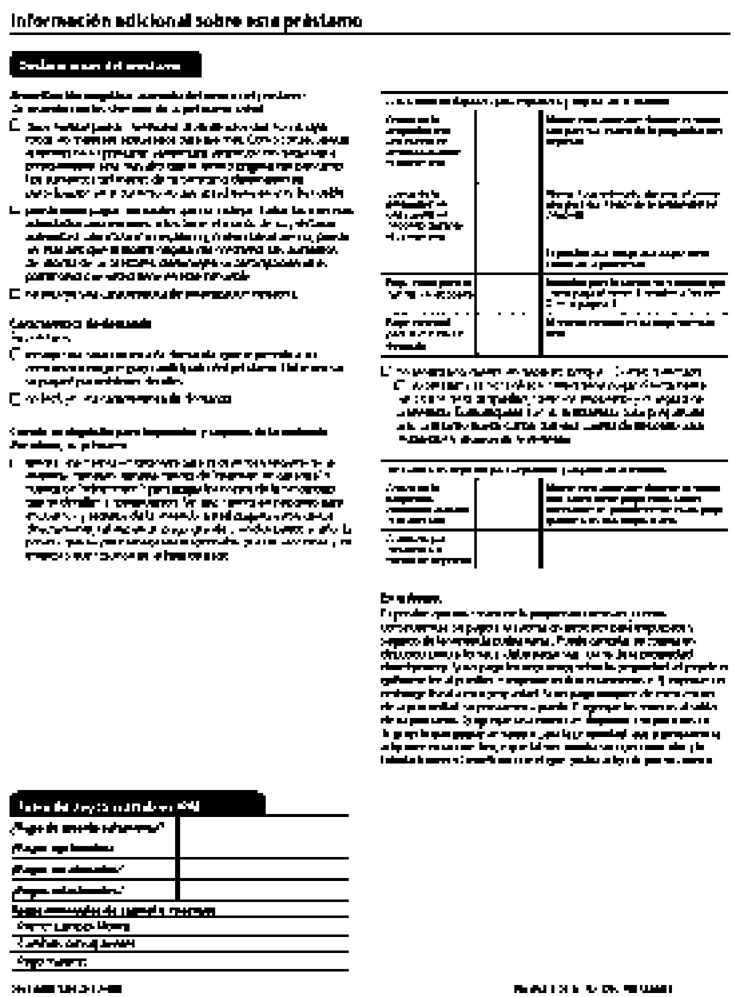
Costos al momento de cierre


Detalles de los costos de cierre

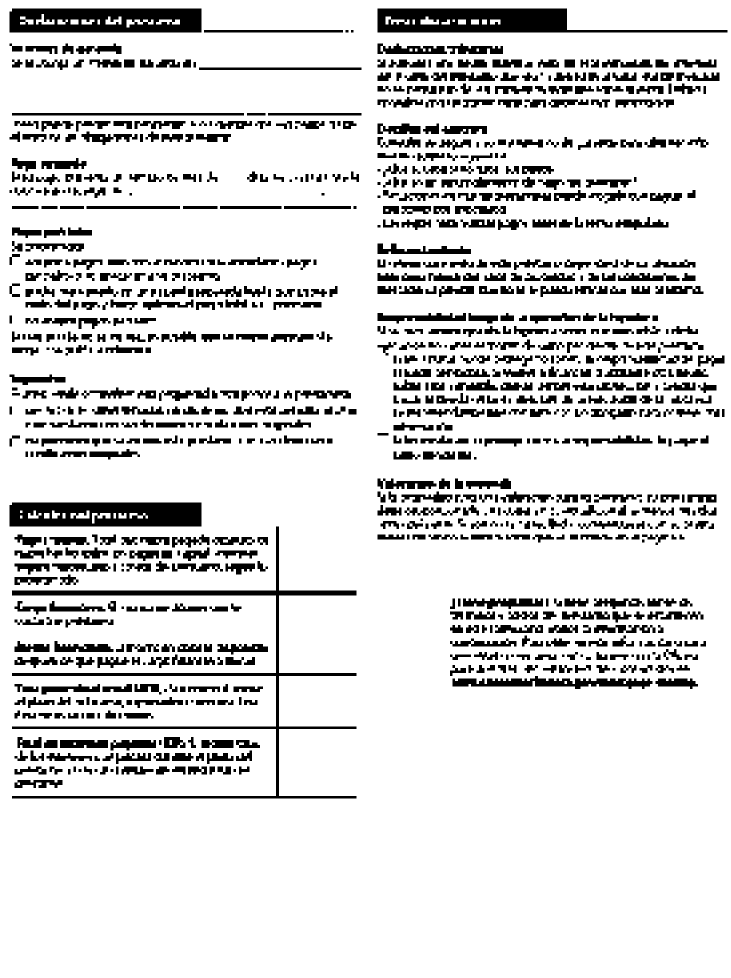

Información adicional sobre este préstamo

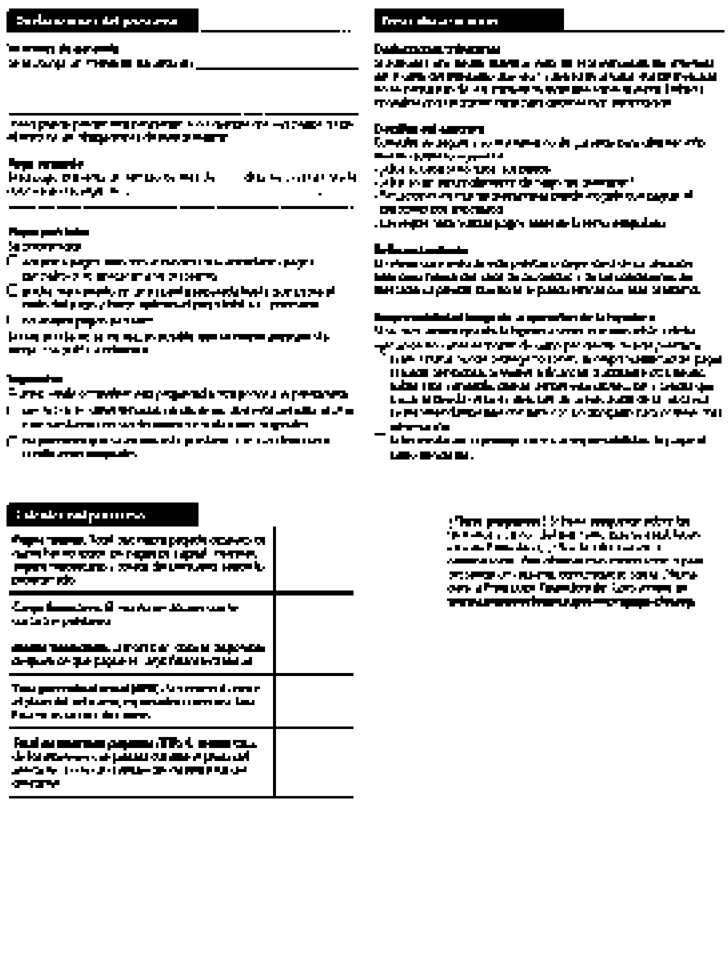


Información adicional sobre este préstamo

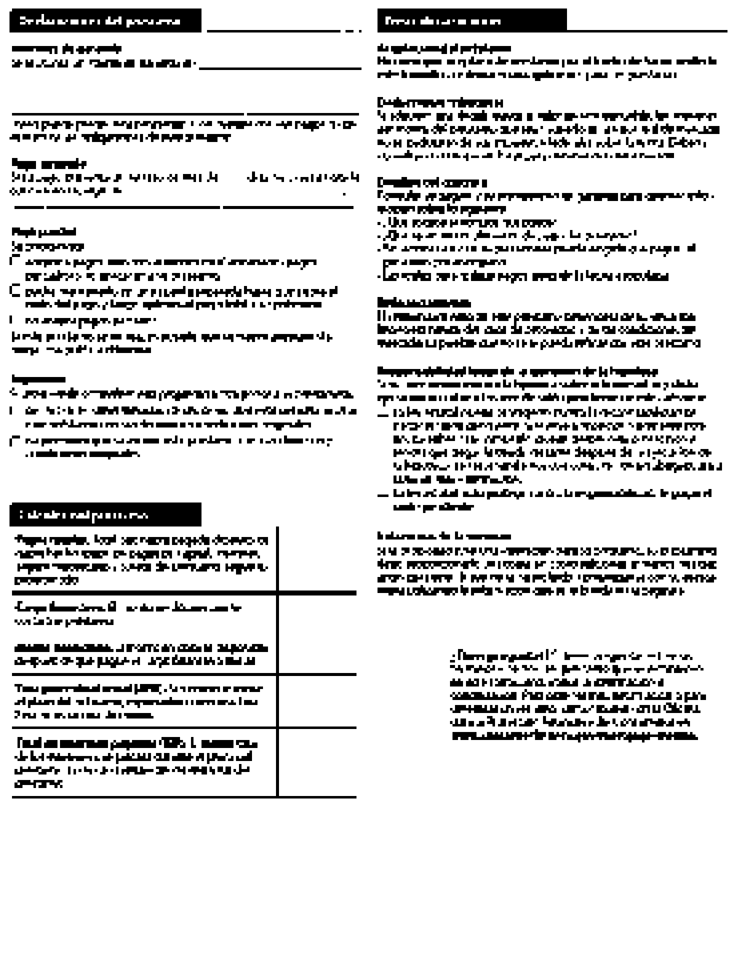

Información adicional sobre este préstamo

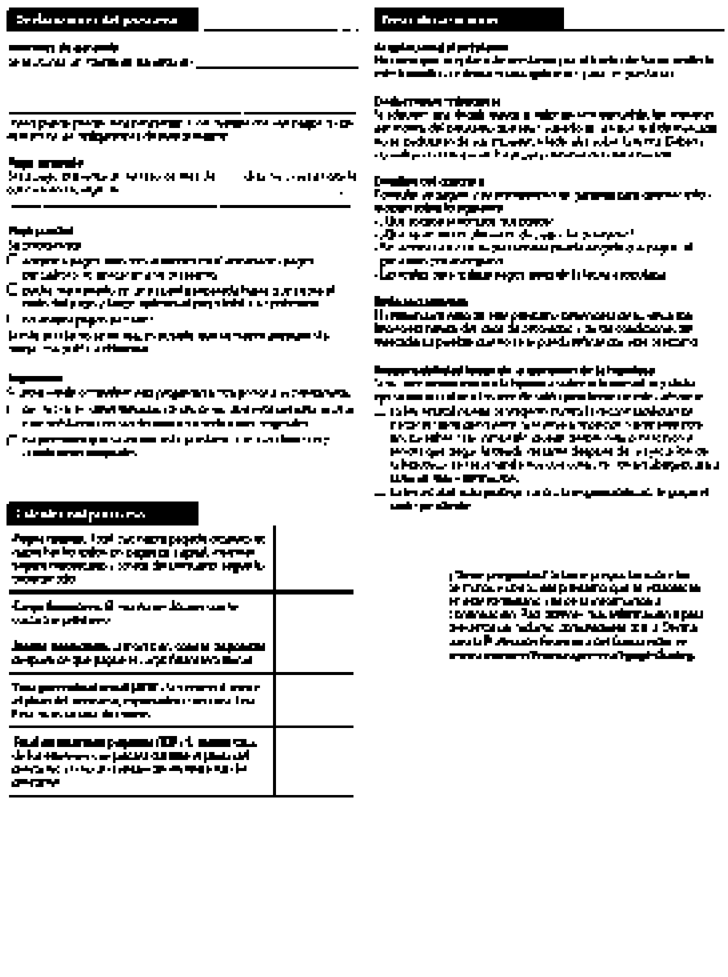
Información adicional sobre este préstamo

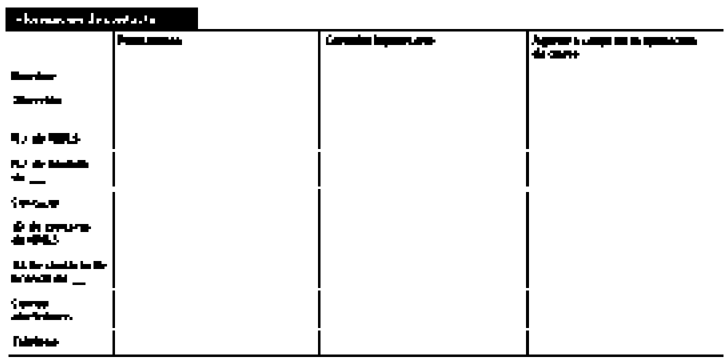




[illegible]







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).

Escrow Closing Notice

BORROWER
MAILING ADDRESS

PROPERTY ADDRESS

ISSUE DATE
LENDER
ACCOUNT NUMBER

PHONE

As of ______, 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 *For closing your escrow account*	

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 ______ 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 ______ by ______ if you want to keep the escrow account on your loan.

H-30(A) Sample Form of Periodic Statement

Springside Mortgage

Mortgage Statement

Account Number	1234567
Payment Due Date	4/1/2012
Amount Due	**$2,079.71**

Account Information

Explanation of Amount Due

Transaction Activity

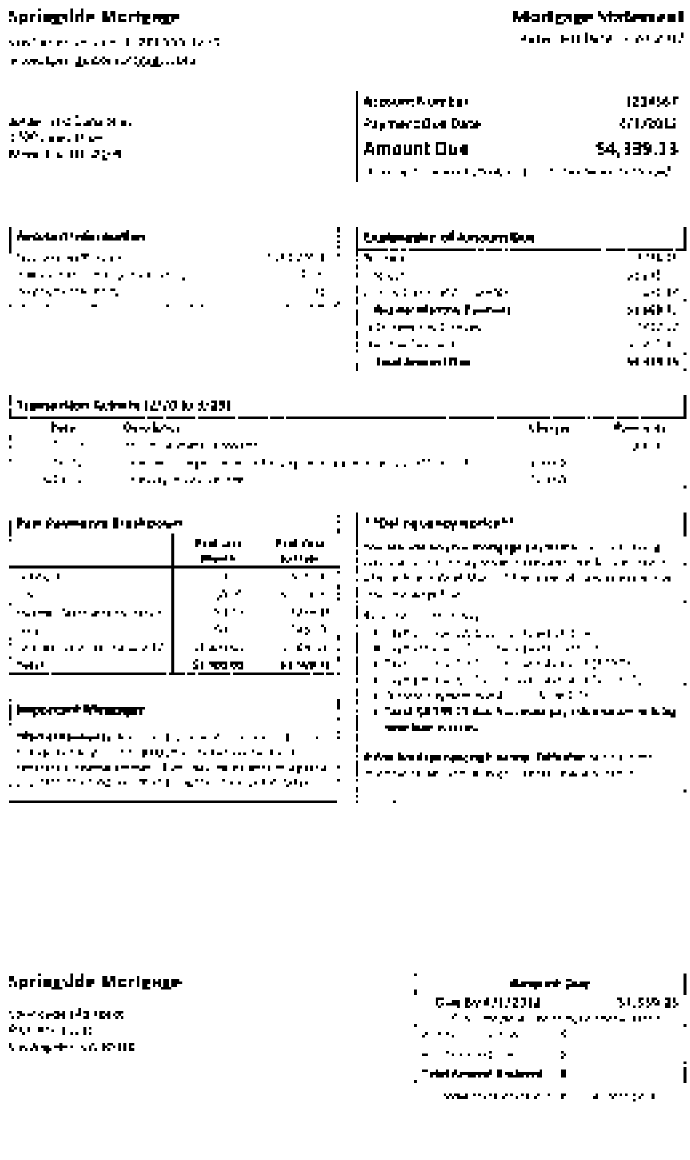
Past Payments Breakdown

Springside Mortgage

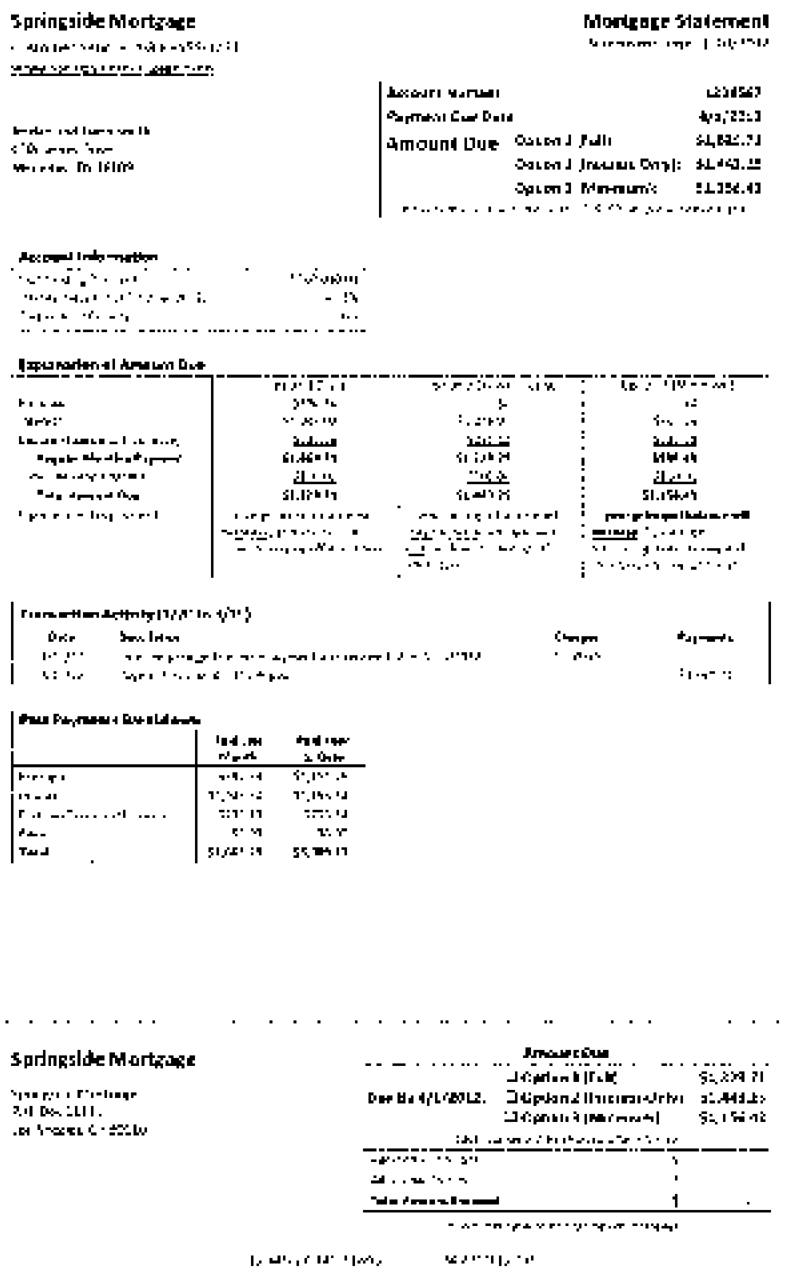
Amount Due

Total Amount Enclosed $

H-30(B) Sample Form of Periodic Statement with Delinquency Box



H–30(C) SAMPLE FORM OF PERIODIC STATEMENT FOR A PAYMENT-OPTION LOAN


Springside Mortgage

Mortgage Statement

Amount Due

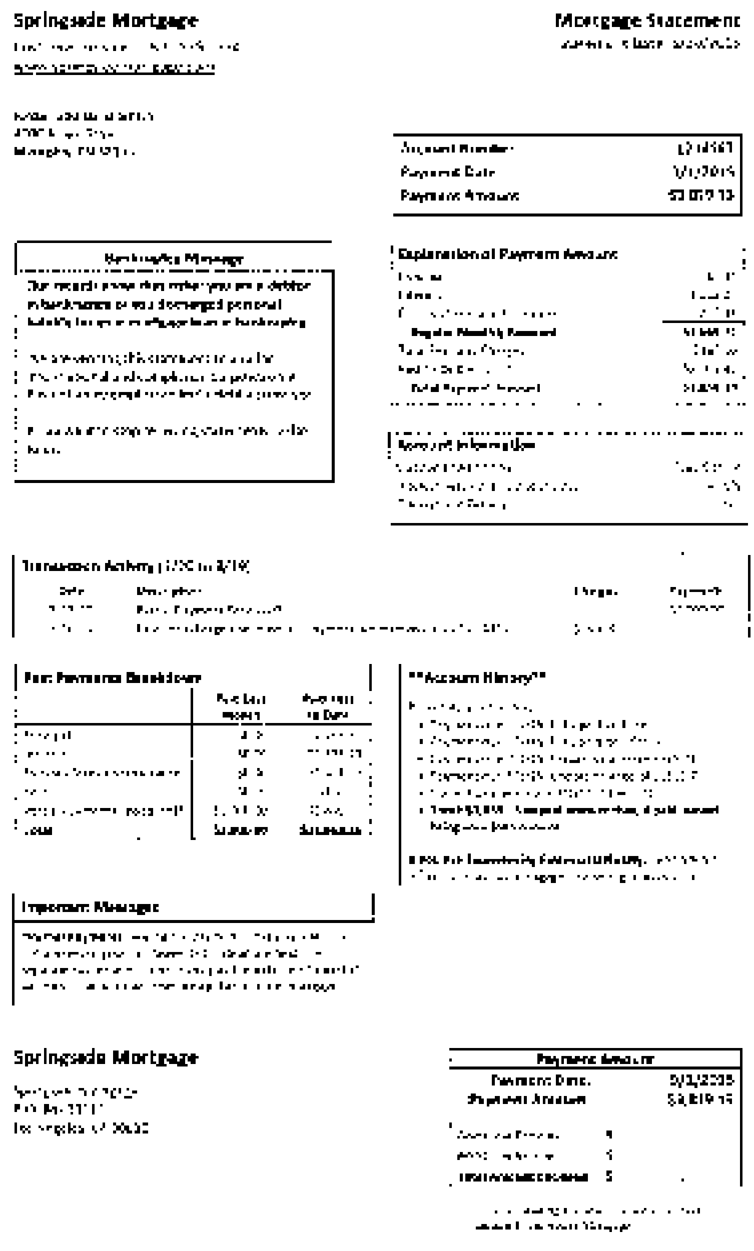
Springside Mortgage

H–30(D) SAMPLE CLAUSE FOR HOMEOWNERSHIP COUNSELOR CONTACT INFORMATION

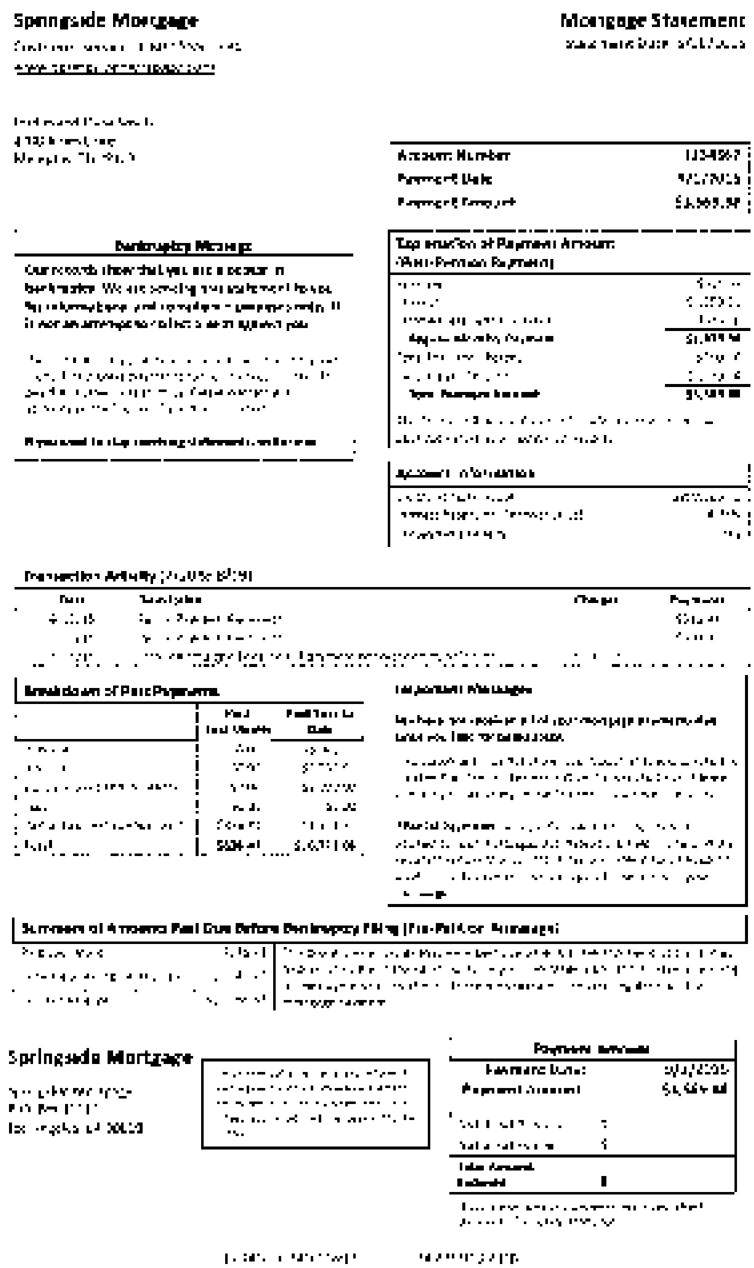
Housing Counselor Information: If you would like counseling or assistance, you can contact the following:

• U.S. Department of Housing and Urban Development (HUD): For a list of homeownership counselors or counseling organizations in your area, go to *http://www.hud.gov/offices/hsg/sfh/hcc/hcs.cfm* or call 800–569–4287.

H–30(E) SAMPLE FORM OF PERIODIC STATEMENT FOR CONSUMER IN CHAPTER 7 OR CHAPTER 11 BANKRUPTCY



H–30(F) SAMPLE FORM OF PERIODIC STATEMENT FOR CONSUMER IN CHAPTER 12 OR CHAPTER 13 BANKRUPTCY



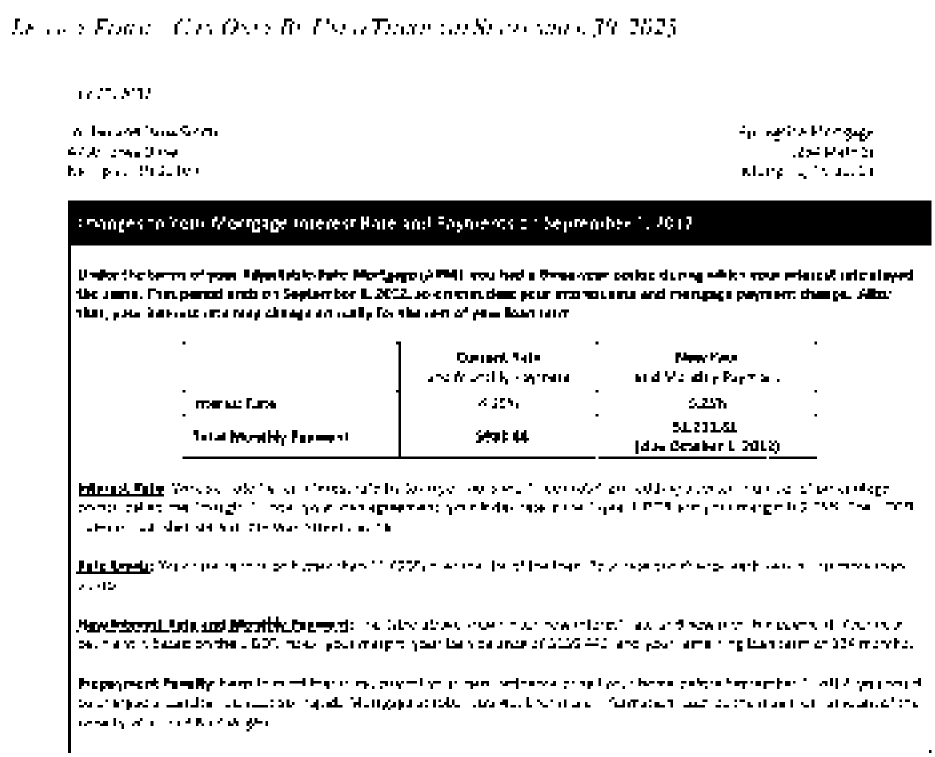
[76 FR 79772, Dec. 22, 2011, as amended at 78 FR 11008, Feb. 14, 2013; 78 FR 80130, Dec. 31, 2013; 80 FR 8776, Feb. 19, 2015; 81 FR 72390, Oct. 19, 2016]

EFFECTIVE DATE NOTES: 1. At 86 FR 69782, Dec. 8, 2021, appendix H to part 1026 was amended by revising the entries for H–4(D)(2) and H–4(D)(4), effective Apr. 1, 2022. For the convenience of the user, the revised text is set forth as follows:

APPENDIX H TO PART 1026—CLOSED-END MODEL FORMS AND CLAUSES

* * * * *

H-4(D)(2) Sample Form for § 1026.20(c)



[illegible] 2022

[illegible] 2022

[illegible]	[illegible]
[illegible]	[illegible]
[illegible]	[illegible]

Changes to Your Mortgage Interest Rate and Payments on [illegible] 2022

[illegible]

	Current Rate [illegible]	New Rate [illegible]
Interest Rate	[illegible]	[illegible]
Total Monthly Payment	[illegible]	[illegible] (due October 1, 2022)

Interest Rate: [illegible]

Rate Limits: [illegible]

New Interest Rate and Monthly Payment: [illegible]

Prepayment Penalty: [illegible]

H-4(D)(4) Sample Form of § 1026.20(c)

[illegible]

[illegible]

Changes to Your Mortgage Interest Rate and Payments on September 1, [illegible]

[illegible]

	Current Rate and Monthly Payment	Estimated New Rate and Monthly Payment
Interest Rate	[illegible]	[illegible]
Principal	none	[illegible]
Interest	[illegible]	[illegible]
Escrow (Taxes and Insurance)	[illegible]	[illegible]
Total Monthly Payment	[illegible]	[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible] 2022

[illegible]

Changes to Your Mortgage Interest Rate and Payments on November 1, 2022

[illegible] November 1, 2022 [illegible]

	Current Rate and Monthly Payment	Estimated New Rate and Monthly Payment
Interest Rate	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Total Monthly Payment	[illegible]	[illegible] (due December 1, 2022)

[illegible]

[illegible]

New Interest Rate and Monthly Payment: [illegible]

[illegible]

[illegible]

- [illegible]
- [illegible]
  - [illegible]
  - [illegible]

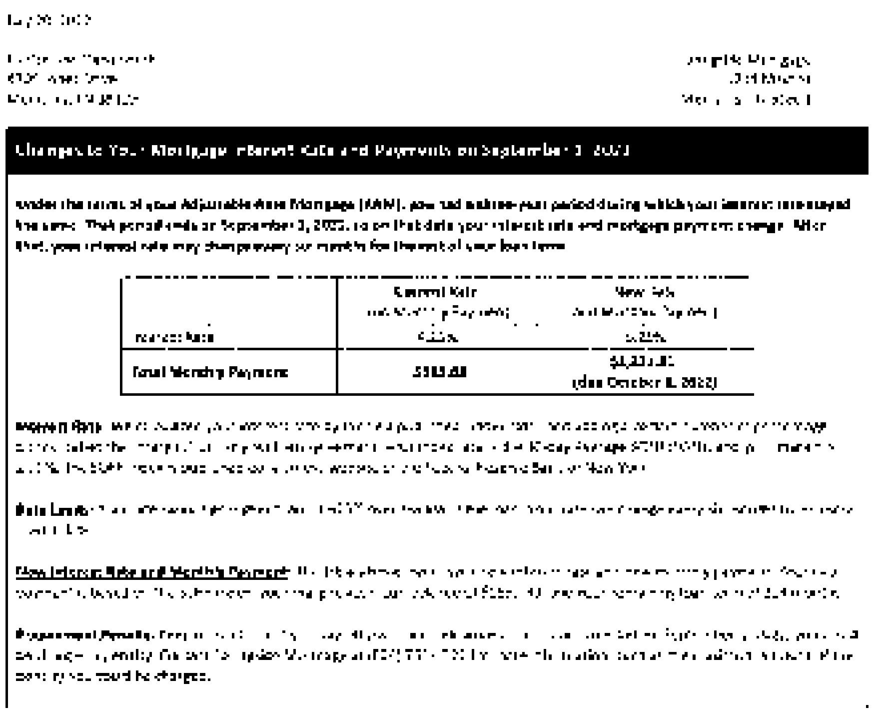
[illegible]

* * * * *

EFFECTIVE DATE NOTES: 2. At 86 FR 69786, Dec. 8, 2021, appendix H to part 1026 was further amended by revising the entries for H–4(D)(2) and H–4(D)(4), effective Oct. 1, 2023. For the convenience of the user, the revised text is set forth as follows:

APPENDIX H TO PART 1026—CLOSED-END MODEL FORMS AND CLAUSES

H–4(D)(2) SAMPLE FORM FOR § 1026.20(c)



	Current Rate (and Monthly Payment)	New Rate (and Monthly Payment)
Interest Rate	[illegible]	[illegible]
Total Monthly Payment	[illegible]	[illegible] (due October [illegible])

[illegible]

* * * * *

H–4(D) [illegible] Form for § 1026.20(c)

[illegible]

[illegible] [illegible]

Changes to Your Mortgage Interest Rate and Payments on November 1, 2022

[illegible]

	Current Rate and Monthly Payment	Estimated New Rate and Monthly Payment
Interest Rate	[illegible]	[illegible]
Principal	[illegible]	[illegible]
Interest	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]
Total Monthly Payment	**[illegible]**	**[illegible]**

[illegible]

Rate Limits: [illegible]

New Interest Rate and Monthly Payment: [illegible]

Prepayment Penalty: [illegible]

If You Anticipate Problems Making Your Payments:

- [illegible]
- [illegible]

[illegible]

* * * * *

APPENDIX I TO PART 1026 [RESERVED]

APPENDIX J TO PART 1026—ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CLOSED-END CREDIT TRANSACTIONS

(a) INTRODUCTION

(1) Section 1026.22(a) of Regulation Z provides that the annual percentage rate for other than open-end credit transactions shall be determined in accordance with either the actuarial method or the United States Rule method. This appendix contains an explanation of the actuarial method as well as equations, instructions and examples of how this method applies to single advance and multiple advance transactions.

(2) Under the actuarial method, at the end of each unit-period (or fractional unit-period) the unpaid balance of the amount financed is increased by the finance charge earned during that period and is decreased by the total payment (if any) made at the end of that period. The determination of unit-periods and fractional unit-periods shall be consistent with the definitions and rules in paragraphs (b)(3), (4) and (5) of this section and the general equation in paragraph (b)(8) of this section.

(3) In contrast, under the United States Rule method, at the end of each payment period, the unpaid balance of the amount financed is increased by the finance charge earned during that payment period and is decreased by the payment made at the end of that payment period. If the payment is less than the finance charge earned, the adjustment of the unpaid balance of the amount financed is postponed until the end of the next payment period. If at that time the sum of the two payments is still less than the total earned finance charge for the two payment periods, the adjustment of the unpaid balance of the amount financed is postponed still another payment period, and so forth.

(b) INSTRUCTIONS AND EQUATIONS FOR THE ACTUARIAL METHOD

(1) General Rule

The annual percentage rate shall be the nominal annual percentage rate determined by multiplying the unit-period rate by the number of unit-periods in a year.

(2) Term of the Transaction

The term of the transaction begins on the date of its consummation, except that if the finance charge or any portion of it is earned beginning on a later date, the term begins on the later date. The term ends on the date the last payment is due, except that if an advance is scheduled after that date, the term ends on the later date. For computation purposes, the length of the term shall be equal to the time interval between any point in time on the beginning date to the same point in time on the ending date.

(3) Definitions of Time Intervals

(i) A period is the interval of time between advances or between payments and includes the interval of time between the date the finance charge begins to be earned and the date of the first advance thereafter or the date of the first payment thereafter, as applicable.

(ii) A common period is any period that occurs more than once in a transaction.

(iii) A standard interval of time is a day, week, semimonth, month, or a multiple of a week or a month up to, but not exceeding, 1 year.

(iv) All months shall be considered equal. Full months shall be measured from any point in time on a given date of a given month to the same point in time on the same date of another month. If a series of payments (or advances) is scheduled for the last day of each month, months shall be measured from the last day of the given month to the last day of another month. If payments (or advances) are scheduled for the 29th or 30th of each month, the last day of February shall be used when applicable.

(4) Unit-Period

(i) In all transactions other than a single advance, single payment transaction, the unit-period shall be that common period, not to exceed 1 year, that occurs most frequently in the transaction, except that

(A) If 2 or more common periods occur with equal frequency, the smaller of such common periods shall be the unit-period; or

(B) If there is no common period in the transaction, the unit-period shall be that period which is the average of all periods rounded to the nearest whole standard interval of time. If the average is equally near 2 standard intervals of time, the lower shall be the unit-period.

(ii) In a single advance, single payment transaction, the unit-period shall be the term of the transaction, but shall not exceed 1 year.

(5) Number of Unit-Periods Between 2 Given Dates

(i) The number of days between 2 dates shall be the number of 24-hour intervals between any point in time on the first date to the same point in time on the second date.

(ii) If the unit-period is a month, the number of full unit-periods between 2 dates shall be the number of months measured back from the later date. The remaining fraction of a unit-period shall be the number of days measured forward from the earlier date to the beginning of the first full unit-period, divided by 30. If the unit-period is a month, there are 12 unit-periods per year.

(iii) If the unit-period is a semimonth or a multiple of a month not exceeding 11 months, the number of days between 2 dates shall be 30 times the number of full months measured back from the later date, plus the number of remaining days. The number of full unit-periods and the remaining fraction of a unit-period shall be determined by dividing such number of days by 15 in the case of a semimonthly unit-period or by the appropriate multiple of 30 in the case of a multimonthly unit-period. If the unit-period is a semimonth, the number of unit-periods per year shall be 24. If the number of unit-periods is a multiple of a month, the number of unit-periods per year shall be 12 divided by the number of months per unit-period.

(iv) If the unit-period is a day, a week, or a multiple of a week, the number of full unit-periods and the remaining fractions of a unit-period shall be determined by dividing the number of days between the 2 given dates by the number of days per unit-period. If the unit-period is a day, the number of unit-periods per year shall be 365. If the unit-period is a week or a multiple of a week, the number of unit-periods per year shall be 52 divided by the number of weeks per unit-period.

(v) If the unit-period is a year, the number of full unit-periods between 2 dates shall be the number of full years (each equal to 12 months) measured back from the later date. The remaining fraction of a unit-period shall be

(A) The remaining number of months divided by 12 if the remaining interval is equal to a whole number of months, or

(B) The remaining number of days divided by 365 if the remaining interval is *not* equal to a whole number of months.

(vi) In a single advance, single payment transaction in which the term is less than a year and is equal to a whole number of months, the number of unit-periods in the term shall be 1, and the number of unit-periods per year shall be 12 divided by the number of months in the term or 365 divided by the number of days in the term.

(vii) In a single advance, single payment transaction in which the term is less than a year and is *not* equal to a whole number of months, the number of unit-periods in the term shall be 1, and the number of unit-periods per year shall be 365 divided by the number of days in the term.

(6) Percentage Rate for a Fraction of a Unit-Period

The percentage rate of finance charge for a fraction (less than 1) of a unit-period shall be equal to such fraction multiplied by the percentage rate of finance charge per unit-period.

(7) *Symbols*. The symbols used to express the terms of a transaction in the equation set forth in paragraph (b)(8) of this section are defined as follows:

A_k = The amount of the kth advance.

q_k = The number of full unit-periods from the beginning of the term of the transaction to the kth advance.

e_k = The fraction of a unit-period in the time interval from the beginning of the term of the transaction to the kth advance.

m = The number of advances.

P_j = The amount of the jth payment.

t_j = The number of full unit-periods from the beginning of the term of the transaction to the jth payment.

f_j = The fraction of a unit-period in the time interval from the beginning of the term of the transaction to the jth payment.

n = The number of payments.

i = The percentage rate of finance charge per unit-period, expressed as a decimal equivalent.

Symbols used in the examples shown in this appendix are defined as follows:

$\ddot{a}_{\overline{x}|i}$ = The present value of 1 per unit-period for x unit-periods, first payment due immediately.

$$= 1 + \frac{1}{(1+i)} + \frac{1}{(1+i)^2} + \ldots + \frac{1}{(1+i)^{x-1}}$$

w = The number of unit-periods per year.

I = $wi \times 100$ = The nominal annual percentage rate.

(8) *General equation.* The following equation sets forth the relationship among the terms of a transaction:

$$\frac{A_1}{(1+e_1 i)(1+i)^{q_1}} + \frac{A_2}{(1+e_2 i)(1+i)^{q_2}} + \ldots + \frac{A_n}{(1+e_n i)(1+i)^{q_n}} =$$

$$\frac{P_1}{(1+f_1 i)(1+i)^{t_1}} + \frac{P_2}{(1+f_2 i)(1+i)^{t_2}} + \ldots + \frac{P_n}{(1+f_n i)(1+i)^{t_n}}$$

(9) *Solution of general equation by iteration process.* (i) The general equation in paragraph (b)(8) of this section, when applied to a simple transaction of a loan of $1000 to be repaid by 36 monthly payments of $33.61 each, takes the special form:

$$A = \frac{33.61\, \ddot{a}_{\overline{36|}}}{(1+i)}$$

Step 1: Let I_1 = estimated annual percentage rate = 12.50 %

Evaluate expression for A, letting $i = I_1/(100w)$ = .010416667

Result (referred to as A') = 1004.674391

Step 2: Let $I_2 = I_1 + .1$ = 12.60 %

Evaluate expression for A, letting $i = I_2/(100w)$ = .010500000

Result (referred to as A'') = 1003.235366

Step 3: Interpolate for I (annual percentage rate):

$$I = I_1 + .1\left[\frac{(A - A')}{(A'' - A')}\right]$$

$$= 12.50 + .1\left[\frac{(1000.000000 - 1004.674391)}{(1003.235366 - 1004.674391)}\right] = 12.82483042\ \%$$

Step 4: First iteration, let I_1 = 12.82483042 % and repeat Steps 1, 2, and 3 obtaining a new I = 12.82557859 %

Second iteration, let I_1 = 12.82557859 % and repeat Steps 1, 2, and 3 obtaining a new I = 12.82557529 %

In this case, no further iterations are required to obtain the annual percentage rate correct to two decimal places, 12.83%.

(iii) When the iteration approach is used, it is expected that calculators or computers will be programmed to carry all available decimals throughout the calculation and that enough iterations will be performed to make virtually certain that the annual percentage rate obtained, when rounded to 2 decimals, is correct. Annual percentage rates in the examples below were obtained by using a 10 digit programmable calculator and the iteration procedure described above.

(c) Examples for the actuarial method. (1) Single advance transaction, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^{t}}\left(P\, a_{\overline{n}|i}\right)$$

Example (i): Monthly payments (regular first period)

Amount advanced (A) = $5000. Payment (P) = $230.
Number of payments (n) = 24.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f = 0)
Annual percentage rate (I) = wi = .0969 = 9.69 %

Example (ii): Monthly payments (long first period)

Amount advanced (A) = $6000. Payment (P) = $200.
Number of payments (n) = 36.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 2-10-78. First payment, 4-1-78.
From 3-1-78 through 4-1-78 = 1 unit-period. (t = 1)
From 2-10-78 through 3-1-78 = 19 days. (f = 19/30)
Annual percentage rate (I) = wi = .1182 = 11.82%

Example (iii): Semimonthly payments (short first period)

Amount advanced (A) = $5000. Payment (P) = $219.17.
Number of payments (n) = 24.
Unit-period = 1/2 month. Unit-periods per year (w) = 24.
Advance, 2-23-78. First payment, 3-1-78. Payments made on 1st and 16th of each month.
From 2-23-78 through 3-1-78 = 6 days. (t = 0, f = 6/15)
Annual percentage rate (I) = wi = .1034 = 10.34 %

Example (iv): Quarterly payments (long first period)

Amount advanced (A) = $10,000. Payment (P) = $385.
Number of payments (n) = 40.
Unit-period = 3 months. Unit-periods per year (w) = 4.
Advance, 5-23-78. First payment, 10-1-78.
From 7-1-78 through 10-1-78 = 1 unit-period. (t = 1)
From 6-1-78 through 7-1-78 = 1 month = 30 days. From 5-23-78 through 6-1-78 = 9 days. (f = 39/90)
Annual percentage rate (I) = wi = .0897 = 8.97 %

Example (v): Weekly payments (long first period)

Amount advanced (A) = $500. Payment (P) = $17.60.
Number of payments (n) = 30.
Unit-period = 1 week. Unit-periods per year (w) = 52.
Advance, 3-20-78. First payment, 4-21-78.
From 3-24-78 through 4-21-78 = 4 unit-periods. (t = 4)
From 3-20-78 through 3-24-78 = 4 days. (f = 4/7)
Annual percentage rate (I) = wi = .1496 = 14.96%

(2) Single advance transaction, with an odd first payment, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^t}\left[P_1 + \frac{P\,a_{\overline{n-1|}}}{(1+i)}\right]$$

Example (i): Monthly payments (regular first period and irregular first payment)

Amount advanced (A) = $5000. First payment (P_1) = $250.
Regular payment (P) = $230. Number of payments (n) = 24.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1, f = 0)
Annual percentage rate (I) = wi = .1008 = 10.08%

Example (ii): Payments every 4 weeks (long first period and irregular first payment)

Amount advanced (A) = $400. First payment (P_1) = $39.50.
Regular payment (P) = $29.92. Number of payments (n) = 16.
Unit-period = 4 weeks. Unit-periods per year (w) = 52/4 = 13.
Advance, 3-18-78. First payment, 4-20-78.
From 3-23-78 through 4-20-78 = 1 unit-period. (t = 1)
From 3-18-78 through 3-23-78 = 5 days. (f = 5/28)
Annual percentage rate (I) = wi = .2850 = 28.50%

(3) Single advance transaction, with an odd final payment, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^t}\left[P\,\ddot{a}_{\overline{n-1|}} + \frac{P_n}{(1+i)^{n-1}}\right]$$

Example (i): Monthly payments (regular first period and irregular final payment)

Amount advanced (A) = $5000. Regular payment (P) = $230.
Final payment (P_n) = $280. Number of payments (n) = 24.
Unit-period = 1 month. Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f = 0)
Annual percentage rate (I) = wi = .1050 = 10.50%

Example (ii): Payments every 2 weeks (short first period and irregular final payment)

Amount advanced (A) = $200. Regular payment (P) = $9.50.
Final payment (P_n) = $30. Number of payments (n) = 20.
Unit-period = 2 weeks. Unit-periods per year (w) = 52/2 = 26.
Advance, 4-3-78. First payment, 4-11-78.
From 4-3-78 through 4-11-78 = 8 days. (t = 0; f = 8/14)
Annual percentage rate (I) = wi = .1222 = 12.22%

(3) Single advance transaction, with an odd first payment, odd final payment, with or without an odd first period, and otherwise regular. The general equation in paragraph (b)(8) of this section can be put in the following special form for this type of transaction:

$$A = \frac{1}{(1+fi)(1+i)^{t}}\left[P_1 + \frac{P\,a_{\overline{n-2}|}}{(1+i)} + \frac{P_n}{(1+i)^{n-1}}\right]$$

Example (i): Monthly payments (regular first period, irregular first payment, and irregular final payment)

Amount advanced (A) = $5000. First payment (P_1) = $250.
Regular payment (P) = $230. Final payment (P_n) = $280.
Number of payments (n) = 24. Unit-period = 1 month.
Unit-periods per year (w) = 12.
Advance, 1-10-78. First payment, 2-10-78.
From 1-10-78 through 2-10-78 = 1 unit-period. (t = 1; f = 0)
Annual percentage rate (I) = wi = .1090 = 10.90%

Example (ii): Payments every two months (short first period, irregular first payment, and irregular final payment)

Amount advanced (A) = $8000. First payment (P_1) = $449.36.
Regular payment (P) = $465. Final payment (P_n) = $200.
Number of payments (n) = 20. Unit-period = 2 months.
Unit-periods per year (w) = 12/2 = 6.
Advance, 1-10-78. First payment, 3-1-78.
From 2-1-78 through 3-1-78 = 1 month. From 1-10-78 through 2-1-78 = 22 days. (t = 0; f = 52/60)
Annual percentage rate (I) = wi = .0730 = 7.30%

(5) Single advance, single payment transactions. The general equation in paragraph (b)(8) of this section can be put in the special forms below for single advance, single payment transactions. Forms 1 through 3 are for the direct determination of the annual percentage rate under special conditions. Form 4 requires the use of the iteration procedure of paragraph (b)(9) of this section and can be used for all single advance, single payment transactions regardless of term.

Form 1 – Term less than 1 year:

$$I = 100w\left(\frac{P}{A} - 1\right)$$

Form 2 – Term more than 1 year but less than 2 years:

$$I = \frac{50w}{f}\left\{\left[(1 + f)^2 + 4f\left(\frac{P}{A} - 1\right)\right]^{1/2} - (1 + f)\right\}$$

Form 3 – Term equal to exactly a year or exact multiple of a year:

$$I = 100w\left[\left(\frac{P}{A}\right)^{1/t} - 1\right]$$

Form 4 – Special form for iteration procedure (no restriction on term):

$$A = \frac{P}{(1 + fi)(1 + i)^t}$$

Example (i): Single advance, single payment (term of less than 1 year, measured in days):

Amount advanced (A) = $1000. Payment (P) = $1080.
Unit-period = 255 days. Unit-periods per year (w) = 365/255.
Advance, 1-3-78. Payment, 9-15-78.
From 1-3-78 through 9-15-78 = 255 days. (t = 0; f = 0)
Annual percentage rate (I) = wi = .11452 = 11.45%. (Use Form 1 or 4.)

Example (ii): Single advance, single payment (term of less than 1 year, measured in exact calendar months):

Amount advanced (A) = $1000. Payment (P) = $1044.
Unit-period = 6 months. Unit-periods per year (w) = 2.
Advance, 7-15-78. Payment, 1-15-79.
From 7-15-78 through 1-15-79 = 6 mos. (t = 1; f = 0)
Annual percentage rate (I) = wi = .0880 = 8.80%. (Use Form 1 or 4.)

Example (iii). Single advance, single payment (term of more than 1 year but less than 2 years, fraction measured in exact months):

Amount advanced (A) = $1000. Payment (P) = $1135.19.
Unit-period = 1 year. Unit-periods per year (w) = 1.
Advance, 7-17-78. Payment, 1-17-80.
From 1-17-79 through 1-17-80 = 1 unit-period. (t = 1)
From 7-17-78 through 1-17-79 = 6 mos. (f = 6/12)
Annual percentage rate (I) = wi = .0876 = 8.76%. (Use Form 2 or 4.)

Example (iv): Single advance, single payment (term of exactly 2 years)

Amount advanced (A) = $1000. Payment (P) = $1240.
Unit-period = 1 year. Unit-periods per year (w) = 1.
Advance, 1-3-78. Payment, 1-3-80.
From 1-3-78 through 1-3-80 = 2 unit-periods. ($t = 2$; $f = 0$)
Annual percentage rate (I) = wi = .1136 = 11.36%. (Use Form 3 or 4.)

(6) Complex single advance transaction.

Example (i): Skipped payment loan (payments every 4 weeks)

A loan of $2135 is advanced on 1-25-78. It is to be repaid by 24 payments of $100 each. Payments are due every 4 weeks beginning 2-20-78. However, in those months in which 2 payments would be due, only the first of the 2 payments is made and the following payment is delayed by 2 weeks to place it in the next month.
Unit-period = 4 weeks. Unit-periods per year (w) = 52/4 = 13.
First series of payments begins 26 days after 1-25-78.
($t_1 = 0$, $f_1 = 26/28$)

Second series of payments begins 9 unit-periods plus 2 weeks after start of first series. ($t_2 = 10$; $f_2 = 12/28$)

Third series of payments begins 6 unit-periods plus 2 weeks after start of second series. ($t_3 = 16$; $f_3 = 26/28$)

Last series of payments begins 6 unit-periods plus 2 weeks after start of third series. ($t_4 = 23$; $f_4 = 12/28$)

The general equation in paragraph (b)(8) of this section can be written in the special form:

$$2135 = \frac{100\,\ddot{a}_{\overline{9}|}}{(1+(26/28)i)} + \frac{100\,\ddot{a}_{\overline{6}|}}{(1+(12/28)i)(1+i)^{10}} + \frac{100\,\ddot{a}_{\overline{6}|}}{(1+(26/28)i)(1+i)^{16}} + \frac{100\,\ddot{a}_{\overline{3}|}}{(1+(12/28)i)(1+i)^{23}}$$

Annual percentage rate (I) = wi = .1200 = 12.00%

Example (ii): Skipped payment loan plus single payments

A loan of $7350 on 3-3-78 is to be repaid by 3 monthly payments of $1000 each beginning 9-15-78, plus a single payment of $2000 on 3-15-79, plus 3 more monthly payments of $750 each beginning 9-15-79, plus a final payment of $1000 on 2-1-80.
Unit period = 1 month. Unit periods per year (w) = 12.
First series of payments begins 6 unit-periods plus 12 days after 3-3-78. (t_1 = 6; f_1 = 12/30)

Second series of payments (single payment) occurs 12 unit-periods plus 12 days after 3-3-78. (t_2 = 12; f_2 = 12/30)

Third series of payments begins 18 unit-periods plus 12 days after 3-3-78. (t_3 = 18; f_3 = 12/30)

Final payment occurs 22 unit-periods plus 29 days after 3-3-78. (t_4 = 22; f_4 = 29/30)

The general equation in paragraph (b)(8) of this section can be written in the special form:

$$7350 = \frac{1000\, a_{\overline{3}|}}{(1+(12/30)i)(1+i)^{6}} + \frac{2000}{(1+(12/30)i)(1+i)^{12}} + \frac{750\, a_{\overline{3}|}}{(1+(12/30)i)(1+i)^{18}} + \frac{1000}{(1+(29/30)i)(1+i)^{22}}$$

Annual percentage rate (I) = wi = .1022 = 10.22%

Example (iii): Mortgage with varying payments

A loan of $39,688.56 (net) on 4-10-78 is to be repaid by 360 monthly payments beginning 6-1-78. Payments are the same for 12 months at a time as follows:

Year	Monthly payment	Year	Monthly payment	Year	Monthly payment
1	$291.81	11	$385.76	21	$380.43
2	300.18	12	385.47	22	379.61
3	308.78	13	385.03	23	378.68
4	317.61	14	384.62	24	377.69
5	326.65	15	384.17	25	376.60
6	335.92	16	383.67	26	375.42
7	345.42	17	383.11	27	374.13
8	355.15	18	382.50	28	372.72
9	365.12	19	381.90	29	371.19
10	375.33	20	381.20	30	369.53

Unit-period = 1 month. Unit-periods per year (w) = 12.
From 5-1-78 through 5-1-78 = 1 unit-period. (t = 1)
From 4-10-78 through 5-1-78 = 21 days. (f = 21/30)

The general equation in paragraph (b)(8) of this section can be written in the special form:

$$39{,}658.36 = \frac{a_{\overline{12|}i}}{(1+(21/30)i)(1+i)}\left[291.81 + \frac{300.18}{(1+i)^{12}} + \frac{308.78}{(1+i)^{24}} + \cdots + \frac{369.53}{(1+i)^{348}}\right]$$

Annual percentage rate (I) = wi = .0980 = 9.80%

(7) <u>Multiple advance transactions</u>.

<u>Example (i)</u>: Construction loan

Three advances of $30,000 each are made on 4-10-79, 6-12-79, and 9-18-79. Repayment is by 240 monthly payments of $612.36 each beginning 12-10-79.
Unit-period = 1 month. Unit-periods per year (w) = 12.
From 4-10-79 through 6-12-79 = (2+2/30) unit-periods.
From 4-10-79 through 9-18-79 = (5+8/30) unit-periods.
From 4-10-79 through 12-10-79 = (8) unit-periods.

The general equation in paragraph (b)(8) of this section is changed to the single advance mode by treating the 2nd and 3rd advances as negative payments:

$$20{,}000 = \frac{612.36\, a_{\overline{240}|i}}{(1+i)^{8}} - \frac{20{,}000}{(1+(2/30)i)(1+i)^{2}} - \frac{20{,}000}{(1+(8/30)i)(1+i)^{5}}$$

Annual percentage rate (I) = wi = .1025 = 10.25%

Example (ii): Student loan

A student loan consists of 8 advances: $1800 on 9-5-78, 9-5-79, 9-5-80, and 9-5-81; plus $1000 on 1-5-79, 1-5-80, 1-5-81, and 1-5-82. The borrower is to make 48 monthly payments of $240 each beginning 7-1-78 (prior to first advance).
Unit-period = 1 month. Unit-periods per year (w) = 12.
Zero point is date of first payment since it precedes first advance.
From 7-1-78 to 9-5-78 = (2 + 4/30) unit-periods.

" " " 9-5-79 = (14 + 4/30) "

" " " 9-5-80 = (26 + 4/30) "

" " " 9-5-81 = (38 + 4/30) "

" " " 1-5-79 = (6 + 4/30) "

" " " 1-5-80 = (18 + 4/30) "

" " " 1-5-81 = (30 + 4/30) "

" " " 1-5-82 = (42 + 4/30) "

Since the zero point is date of first payment, the general equation in paragraph (b)(8) of this section is written in the single advance form below by treating the first payment as a negative advance and the 8 advances as negative payments:

$$-240 = \frac{240\, a_{\overline{48}|i}}{(1+i)} - \frac{1800}{(1+(4/30)i)}\left[\frac{1}{(1+i)^{2}} + \frac{1}{(1+i)^{14}} + \frac{1}{(1+i)^{26}} + \frac{1}{(1+i)^{38}}\right]$$

$$- \frac{1000}{(1+(4/30)i)}\left[\frac{1}{(1+i)^{6}} + \frac{1}{(1+i)^{18}} + \frac{1}{(1+i)^{30}} + \frac{1}{(1+i)^{42}}\right]$$

Annual percentage rate (I) = wi = .3206 = 32.06%

APPENDIX K TO PART 1026—TOTAL ANNUAL LOAN COST RATE COMPUTATIONS FOR REVERSE MORTGAGE TRANSACTIONS

(a) *Introduction.* Creditors are required to disclose a series of total annual loan cost rates for each reverse mortgage transaction. This appendix contains the equations creditors must use in computing the total annual loan cost rate for various transactions, as well as instructions, explanations, and examples for various transactions. This appendix is modeled after appendix J of this part (Annual Percentage Rates Computations for Closed-end Credit Transactions); creditors should consult appendix J of this part for additional guidance in using the formulas for reverse mortgages.

(b) *Instructions and equations for the total annual loan cost rate*—(1) *General rule.* The total annual loan cost rate shall be the nominal total annual loan cost rate determined by multiplying the unit-period rate by the number of unit-periods in a year.

(2) *Term of the transaction.* For purposes of total annual loan cost disclosures, the term of a reverse mortgage transaction is assumed to begin on the first of the month in which consummation is expected to occur. If a loan cost or any portion of a loan cost is initially incurred beginning on a date later than consummation, the term of the transaction is assumed to begin on the first of the month in which that loan cost is incurred. For purposes of total annual loan cost disclosures, the term ends on each of the assumed loan periods specified in §1026.33(c)(6).

(3) *Definitions of time intervals.* (i) A *period* is the interval of time between advances.

(ii) A *common period* is any period that occurs more than once in a transaction.

(iii) A *standard interval of time* is a day, week, semimonth, month, or a multiple of a week or a month up to, but not exceeding, 1 year.

(iv) All months shall be considered to have an equal number of days.

(4) *Unit-period.* (i) In all transactions other than single-advance, single-payment transactions, the unit-period shall be that common period, not to exceed one year, that occurs most frequently in the transaction, except that:

(A) If two or more common periods occur with equal frequency, the smaller of such common periods shall be the unit-period; or

(B) If there is no common period in the transaction, the unit-period shall be that period which is the average of all periods rounded to the nearest whole standard interval of time. If the average is equally near two standard intervals of time, the lower shall be the unit-period.

(ii) In a single-advance, single-payment transaction, the unit-period shall be the term of the transaction, but shall not exceed one year.

(5) *Number of unit-periods between two given dates.* (i) The number of days between two dates shall be the number of 24-hour intervals between any point in time on the first date to the same point in time on the second date.

(ii) If the unit-period is a month, the number of full unit-periods between two dates shall be the number of months. If the unit-period is a month, the number of unit-periods per year shall be 12.

(iii) If the unit-period is a semimonth or a multiple of a month not exceeding 11 months, the number of days between two dates shall be 30 times the number of full months. The number of full unit-periods shall be determined by dividing the number of days by 15 in the case of a semimonthly unit-period or by the appropriate multiple of 30 in the case of a multimonthly unit-period. If the unit-period is a semimonth, the number of unit-periods per year shall be 24. If the number of unit-periods is a multiple of a month, the number of unit-periods per year shall be 12 divided by the number of months per unit-period.

(iv) If the unit-period is a day, a week, or a multiple of a week, the number of full unit-periods shall be determined by dividing the number of days between the two given dates by the number of days per unit-period. If the unit-period is a day, the number of unit-periods per year shall be 365. If the unit-period is a week or a multiple of a week, the number of unit-periods per year shall be 52 divided by the number of weeks per unit-period.

(v) If the unit-period is a year, the number of full unit-periods between two dates shall be the number of full years (each equal to 12 months).

(6) *Symbols.* The symbols used to express the terms of a transaction in the equation set forth in paragraph (b)(8) of this appendix are defined as follows:

A_j = The amount of each periodic or lump-sum advance to the consumer under the reverse mortgage transaction.

i = Percentage rate of the total annual loan cost per unit-period, expressed as a decimal equivalent.

j = The number of unit-periods until the jth advance.

n = The number of unit-periods between consummation and repayment of the debt.

P_n = Min (Bal_n, Val_n). This is the maximum amount that the creditor can be repaid at the specified loan term.

Bal_n = Loan balance at time of repayment, including all costs and fees incurred by the consumer (including any shared appreciation or shared equity amount) compounded to time n at the creditor's contract rate of interest.

$Val_n = Val_0(1 + \sigma)^y$, where Val_0 is the property value at consummation, σ is the assumed annual rate of appreciation for the dwelling, and y is the number of years in the assumed term. Val_n must be reduced by the amount of any equity reserved for the consumer by agreement between the parties, or by 7 percent (or the amount or percentage specified in the credit agreement), if the amount required to be repaid is limited to the net proceeds of sale.

σ = The summation operator.

Symbols used in the examples shown in this appendix are defined as follows:

$FV_{x\urcorner}i$ = The future value of 1 per unit period for x unit periods, first advance due immediately (at time = 0, which is consummation).

$$= \sum_{j=0}^{x-1} (1+i)^{x-j}$$

$$= (1+i)^x + (1+i)^{x-1} + \cdots + (1+i)^1, \text{ or}$$

$$= \frac{(1+i)^x - 1}{i} \times (1+i)$$

w = The number of unit-periods per year.

I = wi × 100 = the nominal total annual loan cost rate.

(7) *General equation.* The total annual loan cost rate for a reverse mortgage transaction must be determined by first solving the following formula, which sets forth the relationship between the advances to the consumer and the amount owed to the creditor under the terms of the reverse mortgage agreement for the loan cost rate per unit-period (the loan cost rate per unit-period is then multiplied by the number of unit-periods per year to obtain the total annual loan cost rate I; that is, I = wi):

$$\sum_{j=0}^{n-1} A_j (1+i)^{n-j} = P_n$$

(8) *Solution of general equation by iteration process.* (i) The general equation in paragraph (b)(7) of this appendix, when applied to a simple transaction for a reverse mortgage loan of equal monthly advances of $350 each, and with a total amount owed of $14,313.08 at an assumed repayment period of two years, takes the special form:

$$P_n = 350 \, FV_{24\urcorner} i, \text{ or}$$

$$P_n = 350 \times \left[\frac{(1+i)^{24} - 1}{i} \times (1+i) \right]$$

Using the iteration procedures found in steps 1 through 4 of (b)(9)(i) of appendix J of this part, the total annual loan cost rate, correct to two decimals, is 48.53%.

(ii) In using these iteration procedures, it is expected that calculators or computers will be programmed to carry all available decimals throughout the calculation and that enough iterations will be performed to make virtually certain that the total annual loan cost rate obtained, when rounded to two decimals, is correct. Total annual loan cost rates in the examples below were obtained by using a 10-digit programmable calculator and the iteration procedure described in appendix J of this part.

(9) *Assumption for discretionary cash advances.* If the consumer controls the timing of advances made after consummation (such as in a credit line arrangement), the creditor must use the general formula in paragraph (b)(7) of this appendix. The total annual loan cost rate shall be based on the assumption that 50 percent of the principal loan amount is advanced at closing, or in the case of an open-end transaction, at the time the consumer becomes obligated under the plan. Creditors shall assume the advances are made at the interest rate then in effect and that no further advances are made to, or repayments made by, the consumer during the term of the transaction or plan.

(10) *Assumption for variable-rate reverse mortgage transactions.* If the interest rate for a reverse mortgage transaction may increase during the loan term and the amount or timing is not known at consummation, creditors shall base the disclosures on the initial interest rate in effect at the time the disclosures are provided.

(11) *Assumption for closing costs.* In calculating the total annual loan cost rate, creditors shall assume all closing and other consumer costs are financed by the creditor.

(c) *Examples of total annual loan cost rate computations*—(1) *Lump-sum advance at consummation.*

Lump-sum advance to consumer at consummation: $30,000

Total of consumer's loan costs financed at consummation: $4,500

Contract interest rate: 11.60%

Estimated time of repayment (based on life expectancy of a consumer at age 78): 10 years

Appraised value of dwelling at consummation: $100,000

Assumed annual dwelling appreciation rate: 4%

P_{10} = Min (103,385.84, 137,662.72)

$$30,000(1+i)^{n-1} + \sum_{j=1}^{n} 0(1+i)^{n-j} = 103,385.84$$

i = .1317069438

Total annual loan cost rate (100(.1317069438 × 1)) = 13.17%

(2) *Monthly advance beginning at consummation.*

Monthly advance to consumer, beginning at consummation: $492.51

Total of consumer's loan costs financed at consummation: $4,500

Contract interest rate: 9.00%

Estimated time of repayment (based on life expectancy of a consumer at age 78): 10 years

Appraised value of dwelling at consummation: $100,000

Assumed annual dwelling appreciation rate: 8%

$$P_{120} = Min(107,053.63, 200,780.02)$$

$$492.51 \times \left[\frac{(1+i)^{120} - 1}{i} \times (1+i)\right] = 107,053.63$$

$$i = .009061140$$

Total annual loan cost rate (100(.009061140 × 12)) = 10.87%

(3) *Lump sum advance at consummation and monthly advances thereafter.*

Lump sum advance to consumer at consummation: $10,000

Monthly advance to consumer, beginning at consummation: $725

Total of consumer's loan costs financed at consummation: $4,500

Contract rate of interest: 8.5%

Estimated time of repayment (based on life expectancy of a consumer at age 75): 12 years

Appraised value of dwelling at consummation: $100,000

Assumed annual dwelling appreciation rate: 8%

$$R_{144} = Min\,(221{,}818.30,\ 251{,}189.52)$$

$$10{,}000(1+i)^{144-0} + \sum_{j=0}^{143} 725(1+i)^{144-j} = 221{,}818.30$$

$$i = .007708844$$

Total annual loan cost rate (100(.007708844 × 12)) = 9.25%

(d) *Reverse mortgage model form and sample form*—(1) *Model form.*

TOTAL ANNUAL LOAN COST RATE

Loan Terms

Age of youngest borrower:
Appraised property value:
Interest rate:
Monthly advance:
Initial draw:
Line of credit:

Initial Loan Charges

Closing costs:
Mortgage insurance premium:
Annuity cost:

Monthly Loan Charges

Servicing fee:

Other Charges:

Mortgage insurance:
Shared Appreciation:

Repayment Limits

Assumed annual appreciation (percent)	Total annual loan cost rate			
	2-year loan term	[ ]-year loan term]	[ ]-year loan term	[ ]-year loan term
0	....	[ ]	....	
4	....	[ ]	....	
8	....	[ ]	....	....

The cost of any reverse mortgage loan depends on how long you keep the loan and how much your house appreciates in value. Generally, the longer you keep a reverse mortgage, the lower the total annual loan cost rate will be.

This table shows the estimated cost of your reverse mortgage loan, expressed as an annual rate. It illustrates the cost for three [four] loan terms: 2 years, [half of life expectancy for someone your age,] that life expectancy, and 1.4 times that life expectancy. The table also shows the cost of the loan, assuming the value of your home appreciates at three different rates: 0%, 4% and 8%.

The total annual loan cost rates in this table are based on the total charges associated with this loan. These charges typically include principal, interest, closing costs, mortgage insurance premiums, annuity costs, and servicing costs (but not costs when you sell the home).

The rates in this table are estimates. Your actual cost may differ if, for example, the amount of your loan advances varies or the interest rate on your mortgage changes.

Signing an Application or Receiving These Disclosures Does Not Require You To Complete This Loan

(2) Sample Form.

TOTAL ANNUAL LOAN COST RATE

Loan Terms

Age of youngest borrower: 75
Appraised property value: $100,000
Interest rate: 9%
Monthly advance: $301.80
Initial draw: $1,000
Line of credit: $4,000

Initial Loan Charges

Closing costs: $5,000
Mortgage insurance premium: None
Annuity cost: None

MONTHLY LOAN CHARGES

Servicing fee: None

OTHER CHARGES

Mortgage insurance: None

Shared Appreciation: None

REPAYMENT LIMITS

Net proceeds estimated at 93% of projected home sale

Assumed annual appreciation (percent)	Total annual loan cost rate			
	2-year loan term (percent)	6-year loan term (percent)	12-year loan term (percent)	17-year loan term (percent)
0	39.00	[14.94]	9.86	3.87
4	39.00	[14.94]	11.03	10.14
8	39.00	[14.94]	11.03	10.20

The cost of any reverse mortgage loan depends on how long you keep the loan and how much your house appreciates in value. Generally, the longer you keep a reverse mortgage, the lower the total annual loan cost rate will be.

This table shows the estimated cost of your reverse mortgage loan, expressed as an annual rate. It illustrates the cost for three [four] loan terms: 2 years, [half of life expectancy for someone your age,] that life expectancy, and 1.4 times that life expectancy. The table also shows the cost of the loan, assuming the value of your home appreciates at three different rates: 0%, 4% and 8%.

The total annual loan cost rates in this table are based on the total charges associated with this loan. These charges typically include principal, interest, closing costs, mortgage insurance premiums, annuity costs, and servicing costs (but not disposition costs—costs when you sell the home).

The rates in this table are estimates. Your actual cost may differ if, for example, the amount of your loan advances varies or the interest rate on your mortgage changes.

Signing an Application or Receiving These Disclosures Does Not Require You To Complete This Loan

APPENDIX L TO PART 1026—ASSUMED LOAN PERIODS FOR COMPUTATIONS OF TOTAL ANNUAL LOAN COST RATES

(a) *Required tables.* In calculating the total annual loan cost rates in accordance with appendix K of this part, creditors shall assume three loan periods, as determined by the following table.

(b) *Loan periods.* (1) Loan Period 1 is a two-year loan period.

(2) Loan Period 2 is the life expectancy in years of the youngest borrower to become obligated on the reverse mortgage loan, as shown in the U.S. Decennial Life Tables for 1979–1981 for females, rounded to the nearest whole year.

(3) Loan Period 3 is the life expectancy figure in Loan Period 3, multiplied by 1.4 and rounded to the nearest full year (life expectancy figures at .5 have been rounded up to 1).

(4) At the creditor's option, an additional period may be included, which is the life expectancy figure in Loan Period 2, multiplied by .5 and rounded to the nearest full year (life expectancy figures at .5 have been rounded up to 1).

Age of youngest borrower	Loan period 1 (in years)	[Optional loan period (in years)]	Loan period 2 (life expectancy) (in years)	Loan period 3 (in years)
62	2	[11]	21	29
63	2	[10]	20	28
64	2	[10]	19	27
65	2	[9]	18	25
66	2	[9]	18	25
67	2	[9]	17	24
68	2	[8]	16	22
69	2	[8]	16	22
70	2	[8]	15	21
71	2	[7]	14	20
72	2	[7]	13	18
73	2	[7]	13	18
74	2	[6]	12	17
75	2	[6]	12	17
76	2	[6]	11	15
77	2	[5]	10	14
78	2	[5]	10	14
79	2	[5]	9	13
80	2	[5]	9	13
81	2	[4]	8	11
82	2	[4]	8	11
83	2	[4]	7	10
84	2	[4]	7	10

Age of youngest borrower	Loan period 1 (in years)	[Optional loan period (in years)]	Loan period 2 (life expectancy) (in years)	Loan period 3 (in years)
85	2	[3]	6	8
86	2	[3]	6	8
87	2	[3]	6	8
88	2	[3]	5	7
89	2	[3]	5	7
90	2	[3]	5	7
91	2	[2]	4	6
92	2	[2]	4	6
93	2	[2]	4	6
94	2	[2]	4	6
95 and over	2	[2]	3	4

Appendix M1 to Part 1026—Repayment Disclosures

(a) *Definitions.* (1) ''Promotional terms'' means terms of a cardholder's account that will expire in a fixed period of time, as set forth by the card issuer.

(2) ''Deferred interest or similar plan'' means a plan where a consumer will not be obligated to pay interest that accrues on balances or transactions if those balances or transactions are paid in full prior to the expiration of a specified period of time.

(b) *Calculating minimum payment repayment estimates*—(1) *Minimum payment formulas.* When calculating the minimum payment repayment estimate, card issuers must use the minimum payment formula(s) that apply to a cardholder's account. If more than one minimum payment formula applies to an account, the issuer must apply each minimum payment formula to the portion of the balance to which the formula applies. In this case, the issuer must disclose the longest repayment period calculated. For example, assume that an issuer uses one minimum payment formula to calculate the minimum payment amount for a general revolving feature, and another minimum payment formula to calculate the minimum payment amount for special purchases, such as a ''club plan purchase.'' Also, assume that based on a consumer's balances in these features and the annual percentage rates that apply to such features, the repayment period calculated pursuant to this appendix for the general revolving feature is 5 years, while the repayment period calculated for the special purchase feature is 3 years. This issuer must disclose 5 years as the repayment period for the entire balance to the consumer. If any promotional terms related to payments apply to a cardholder's account, such as a deferred billing plan where minimum payments are not required for 12 months, card issuers may assume no promotional terms apply to the account. For example, assume that a promotional minimum payment of $10 applies to an account for six months, and then after the promotional period expires, the minimum payment is calculated as 2 percent of the outstanding balance on the account or $20 whichever is greater. An issuer may assume during the promotional period that the $10 promotional minimum payment does not apply, and instead calculate the minimum payment disclosures based on the minimum payment formula of 2 percent of the outstanding balance or $20, whichever is greater. Alternatively, during the promotional period, an issuer in calculating the minimum payment repayment estimate may apply the promotional minimum payment until it expires and then apply the minimum payment formula that applies after the promotional minimum payment expires. In the above example, an issuer could calculate the minimum payment repayment estimate during the promotional period by applying the $10 promotional minimum payment for the first six months and then applying the 2 percent or $20 (whichever is greater) minimum payment formula after the promotional minimum payment expires. In calculating the minimum payment repayment estimate during a promotional period, an issuer may not assume that the promotional minimum payment will apply until the outstanding balance is paid off by making only minimum payments (assuming the repayment estimate is longer than the promotional period). In the above example, the issuer may not calculate the minimum payment repayment estimate during the promotional period by assuming that the $10 promotional minimum payment will apply beyond the six months until the outstanding balance is repaid.

(2) *Annual percentage rate.* When calculating the minimum payment repayment estimate, a card issuer must use the annual percentage rates that apply to a cardholder's account, based on the portion of the balance to which the rate applies. If any promotional terms related to annual percentage rates apply to a cardholder's account, other than deferred interest or similar plans, a card issuer in calculating the minimum payment repayment estimate during the promotional period must apply the promotional annual percentage rate(s) until it expires and then must apply the rate that applies after the

promotional rate(s) expires. If the rate that applies after the promotional rate(s) expires is a variable rate, a card issuer must calculate that rate based on the applicable index or formula. This variable rate is accurate if it was in effect within the last 30 days before the minimum payment repayment estimate is provided. For deferred interest plans or similar plans, if minimum payments under the deferred interest or similar plan will repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply a zero percent annual percentage rate to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest plan or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period of time and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the minimum payment repayment estimate, the card issuer must apply the annual percentage rate at which interest is accruing to the balance subject to the deferred interest or similar plan.

(3) *Beginning balance.* When calculating the minimum payment repayment estimate, a card issuer must use as the beginning balance the outstanding balance on a consumer's account as of the closing date of the last billing cycle. When calculating the minimum payment repayment estimate, a card issuer may round the beginning balance as described above to the nearest whole dollar.

(4) *Assumptions.* When calculating the minimum payment repayment estimate, a card issuer for each of the terms below, may either make the following assumption about that term, or use the account term that applies to a consumer's account.

(i) Only minimum monthly payments are made each month. In addition, minimum monthly payments are made each month—for example, a debt cancellation or suspension agreement, or skip payment feature does not apply to the account.

(ii) No additional extensions of credit are obtained, such as new purchases, transactions, fees, charges or other activity. No refunds or rebates are given.

(iii) The annual percentage rate or rates that apply to a cardholder's account will not change, through either the operation of a variable rate or the change to a rate, except as provided in paragraph (b)(2) of this Appendix. For example, if a penalty annual percentage rate currently applies to a consumer's account, a card issuer may assume that the penalty annual percentage rate will apply to the consumer's account indefinitely, even if the consumer may potentially return to a non-penalty annual percentage rate in the future under the account agreement.

(iv) There is no grace period.

(v) The final payment pays the account in full (*i.e.*, there is no residual finance charge after the final month in a series of payments).

(vi) The average daily balance method is used to calculate the balance.

(vii) All months are the same length and leap year is ignored. A monthly or daily periodic rate may be assumed. If a daily periodic rate is assumed, the issuer may either assume (1) a year is 365 days long, and all months are 30.41667 days long, or (2) a year is 360 days long, and all months are 30 days long.

(viii) Payments are credited either on the last day of the month or the last day of the billing cycle.

(ix) Payments are allocated to lower annual percentage rate balances before higher annual percentage rate balances.

(x) The account is not past due and the account balance does not exceed the credit limit.

(xi) When calculating the minimum payment repayment estimate, the assumed payments, current balance and interest charges for each month may be rounded to the nearest cent, as shown in appendix M2 to this part.

(5) *Tolerance.* A minimum payment repayment estimate shall be considered accurate if it is not more than 2 months above or below the minimum payment repayment estimate determined in accordance with the guidance in this appendix (prior to rounding described in §1026.7(b)(12)(i)(B) and without use of the assumptions listed in paragraph (b)(4) of this appendix to the extent a card issuer chooses instead to use the account terms that apply to a consumer's account). For example, assume the minimum payment repayment estimate calculated using the guidance in this appendix is 28 months (2 years, 4 months), and the minimum payment repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The minimum payment repayment estimate should be disclosed as 2 years, due to the rounding rule set forth in §1026.7(b)(12)(i)(B). Nonetheless, based on the 30-month estimate, the issuer disclosed 3 years, based on that rounding rule. The issuer would be in compliance with this guidance by disclosing 3 years, instead of 2 years, because the issuer's estimate is within the 2 months' tolerance, prior to rounding. In addition, even if an issuer's estimate is more than 2 months above or below the minimum payment repayment estimate calculated using the guidance in this Appendix, so long as the issuer discloses the

correct number of years to the consumer based on the rounding rule set forth in §1026.7(b)(12)(i)(B), the issuer would be in compliance with this guidance. For example, assume the minimum payment repayment estimate calculated using the guidance in this appendix is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in §1026.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. Thus, if the issuer disclosed 3 years to the consumer, the issuer would be in compliance with this guidance even though the minimum payment repayment estimate calculated by the issuer is outside the 2 months' tolerance amount.

(c) *Calculating the minimum payment total cost estimate.* When calculating the minimum payment total cost estimate, a card issuer must total the dollar amount of the interest and principal that the consumer would pay if he or she made minimum payments for the length of time calculated as the minimum payment repayment estimate under paragraph (b) of this Appendix. The minimum payment total cost estimate is deemed to be accurate if it is based on a minimum payment repayment estimate that is within the tolerance guidance set forth in paragraph (b)(5) of this Appendix. For example, assume the minimum payment repayment estimate calculated using the guidance in this appendix is 28 months (2 years, 4 months), and the minimum payment repayment estimate calculated by the issuer is 30 months (2 years, 6 months). The minimum payment total cost estimate will be deemed accurate even if it is based on the 30 month estimate for length of repayment, because the issuer's minimum payment repayment estimate is within the 2 months' tolerance, prior to rounding. In addition, assume the minimum payment repayment estimate calculated under this appendix is 32 months (2 years, 8 months), and the minimum payment repayment estimate calculated by the issuer is 38 months (3 years, 2 months). Under the rounding rule set forth in §1026.7(b)(12)(i)(B), both of these estimates would be rounded and disclosed to the consumer as 3 years. If the issuer based the minimum payment total cost estimate on 38 months (or any other minimum payment repayment estimate that would be rounded to 3 years), the minimum payment total cost estimate would be deemed to be accurate.

(d) *Calculating the estimated monthly payment for repayment in 36 months*—(1) *In general.* When calculating the estimated monthly payment for repayment in 36 months, a card issuer must calculate the estimated monthly payment amount that would be required to pay off the outstanding balance shown on the statement within 36 months, assuming the consumer paid the same amount each month for 36 months.

(2) *Weighted annual percentage rate.* In calculating the estimated monthly payment for repayment in 36 months, an issuer may use a weighted annual percentage rate that is based on the annual percentage rates that apply to a cardholder's account and the portion of the balance to which the rate applies, as shown in appendix M2 to this part. If a card issuer uses a weighted annual percentage rate and any promotional terms related to annual percentage rates apply to a cardholder's account, other than deferred interest plans or similar plans, in calculating the weighted annual percentage rate, the issuer must calculate a weighted average of the promotional rate and the rate that will apply after the promotional rate expires based on the percentage of 36 months each rate will apply, as shown in appendix M2 to this part. For deferred interest plans or similar plans, if minimum payments under the deferred interest or similar plan will repay the balances or transactions in full prior to the expiration of the specified period of time, if a card issuer uses a weighted annual percentage rate, the card issuer must assume that the consumer will not be obligated to pay the accrued interest. This means, in calculating the weighted annual percentage rate, the card issuer must apply a zero percent annual percentage rate to the balance subject to the deferred interest or similar plan. If, however, minimum payments under the deferred interest plan or similar plan may not repay the balances or transactions in full prior to the expiration of the specified period of time, a card issuer in calculating the weighted annual percentage rate must assume that a consumer will not repay the balances or transactions in full prior to the expiration of the specified period of time and thus the consumer will be obligated to pay the accrued interest. This means, in calculating the weighted annual percentage rate, the card issuer must apply the annual percentage rate at which interest is accruing to the balance subject to the deferred interest or similar plan. A card issuer may use a method of calculating the estimated monthly payment for repayment in 36 months other than a weighted annual percentage rate, so long as the calculation results in the same payment amount each month and so long as the total of the payments would pay off the outstanding balance shown on the periodic statement within 36 months.

(3) *Assumptions.* In calculating the estimated monthly payment for repayment in 36 months, a card issuer must use the same terms described in paragraph (b) of this Appendix, as appropriate.

(4) *Tolerance.* An estimated monthly payment for repayment in 36 months shall be considered accurate if it is not more than 10 percent above or below the estimated monthly payment for repayment in 36 months determined in accordance with the guidance in

this appendix (after rounding described in §1026.7(b)(12)(i)(F)(*1*)(*i*)).

(e) *Calculating the total cost estimate for repayment in 36 months.* When calculating the total cost estimate for repayment in 36 months, a card issuer must total the dollar amount of the interest and principal that the consumer would pay if he or she made the estimated monthly payment calculated under paragraph (d) of this appendix each month for 36 months. The total cost estimate for repayment in 36 months shall be considered accurate if it is based on the estimated monthly payment for repayment in 36 months that is calculated in accordance with paragraph (d) of this appendix.

(f) *Calculating the savings estimate for repayment in 36 months.* When calculating the savings estimate for repayment in 36 months, if a card issuer chooses under §1026.7(b)(12)(i) to round the disclosures to the nearest whole dollar when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest whole dollar) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest whole dollar). If a card issuer chooses under §1026.7(b)(12)(i), however, to round the disclosures to the nearest cent when disclosing them on the periodic statement, the card issuer must calculate the savings estimate for repayment in 36 months by subtracting the total cost estimate for repayment in 36 months calculated under paragraph (e) of this appendix (rounded to the nearest cent) from the minimum payment total cost estimate calculated under paragraph (c) of this appendix (rounded to the nearest cent). The savings estimate for repayment in 36 months shall be considered accurate if it is based on the total cost estimate for repayment in 36 months that is calculated in accordance with paragraph (e) of this appendix and the minimum payment total cost estimate calculated under paragraph (c) of this appendix.

Appendix M2 to Part 1026—Sample Calculations of Repayment Disclosures

The following is an example of how to calculate the minimum payment repayment estimate, the minimum payment total cost estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months using the guidance in appendix M1 to this part where three annual percentage rates apply (where one of the rates is a promotional APR), the total outstanding balance is $1000, and the minimum payment formula is 2 percent of the outstanding balance or $20, whichever is greater. The following calculation is written in SAS code.

```
data one;
/*
Note:
pmt01 = estimated monthly payment to repay balance in 36 months sumpmts36 = sum of payments for repayment in 36 months
month = number of months to repay total balance if making only minimum payments
pmt = minimum monthly payment
fc = monthly finance charge
sumpmts = sum of payments for minimum payments
*/
* inputs;
* annual percentage rates; apr1 = 0.0; apr2 = 0.17; apr3 = 0.21; * insert in ascending order;
* outstanding balances; cbal1 = 500; cbal2 = 250; cbal3 = 250;
* dollar minimum payment; dmin = 20;
* percent minimum payment; pmin = 0.02; * (0.02 + perrate);
* promotional rate information;
* last month for promotional rate; expm = 6; * = 0 if no promotional rate;
* regular rate; rrate = .17; * = 0 if no promotional rate;
array apr(3); array perrate(3);
days = 365/12; * calculate days in month;
* calculate estimated monthly payment to pay off balances in 36 months, and total cost of repaying balance in 36 months;
array xperrate(3);
do I = 1 to 3;
xperrate(I) = (apr(I)/365) * days; * calculate periodic rate;
end;
if expmgt 0 then xperrate1a = (expm/36) * xperrate1 + (1-(expm/36)) * (rrate/365) * days; else xperrate1a = xperrate1;
tbal = cbal1 + cbal2 + cbal3;
perrate36 = (cbal1 * xperrate1a + cbal2 * xperrate2 + cbal3 * xperrate3)/(cbal1 + cbal2 + cbal3);
* months to repay; dmonths = 36;
* initialize counters for sum of payments for repayment in 36 months; Sumpmts36 = 0;
  pvaf = (1-(1 + perrate36) ** -dmonths)/
perrate36; * calculate present value of annuity factor;
pmt01 = round(tbal/pvaf,0.01); * calculate monthly payment for designated number of months;
sumpmts36 = pmt01 * 36;
* calculate time to repay and total cost of making minimum payments each month;
* initialize counter for months, and sum of payments;
month = 0;
sumpmts = 0;
do I = 1 to 3;
```

```
perrate(I) = (apr(I)/365) * days; * calculate
    periodic rate;
end;
put perrate1 = perrate2 = perrate3 =;
eins:
month = month + 1; * increment month
    counter;
pmt = round(pmin * tbal,0.01); * calculate
    payment as percentage of balance;
if month geexpm and expm ne 0 then
    perrate1 = (rrate/365) * days;
if pmtltdmin then pmt = dmin; * set dollar
    minimum payment;
array xxxbal(3); array cbal(3);
do I = 1 to 3;
xxxbal(I) = round(cbal(I) * (1 +
    perrate(I)),0.01);
end;
fc = xxxbal1 + xxxbal2 + xxxbal3 − tbal;
if pmtgt (tbal + fc) then do;
do I = 1 to 3;
if cbal(I) gt 0 then pmt = round(cbal(I) * (1 +
    perrate(I)),0.01); * set final payment
    amount;
end;
end;
if pmt le xxxbal1 then do;
cbal1 = xxxbal1 − pmt;
cbal2 = xxxbal2;
cbal3 = xxxbal3;
end;
if pmtgt xxxbal1 and xxxbal2 gt 0 and pmt le
    (xxxbal1 + xxxbal2) then do;
cbal2 = xxxbal2 − (pmt − xxxbal1);
cbal1 = 0;
cbal3 = xxxbal3;
end;
if pmtgt xxxbal2 and xxxbal3 gt 0 then do;
cbal3 = xxxbal3 − (pmt − xxxbal1 −
    xxxbal2);
cbal2 = 0;
end;
sumpmts = sumpmts + pmt; * increment sum
    of payments;
tbal = cbal1 + cbal2 + cbal3; * calculate new
    total balance;
* print month, balance, payment amount,
    and finance charge;
put month = tbal = cbal1 = cbal2 = cbal3 =
    pmt = fc =;
if tbalgt 0 then go to eins; * go to next month
    if balance is greater than zero;
* initialize total cost savings;
savtot = 0;
savtot = round(sumpmts,1)—round
    (sumpmts36,1);
* print number of months to repay debt if
    minimum payments made, final balance
    (zero), total cost if minimum payments
    made, estimated monthly payment for
    repayment in 36 months, total cost for
    repayment in 36 months, and total sav-
    ings if repaid in 36 months;
put title = ' ';
put title = 'number of months to repay debt
    if minimum payment made, final bal-
    ance, total cost if minimum payments
    made, estimated monthly payment for
    repayment in 36 months, total cost for
    repayment in 36 months, and total sav-
    ings if repaid in 36 months';
put month = tbal = sumpmts = pmt01 =
    sumpmts36 = savtot =;
put title = ' ';
run;
```

APPENDIX N TO PART 1026—HIGHER-PRICED MORTGAGE LOAN APPRAISAL SAFE HARBOR REVIEW

To qualify for the safe harbor provided in §1026.35(c)(3)(ii), a creditor must confirm that the written appraisal:

1. Identifies the creditor who ordered the appraisal and the property and the interest being appraised.
2. Indicates whether the contract price was analyzed.
3. Addresses conditions in the property's neighborhood.
4. Addresses the condition of the property and any improvements to the property.
5. Indicates which valuation approaches were used, and includes a reconciliation if more than one valuation approach was used.
6. Provides an opinion of the property's market value and an effective date for the opinion.
7. Indicates that a physical property visit of the interior of the property was performed, as applicable.
8. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of the Uniform Standards of Professional Appraisal Practice.
9. Includes a certification signed by the appraiser that the appraisal was prepared in accordance with the requirements of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations.

[78 FR 10444, Feb. 13, 2013, as amended at 78 FR 78586, Dec. 26, 2013]

APPENDIX O TO PART 1026—ILLUSTRATIVE WRITTEN SOURCE DOCUMENTS FOR HIGHER-PRICED MORTGAGE LOAN APPRAISAL RULES

A creditor acts with reasonable diligence under §1026.35(c)(4)(vi)(A) if the creditor bases its determination on information contained in written source documents, such as:

1. A copy of the recorded deed from the seller.
2. A copy of a property tax bill.
3. A copy of any owner's title insurance policy obtained by the seller.
4. A copy of the RESPA settlement statement from the seller's acquisition (*i.e.*, the HUD–1 or any successor form).

5. A property sales history report or title report from a third-party reporting service.
6. Sales price data recorded in multiple listing services.
7. Tax assessment records or transfer tax records obtained from local governments.
8. A written appraisal performed in compliance with §1026.35(c)(3)(i) for the same transaction.
9. A copy of a title commitment report detailing the seller's ownership of the property, the date it was acquired, or the price at which the seller acquired the property.
10. A property abstract.

[78 FR 10444, Feb. 13, 2013]

APPENDIX P TO PART 1026 [RESERVED]

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

INTRODUCTION

1. *Official status.* This commentary is the vehicle by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation Z. Good faith compliance with this commentary affords protection from liability under section 130(f) of the Truth in Lending Act. Section 130(f) (15 U.S.C. 1640) protects creditors from civil liability for any act done or omitted in good faith in conformity with any interpretation issued by a duly authorized official or employee of the Bureau of Consumer Financial Protection.

2. *Procedure for requesting interpretations.* Under appendix C of the regulation, anyone may request an official interpretation. Interpretations that are adopted will be incorporated in this commentary following publication in the FEDERAL REGISTER. No official interpretations are expected to be issued other than by means of this commentary.

3. *Rules of construction.* (a) Lists that appear in the commentary may be exhaustive or illustrative; the appropriate construction should be clear from the context. In most cases, illustrative lists are introduced by phrases such as "including, but not limited to," "among other things," "for example," or "such as."

(b) Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment.

4. *Comment designations.* Each comment in the commentary is identified by a number and the regulatory section or paragraph which it interprets. The comments are designated with as much specificity as possible according to the particular regulatory provision addressed. For example, some of the comments to §1026.18(b) are further divided by subparagraph, such as comment 18(b)(1)–1 and comment 18(b)(2)–1. In other cases, comments have more general application and are designated, for example, as comment 18–1 or comment 18(b)–1. This introduction may be cited as comments I–1 through I–4. Comments to the appendices may be cited, for example, as comment app. A–1.

SUBPART A—GENERAL

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

1(c) Coverage

1. *Foreign applicability.* Regulation Z applies to all persons (including branches of foreign banks and sellers located in the United States) that extend consumer credit to residents (including resident aliens) of any state as defined in §1026.2. If an account is located in the United States and credit is extended to a U.S. resident, the transaction is subject to the regulation. This will be the case whether or not a particular advance or purchase on the account takes place in the United States and whether or not the extender of credit is chartered or based in the United States or a foreign country. For example, if a U.S. resident has a credit card account located in the consumer's state issued by a bank (whether U.S. or foreign-based), the account is covered by the regulation, including extensions of credit under the account that occur outside the United States. In contrast, if a U.S. resident residing or visiting abroad, or a foreign national abroad, opens a credit card account issued by a foreign branch of a U.S. bank, the account is not covered by the regulation.

Paragraph 1(c)(5).

1. *Exemption for certain mortgage transactions.* Section 1026.1(c)(5) implements sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129C(h), 129D(h), 129D(j)(1)(A), and 129D(j)(1)(B) of the Truth in Lending Act and section 4(c) of the Real Estate Settlement Procedures Act, by exempting persons from the disclosure requirements of those sections, except in certain transactions. The exemptions do not apply to certain transactions for which the disclosure requirements are implemented in other parts of Regulation Z. Sections 1026.37 and 1026.38 implement sections 128(a)(16) through (19), 128(b)(4), 129C(f)(1), 129C(g)(2) and (3), 129D(h), and 129D(j)(1)(A) of the Truth in Lending Act and section 4(c) of the Real Estate Settlement Procedures Act for transactions subject to §1026.19(e) and (f). Section 1026.38(l)(5) implements the disclosure requirements of section 129C(h) of the Truth in Lending Act for transactions subject to §1026.19(f). Section 1026.39(d)(5) implements the disclosure requirements of section 129C(h) of the Truth in Lending Act for transactions subject to §1026.39(d)(5). Section 1026.20(e) implements the disclosure requirements of section 129D(j)(1)(B) of the Truth in Lending Act for transactions subject to §1026.20(e). Section

1026.1(c)(5) does not exempt any person from any other requirement of this part, Regulation X (12 CFR part 1024), the Truth in Lending Act, or the Real Estate Settlement Procedures Act.

1(d) Organization.

Paragraph 1(d)(5).

1. *Effective date.* i. *General.* The Bureau's revisions to Regulation X and Regulation Z published on December 31, 2013 (the TILA–RESPA Final Rule) apply to covered loans (closed-end credit transactions that are secured by real property or a cooperative unit, whether or not treated as real property under State or other applicable law) for which the creditor or mortgage broker receives an application on or after October 3, 2015 (the effective date), except that §1026.19(e)(2), the amendments to §1026.28(a)(1), and the amendments to the commentary to §1026.29 became effective on October 3, 2015, without respect to whether an application was received as of that date. Additionally, §§1026.20(e) and 1026.39(d)(5), as amended or adopted by the TILA–RESPA Final Rule, took effect on October 3, 2015, for transactions for which the creditor or mortgage broker received an application on or after October 3, 2015, and take effect October 1, 2018, with respect to transactions for which a creditor or mortgage broker received an application prior to October 3, 2015.

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

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

iv. *Post-consummation escrow cancellation disclosure and partial payment disclosure.* A creditor, servicer, or covered person, as applicable, must provide the disclosures required by §§1026.20(e) and 1026.39(d)(5) for transactions for which the conditions in §1026.20(e) or §1026.39(d)(5), as applicable, exist on or after October 1, 2018, regardless of when the corresponding applications were received. For transactions in which such conditions exist on or after October 3, 2015, through September 30, 2018, a creditor, servicer, or covered person, as applicable, complies with §§1026.20(e) and 1026.39(d)(5) if it provides the mandated disclosures in all cases or if it provides them only in cases where the corresponding applications were received on or after October 3, 2015.

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

A. *Application received on or after effective date of the TILA–RESPA Final Rule.* Assume a creditor receives an application on October 3, 2015, and that consummation of the transaction occurs on October 31, 2015. The amendments of the TILA–RESPA Final Rule, including the requirement to provide the Loan Estimate and Closing Disclosure under §1026.19(e) and (f), apply to the transaction. The creditor is also required to provide the special information booklet under §1026.19(g).

B. *Application received before effective date of the TILA–RESPA Final Rule.* Assume a creditor receives an application on September 30, 2015, and that consummation of the transaction occurs on October 30, 2015. The requirement to provide the Loan Estimate and Closing Disclosure under §1026.19(e) and (f) does not apply to the transaction. Instead, the creditor and the settlement agent must provide the disclosures required by §1026.19, as it existed prior to the effective date of the TILA–RESPA Final Rule, and by Regulation X, 12 CFR 1024.8. Similarly, the creditor must provide the special information booklet required by Regulation X, 12 CFR 1024.6. However, the provisions of §1026.19(e)(2) apply to the transaction beginning on October 3, 2015, because they became effective on October 3, 2015, without respect to whether an application was received by the creditor or mortgage broker on that date.

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

D. *Request for preemption determination.* Assume a creditor submits a request to the Bureau under §1026.28(a)(1) for a determination of whether a State law is inconsistent with the disclosure requirements in Regulation Z on October 3, 2015. Because the amendments to §1026.28(a)(1) are effective on that date and do not depend on whether the creditor has received an application, §1026.28(a)(1) is applicable to the request on that date, and the Bureau would make a determination based on the provisions of Regulation Z in effect on that date, including the requirements of §1026.19(e) and (f).

E. *Effective dates for the post-consummation escrow cancelation disclosure and partial payment disclosure.* Assume a creditor receives an application on October 10, 2010, and that the loan was consummated on November 19, 2010. Assume further that, on December 19, 2016, the escrow account established in connection with the mortgage loan was canceled or the loan is sold to another covered person. A creditor, servicer, or covered person, as applicable, may provide the disclosures required under §§1026.20(e) and 1026.39(d)(5) to the consumer, but the creditor, servicer, or covered person, as applicable, is not required to provide those disclosures in this case. Assume the same circumstances, except that the escrow account established in connection with the loan is canceled or the mortgage loan is sold to another covered person on April 14, 2020. A creditor, servicer, or covered person, as applicable, must provide the disclosures in §§1026.20(e) and 1026.39(d)(5), as applicable, because a condition requiring these disclosures occurred after October 1, 2018 (thus the date the application was received is irrelevant).

2. *2017 TILA–RESPA Amendments.* i. *Generally.* Except as provided in comment 1(d)(5)–2.ii, compliance with the amendments to this part effective on October 10, 2017 (the 2017 TILA–RESPA Amendments) is mandatory with respect to transactions for which a creditor or mortgage broker received an application on or after October 1, 2018. Except as provided in comment 1(d)(5)–2.ii, for transactions for which a creditor or mortgage broker received an application prior to October 1, 2018, from the effective date of the 2017 TILA–RESPA Amendments:

A. A person has the option of complying either: with 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on October 9, 2017, together with any amendments to 12 CFR part 1026 that become effective after October 9, 2017, other than the 2017 TILA–RESPA Amendments; and

B. An act or omission violates 12 CFR part 1026 only if it violates both: 12 CFR part 1026 as it is in effect; and 12 CFR part 1026 as it was in effect on October 9, 2017, together with any amendments to 12 CFR part 1026 that become effective after October 9, 2017, other than the 2017 TILA–RESPA Amendments.

ii. *Post-consummation escrow cancellation disclosure and partial payment disclosure.* Comment 1(d)(5)–1.iv sets forth the transactions to which the disclosures required by §§1026.20(e) and 1026.39(d)(5) are applicable.

Section 1026.2—Definitions and Rules of Construction

2(a)(2) Advertisement

1. *Coverage.* Only commercial messages that promote consumer credit transactions requiring disclosures are advertisements. Messages inviting, offering, or otherwise announcing generally to prospective customers the availability of credit transactions, whether in visual, oral, or print media, are covered by Regulation Z (12 CFR part 1026).

i. Examples include:

A. Messages in a newspaper, magazine, leaflet, promotional flyer, or catalog.

B. Announcements on radio, television, or public address system.

C. Electronic advertisements, such as on the Internet.

D. Direct mail literature or other printed material on any exterior or interior sign.

E. Point of sale displays.

F. Telephone solicitations.

G. Price tags that contain credit information.

H. Letters sent to customers or potential customers as part of an organized solicitation of business.

I. Messages on checking account statements offering auto loans at a stated annual percentage rate.

J. Communications promoting a new open-end plan or closed-end transaction.

ii. The term does not include:

A. Direct personal contacts, such as follow-up letters, cost estimates for individual consumers, or oral or written communication relating to the negotiation of a specific transaction.

B. Informational material, for example, interest-rate and loan-term memos, distributed only to business entities.

C. Notices required by Federal or state law, if the law mandates that specific information be displayed and only the information so mandated is included in the notice.

D. News articles the use of which is controlled by the news medium.

E. Market-research or educational materials that do not solicit business.

F. Communications about an existing credit account (for example, a promotion encouraging additional or different uses of an existing credit card account).

2. *Persons covered.* All *persons* must comply with the advertising provisions in §§1026.16

and 1026.24, not just those that meet the definition of creditor in §1026.2(a)(17). Thus, home builders, merchants, and others who are not themselves creditors must comply with the advertising provisions of the regulation if they advertise consumer credit transactions. However, under section 145 of the Act, the owner and the personnel of the medium in which an advertisement appears, or through which it is disseminated, are not subject to civil liability for violations.

2(a)(3) Application.

1. *In general.* An application means the submission of a consumer's financial information for purposes of obtaining an extension of credit. For transactions subject to §1026.19(e), (f), or (g) of this part, the term consists of the consumer's name, the consumer's income, the consumer's social security number to obtain a credit report, the property address, an estimate of the value of the property, and the mortgage loan amount sought. This definition does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit. However, once a creditor has received these six pieces of information, it has an application for purposes of the requirements of Regulation Z. A submission may be in written or electronic format and includes a written record of an oral application. The following examples for a transaction subject to §1026.19(e), (f), or (g) are illustrative of this provision:

i. Assume a creditor provides a consumer with an application form containing 20 questions about the consumer's credit history and the collateral value. The consumer submits answers to nine of the questions and informs the creditor that the consumer will contact the creditor the next day with answers to the other 11 questions. Although the consumer provided nine pieces of information, the consumer did not provide a social security number. The creditor has not yet received an application for purposes of §1026.2(a)(3).

ii. Assume a creditor requires all applicants to submit 20 pieces of information. The consumer submits only six pieces of information and informs the creditor that the consumer will contact the creditor the next day with answers to the other 14 questions. The six pieces of information provided by the consumer were the consumer's name, income, social security number, property address, estimate of the value of the property, and the mortgage loan amount sought. Even though the creditor requires 14 additional pieces of information to process the consumer's request for a mortgage loan, the creditor has received an application for the purposes of §1026.2(a)(3) and therefore must comply with the relevant requirements under §1026.19.

2. *Social security number to obtain a credit report.* If a consumer does not have a social security number, the creditor may substitute whatever unique identifier the creditor uses to obtain a credit report on the consumer. For example, a creditor has obtained a social security number to obtain a credit report for purposes of §1026.2(a)(3)(ii) if the creditor collects a Tax Identification Number from a consumer who does not have a social security number, such as a foreign national.

3. *Receipt of credit report fees.* Section 1026.19(a)(1)(iii) permits the imposition of a fee to obtain the consumer's credit history prior to the delivery of the disclosures required under §1026.19(a)(1)(i). Section 1026.19(e)(2)(i)(B) permits the imposition of a fee to obtain the consumer's credit report prior to the delivery of the disclosures required under §1026.19(e)(1)(i). Whether, or when, such fees are received does not affect whether an application has been received for the purposes of the definition in §1026.2(a)(3) and the timing requirements in §1026.19(a)(1)(i) and (e)(1)(iii). For example, if, in a transaction subject to §1026.19(e)(1)(i), a creditor receives the six pieces of information identified under §1026.2(a)(3)(ii) on Monday, June 1, but does not receive a credit report fee from the consumer until Tuesday, June 2, the creditor does not comply with §1026.19(e)(1)(iii) if it provides the disclosures required under §1026.19(e)(1)(i) after Thursday, June 4. The three-business-day period beings on Monday, June 1, the date the creditor received the six pieces of information. The waiting period does not begin on Tuesday, June 2, the date the creditor received the credit report fee.

2(a)(4) Billing Cycle or Cycle

1. *Intervals.* In open-end credit plans, the billing cycle determines the intervals for which periodic disclosure statements are required; these intervals are also used as measuring points for other duties of the creditor. Typically, billing cycles are monthly, but they may be more frequent or less frequent (but not less frequent than quarterly).

2. *Creditors that do not bill.* The term *cycle* is interchangeable with *billing cycle* for definitional purposes, since some creditors' cycles do not involve the sending of bills in the traditional sense but only statements of account activity. This is commonly the case with financial institutions when periodic payments are made through payroll deduction or through automatic debit of the consumer's asset account.

3. *Equal cycles.* Although cycles must be equal, there is a permissible variance to account for weekends, holidays, and differences in the number of days in months. If the actual date of each statement does not vary by more than four days from a fixed ''day'' (for

example, the third Thursday of each month) or "date" (for example, the 15th of each month) that the creditor regularly uses, the intervals between statements are considered equal. The requirement that cycles be equal applies even if the creditor applies a daily periodic rate to determine the finance charge. The requirement that intervals be equal does not apply to the first billing cycle on an open-end account (*i.e.*, the time period between account opening and the generation of the first periodic statement) or to a transitional billing cycle that can occur if the creditor occasionally changes its billing cycles so as to establish a new statement day or date. (*See* comments 9(c)(1)–3 and 9(c)(2)–3.)

4. *Payment reminder*. The sending of a regular payment reminder (rather than a late payment notice) establishes a cycle for which the creditor must send periodic statements.

2(a)(6) Business Day

1. *Business function test*. Activities that indicate that the creditor is open for substantially all of its business functions include the availability of personnel to make loan disbursements, to open new accounts, and to handle credit transaction inquiries. Activities that indicate that the creditor is not open for substantially all of its business functions include a retailer's merely accepting credit cards for purchases or a bank's having its customer-service windows open only for limited purposes such as deposits and withdrawals, bill paying, and related services.

2. *Rule for rescission, disclosures for certain mortgage transactions, and private education loans*. A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission, the receipt of disclosures for certain dwelling- or real estate-secured mortgage transactions under §§1026.19(a)(1)(ii), 1026.19(a)(2), 1026.19(e)(1)(iii)(B), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(e)(4)(ii), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii), 1026.20(e)(5), 1026.31(c), or the receipt of disclosures for private education loans under §1026.46(d)(4) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

2(a)(7) Card Issuer

1. *Agent*. i. An agent of a card issuer is considered a card issuer. Except as provided in comment 2(a)(7)–1.ii, because agency relationships are traditionally defined by contract and by state or other applicable law, the regulation does not define agent. Merely providing services relating to the production of credit cards or data processing for others, however, does not make one the agent of the card issuer. In contrast, a financial institution may become the agent of the card issuer if an agreement between the institution and the card issuer provides that the cardholder may use a line of credit with the financial institution to pay obligations incurred by use of the credit card.

ii. Under §1026.2(a)(7), with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61 where that credit feature is offered by an affiliate or business partner of the prepaid account issuer as those terms are defined in §1026.61, the affiliate or business partner offering the credit feature is an agent of the prepaid account issuer and thus, is itself a card issuer with respect to the hybrid prepaid-credit card.

2. *Prepaid cards that are not hybrid prepaid-credit cards*. See §1026.61(a) and comments 61(a)(2)–5.iii and 61(a)(4)–1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

2(a)(8) Cardholder

1. *General rule*. A cardholder is a natural person at whose request a card is issued for consumer credit purposes or who is a co-obligor or guarantor for such a card issued to another. The second category does not include an employee who is a co-obligor or guarantor on a card issued to the employer for business purposes, nor does it include a person who is merely the authorized user of a card issued to another.

2. *Limited application of regulation*. For the limited purposes of the rules on issuance of credit cards and liability for unauthorized use, a cardholder includes *any* person, including an organization, to whom a card is issued for *any* purpose—including a business, agricultural, or commercial purpose.

3. *Issuance*. See the commentary to §1026.12(a).

4. *Dual-purpose cards and dual-card systems*. Some card issuers offer dual-purpose cards that are for business as well as consumer purposes. If a card is issued to an individual for consumer purposes, the fact that an organization has guaranteed to pay the debt does not make it business credit. On the other hand, if a card is issued for business purposes, the fact that an individual sometimes

uses it for consumer purchases does not subject the card issuer to the provisions on periodic statements, billing-error resolution, and other protections afforded to consumer credit. Some card issuers offer dual-card systems—that is, they issue two cards to the same individual, one intended for business use, the other for consumer or personal use. With such a system, the same person may be a cardholder for general purposes when using the card issued for consumer use, and a cardholder only for the limited purposes of the restrictions on issuance and liability when using the card issued for business purposes.

2(a)(9) Cash Price

1. *Components.* This amount is a starting point in computing the amount financed and the total sale price under §1026.18 for credit sales. Any charges imposed equally in cash and credit transactions may be included in the cash price, or they may be treated as other amounts financed under §1026.18(b)(2).

2. *Service contracts.* Service contracts include contracts for the repair or the servicing of goods, such as mechanical breakdown coverage, even if such a contract is characterized as insurance under state law.

3. *Rebates.* The creditor has complete flexibility in the way it treats rebates for purposes of disclosure and calculation. (See the commentary to §1026.18(b).)

2(a)(10) Closed-End Credit

1. *General.* The coverage of this term is defined by exclusion. That is, it includes any credit arrangement that does not fall within the definition of open-end credit. Subpart C contains the disclosure rules for closed-end credit when the obligation is subject to a finance charge or is payable by written agreement in more than four installments.

2(a)(11) Consumer

1. *Scope.* Guarantors, endorsers, and sureties are not generally consumers for purposes of the regulation, but they may be entitled to rescind under certain circumstances and they may have certain rights if they are obligated on credit card plans.

2. *Rescission rules.* For purposes of rescission under §§1026.15 and 1026.23, a consumer includes any natural person whose ownership interest in his or her principal dwelling is subject to the risk of loss. Thus, if a security interest is taken in A's ownership interest in a house and that house is A's principal dwelling, A is a consumer for purposes of rescission, even if A is not liable, either primarily or secondarily, on the underlying consumer credit transaction. An ownership interest does not include, for example, leaseholds or inchoate rights, such as dower.

3. *Trusts.* Credit extended to trusts established for tax or estate planning purposes or to land trusts, as described in comment 3(a)–10, is considered to be extended to a natural person for purposes of the definition of consumer.

4. *Successors in interest.* i. *Assumption of the mortgage loan obligation.* A servicer may not require a confirmed successor in interest to assume the mortgage loan obligation to be considered a consumer for purposes of §§1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41. If a successor in interest assumes a mortgage loan obligation under State law or is otherwise liable on the mortgage loan obligation, the protections the successor in interest enjoys under this part are not limited to §§1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41.

ii. *Communications with confirmed successors in interest.* Communications in compliance with this part to a confirmed successor in interest as defined in §1026.2(a)(27)(ii) do not violate section 805(b) of the Fair Debt Collection Practices Act (FDCPA) because consumer for purposes of FDCPA section 805 includes any person who meets the definition in this part of confirmed successor in interest.

iii. *Treatment of transferor consumer.* Even after a servicer's confirmation of a successor in interest, the servicer is still required to comply with all applicable requirements of §§1026.20(c) through (e), 1026.36(c), 1026.39, and 1026.41 with respect to the consumer who transferred an ownership interest to the successor in interest.

iv. *Multiple notices unnecessary.* Except as required by Regulation X, 12 CFR 1024.36, a servicer is not required to provide to a confirmed successor in interest any written disclosure required by §1026.20(c), (d), or (e), §1026.39, or §1026.41 if the servicer is providing the same specific disclosure to another consumer on the account. For example, a servicer is not required to provide a periodic statement required by §1026.41 to a confirmed successor in interest if the servicer is providing the same periodic statement to another consumer; a single statement may be sent in that billing cycle. If a servicer confirms more than one successor in interest, the servicer need not send any disclosure required by §1026.20(c), (d), or (e), §1026.39, or §1026.41 to more than one of the confirmed successors in interest.

2(a)(12) Consumer Credit

1. *Primary purpose.* There is no precise test for what constitutes credit offered or extended for personal, family, or household purposes, nor for what constitutes the primary purpose. (See, however, the discussion of business purposes in the commentary to §1026.3(a).)

2(a)(13) Consummation

1. *State law governs.* When a contractual obligation on the consumer's part is created is

a matter to be determined under applicable law; Regulation Z does not make this determination. A contractual commitment agreement, for example, that under applicable law binds the consumer to the credit terms would be consummation. Consummation, however, does not occur merely because the consumer has made some financial investment in the transaction (for example, by paying a nonrefundable fee) unless, of course, applicable law holds otherwise.

2. *Credit v. sale.* Consummation does not occur when the consumer becomes contractually committed to a sale transaction, unless the consumer also becomes legally obligated to accept a particular credit arrangement. For example, when a consumer pays a nonrefundable deposit to purchase an automobile, a purchase contract may be created, but consummation for purposes of the regulation does not occur unless the consumer also contracts for financing at that time.

2(a)(14) Credit

1. *Exclusions.* The following situations are not considered credit for purposes of the regulation:

i. Layaway plans, unless the consumer is contractually obligated to continue making payments. Whether the consumer is so obligated is a matter to be determined under applicable law. The fact that the consumer is not entitled to a refund of any amounts paid towards the cash price of the merchandise does not bring layaways within the definition of credit.

ii. Tax liens, tax assessments, court judgments, and court approvals of reaffirmation of debts in bankruptcy. However, third-party financing of such obligations (for example, a bank loan obtained to pay off a tax lien) is credit for purposes of the regulation.

iii. Insurance premium plans that involve payment in installments with each installment representing the payment for insurance coverage for a certain future period of time, unless the consumer is contractually obligated to continue making payments.

iv. Home improvement transactions that involve progress payments, if the consumer pays, as the work progresses, only for work completed and has no contractual obligation to continue making payments.

v. Borrowing against the accrued cash value of an insurance policy or a pension account, if there is no independent obligation to repay.

vi. Letters of credit.

vii. The execution of option contracts. However, there may be an extension of credit when the option is exercised, if there is an agreement at that time to defer payment of a debt.

viii. Investment plans in which the party extending capital to the consumer risks the loss of the capital advanced. This includes, for example, an arrangement with a home purchaser in which the investor pays a portion of the downpayment and of the periodic mortgage payments in return for an ownership interest in the property, and shares in any gain or loss of property value.

ix. Mortgage assistance plans administered by a government agency in which a portion of the consumer's monthly payment amount is paid by the agency. No finance charge is imposed on the subsidy amount, and that amount is due in a lump-sum payment on a set date or upon the occurrence of certain events. (If payment is not made when due, a new note imposing a finance charge may be written, which may then be subject to the regulation.)

2. *Payday loans; deferred presentment.* Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred-presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of §1026.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under §1026.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. (*See* §1026.2(a)(17).)

3. *Transactions on the asset features of prepaid accounts when there are insufficient or unavailable funds.* Credit includes authorization of a transaction on the asset feature of a prepaid account as defined in §1026.61 where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is authorized to cover the amount of the transaction. It also includes settlement of a transaction on the asset feature of a prepaid account where the consumer has insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is settled to cover the amount of the transaction. This includes a transaction where the consumer has sufficient or available funds in the asset feature of a prepaid account to cover the amount of the transaction at the time the transaction is authorized but insufficient or unavailable funds in the asset feature of the prepaid account to cover the transaction amount at the time the transaction is settled. See §1026.61 and related commentary on the applicability of this regulation to credit that is extended in connection with a prepaid account.

Paragraph 2(a)(15)

1. *Usable from time to time.* A credit card must be usable from time to time. Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not credit cards.

2. *Examples.* i. Examples of credit cards include:

A. A card that guarantees checks or similar instruments, if the asset account is also tied to an overdraft line or if the instrument directly accesses a line of credit.

B. A debit card (other than a debit card that is solely an account number) that also accesses a credit account (that is, a debit-credit card). See comment 2(a)(15)–2.ii.C for guidance on whether a debit card that is solely an account number is a credit card.

C. An identification card that permits the consumer to defer payment on a purchase.

D. An identification card indicating loan approval that is presented to a merchant or to a lender, whether or not the consumer signs a separate promissory note for each credit extension.

E. A card or device that can be activated upon receipt to access credit, even if the card has a substantive use other than credit, such as a purchase-price discount card. Such a card or device is a credit card notwithstanding the fact that the recipient must first contact the card issuer to access or activate the credit feature.

F. A prepaid card that is a hybrid prepaid-credit card as defined in §1026.61.

ii. In contrast, credit card does not include, for example:

A. A check-guarantee or debit card with no credit feature or agreement, even if the creditor occasionally honors an inadvertent overdraft.

B. Any card, key, plate, or other device that is used in order to obtain petroleum products for business purposes from a wholesale distribution facility or to gain access to that facility, and that is required to be used without regard to payment terms.

C. An account number that accesses a credit account, unless the account number can access an open-end line of credit to purchase goods or services or as provided in §1026.61 with respect to a hybrid prepaid-credit card. For example, if a creditor provides a consumer with an open-end line of credit that can be accessed by an account number in order to transfer funds into another account (such as an asset account with the same creditor), the account number is not a credit card for purposes of §1026.2(a)(15)(i). However, if the account number can also access the line of credit to purchase goods or services (such as an account number that can be used to purchase goods or services on the Internet), the account number is a credit card for purposes of §1026.2(a)(15)(i), regardless of whether the creditor treats such transactions as purchases, cash advances, or some other type of transaction. Furthermore, if the line of credit can also be accessed by a card (such as a debit card), that card is a credit card for purposes of §1026.2(a)(15)(i).

D. A prepaid card that is not a hybrid prepaid-credit card as defined in §1026.61.

3. *Charge card.* i. Charge cards are credit cards where no periodic rate is used to compute the finance charge. Under the regulation, a reference to credit cards generally includes charge cards. In particular, references to credit card accounts under an open-end (not home-secured) consumer credit plan in subparts B and G generally include charge cards. The term *charge card* is, however, distinguished from credit card or credit card account under an open-end (not home-secured) consumer credit plan in §§1026.6(b)(2)(xiv), 1026.7(b)(11) (except as described in comment 2(a)(15)–3.ii below), 1026.7(b)(12), 1026.9(e), 1026.9(f), 1026.28(d), 1026.52(b)(1)(ii)(C), 1026.60, and appendices G–10 through G–13.

ii. A hybrid prepaid-credit card as defined in §1026.61 is a charge card with respect to a covered separate credit feature if no periodic rate is used to compute the finance charge in connection with the covered separate credit feature. Unlike other charge card accounts, the requirements in §1026.7(b)(11) apply to a covered separate credit feature accessible by a hybrid prepaid-credit card that is a charge card when that covered separate credit feature is a credit card account under an open-end (not home-secured) consumer credit plan. Thus, under §1026.5(b)(2)(ii)(A), with respect to a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan, a card issuer of a hybrid prepaid-credit card that meets the definition of a charge card because no periodic rate is used to compute a finance charge in connection with the covered separate credit feature must adopt reasonable procedures for the covered separate credit feature designed to ensure that (1) periodic statements are mailed or delivered at least 21 days prior to the payment due date disclosed on the statement pursuant to §1026.7(b)(11)(i)(A); and (2) the card issuer does not treat as late for any purposes a required minimum periodic payment received by the card issuer within 21 days after mailing or delivery of the periodic statement disclosing the due date for that payment.

4. *Credit card account under an open-end (not home-secured) consumer credit plan.* i. An open-end consumer credit account is a credit card account under an open-end (not home-secured) consumer credit plan for purposes of §1026.2(a)(15)(ii) if:

A. The account is accessed by a credit card, as defined in §1026.2(a)(15)(i); and

B. The account is not excluded under §1026.2(a)(15)(ii)(A) through (C).

ii. As noted in §1026.2(a)(15)(ii)(C), the exclusion from credit card account under an open-end (not home-secured) consumer credit plan provided by that paragraph for an overdraft line of credit that is accessed by an account number does not apply to a covered separate credit feature accessible by a hybrid prepaid-credit card (including a hybrid prepaid-credit card that is solely an account number) as defined in §1026.61.

2(a)(16) Credit Sale

1. *Special disclosure.* If the seller is a creditor in the transaction, the transaction is a credit sale and the special credit sale disclosures (that is, the disclosures under §1026.18(j)) must be given. This applies even if there is more than one creditor in the transaction and the creditor making the disclosures is not the seller. (See the commentary to §1026.17(d).)

2. *Sellers who arrange credit.* If the seller of the property or services involved arranged for financing but is not a creditor as to that sale, the transaction is not a credit sale. Thus, if a seller assists the consumer in obtaining a direct loan from a financial institution and the consumer's note is payable to the financial institution, the transaction is a loan and only the financial institution is a creditor.

3. *Refinancings.* Generally, when a credit sale is refinanced within the meaning of §1026.20(a), loan disclosures should be made. However, if a new sale of goods or services is also involved, the transaction is a credit sale.

4. *Incidental sales.* Some lenders *sell* a product or service—such as credit, property, or health insurance—as part of a loan transaction. Section 1026.4 contains the rules on whether the cost of credit life, disability or property insurance is part of the finance charge. If the insurance is financed, it may be disclosed as a separate credit-sale transaction or disclosed as part of the primary transaction; if the latter approach is taken, either loan or credit-sale disclosures may be made. (See the commentary to §1026.17(c)(1) for further discussion of this point.)

5. *Credit extensions for educational purposes.* A credit extension for educational purposes in which an educational institution is the creditor may be treated as either a credit sale or a loan, regardless of whether the funds are given directly to the student, credited to the student's account, or disbursed to other persons on the student's behalf. The disclosure of the total sale price need not be given if the transaction is treated as a loan.

2(a)(17) Creditor

1. *General.* The definition contains four independent tests. If any one of the tests is met, the person is a creditor for purposes of that particular test.

Paragraph 2(a)(17)(i)

1. *Prerequisites.* This test is composed of two requirements, both of which must be met in order for a particular credit extension to be subject to the regulation and for the credit extension to count towards satisfaction of the numerical tests mentioned in §1026.2(a)(17)(v).

i. *First*, there must be either or both of the following:

A. A written (rather than oral) agreement to pay in more than four installments. A letter that merely confirms an oral agreement does not constitute a written agreement for purposes of the definition.

B. A finance charge imposed for the credit. The obligation to pay the finance charge need not be in writing.

ii. *Second*, the obligation must be payable to the person in order for that person to be considered a creditor. If an obligation is made payable to *bearer*, the creditor is the one who initially accepts the obligation.

2. *Assignees.* If an obligation is initially payable to one person, that person is the creditor even if the obligation by its terms is simultaneously assigned to another person. For example:

i. An auto dealer and a bank have a business relationship in which the bank supplies the dealer with credit sale contracts that are initially made payable to the dealer and provide for the immediate assignment of the obligation to the bank. The dealer and purchaser execute the contract only after the bank approves the creditworthiness of the purchaser. Because the obligation is initially payable on its face to the dealer, the dealer is the only creditor in the transaction.

3. *Numerical tests.* The examples below illustrate how the numerical tests of §1026.2(a)(17)(v) are applied. The examples assume that consumer credit with a finance charge or written agreement for more than 4 installments was extended in the years in question and that the person did not extend such credit in 2006.

4. *Counting transactions.* For purposes of closed-end credit, the creditor counts each credit transaction. For open-end credit, *transactions* means accounts, so that outstanding accounts are counted instead of individual credit extensions. Normally the number of transactions is measured by the preceding calendar year; if the requisite number is met, then the person is a creditor for all transactions in the current year. However, if the person did not meet the test in the preceding year, the number of transactions is measured by the current calendar year. For example, if the person extends consumer credit 26 times in 2007, it is a creditor for purposes of the regulation for the last extension of credit in 2007 and for all extensions of consumer credit in 2008. On the other hand, if a business begins in 2007 and extends

consumer credit 20 times, it is not a creditor for purposes of the regulation in 2007. If it extends consumer credit 75 times in 2008, however, it becomes a creditor for purposes of the regulation (and must begin making disclosures) after the 25th extension of credit in that year and is a creditor for all extensions of consumer credit in 2009.

5. *Relationship between consumer credit in general and credit secured by a dwelling.* Extensions of credit secured by a dwelling are counted towards the 25-extensions test. For example, if in 2007 a person extends unsecured consumer credit 23 times and consumer credit secured by a dwelling twice, it becomes a creditor for the succeeding extensions of credit, whether or not they are secured by a dwelling. On the other hand, extensions of consumer credit not secured by a dwelling are *not* counted towards the number of credit extensions secured by a dwelling. For example, if in 2007 a person extends credit not secured by a dwelling 8 times and credit secured by a dwelling 3 times, it is not a creditor.

6. *Effect of satisfying one test.* Once one of the numerical tests is satisfied, the person is also a creditor for the other type of credit. For example, in 2007 a person extends consumer credit secured by a dwelling 5 times. That person is a creditor for all succeeding credit extensions, whether they involve credit secured by a dwelling or not.

7. *Trusts.* In the case of credit extended by trusts, each individual trust is considered a separate entity for purposes of applying the criteria. For example:

i. A bank is the trustee for three trusts. Trust A makes 15 extensions of consumer credit annually; Trust B makes 10 extensions of consumer credit annually; and Trust C makes 30 extensions of consumer credit annually. Only Trust C is a creditor for purposes of the regulation.

8. *Prepaid cards that are not hybrid prepaid-credit cards.* See §1026.61(a) and comments 61(a)(2)–5.iii and 61(a)(4)–1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

Paragraph 2(a)(17)(ii) [Reserved]

Paragraph 2(a)(17)(iii)

1. *Card issuers subject to Subpart B.* Section 1026.2(a)(17)(iii) makes certain card issuers creditors for purposes of the open-end credit provisions of the regulation. This includes, for example, the issuers of so-called travel and entertainment cards that expect repayment at the first billing and do not impose a finance charge. Since all disclosures are to be made only as applicable, such card issuers would omit finance charge disclosures. Other provisions of the regulation regarding such areas as scope, definitions, determination of which charges are finance charges, Spanish language disclosures, record retention, and use of model forms, also apply to such card issuers.

2. *Prepaid cards that are not hybrid prepaid-credit cards.* See §1026.61(a) and comments 61(a)(2)–5.iii and 61(a)(4)–1.iv for guidance on the applicability of this regulation in connection with credit accessible by prepaid cards that are not hybrid prepaid-credit cards.

Paragraph 2(a)(17)(iv)

1. *Card issuers subject to Subparts B and C.* Section 1026.2(a)(17)(iv) includes as creditors card issuers extending closed-end credit in which there is a finance charge or an agreement to pay in more than four installments. These card issuers are subject to the appropriate provisions of Subparts B and C, as well as to the general provisions.

2(a)(18) Downpayment

1. *Allocation.* If a consumer makes a lump-sum payment, partially to reduce the cash price and partially to pay prepaid finance charges, only the portion attributable to reducing the cash price is part of the downpayment. (See the commentary to §1026.2(a)(23).)

2. *Pick-up payments.* i. Creditors may treat the deferred portion of the downpayment, often referred to as *pick-up payments,* in a number of ways. If the pick-up payment is treated as part of the downpayment:

A. It is subtracted in arriving at the amount financed under §1026.18(b).

B. It may, but need not, be reflected in the payment schedule under §1026.18(g).

ii. If the pick-up payment does not meet the definition (for example, if it is payable after the second regularly scheduled payment) or if the creditor chooses not to treat it as part of the downpayment:

A. It must be included in the amount financed.B. It must be shown in the payment schedule.

iii. Whichever way the pick-up payment is treated, the total of payments under §1026.18(h) must equal the sum of the payments disclosed under §1026.18(g).

3. *Effect of existing liens.* i. *No cash payment.* In a credit sale, the ''downpayment'' may only be used to reduce the cash price. For example, when a trade-in is used as the downpayment and the existing lien on an automobile to be traded in exceeds the value of the automobile, creditors must disclose a zero on the downpayment line rather than a negative number. To illustrate, assume a consumer owes $10,000 on an existing automobile loan and that the trade-in value of the automobile is only $8,000, leaving a $2,000 deficit. The creditor should disclose a downpayment of $0, not −$2,000.

ii. *Cash payment.* If the consumer makes a cash payment, creditors may, at their option, disclose the entire cash payment as the downpayment, or apply the cash payment first to any excess lien amount and disclose any remaining cash as the downpayment. In the above example:

A. If the downpayment disclosed is equal to the cash payment, the $2,000 deficit must be reflected as an additional amount financed under §1026.18(b)(2).

B. If the consumer provides $1,500 in cash (which does not extinguish the $2,000 deficit), the creditor may disclose a downpayment of $1,500 or of $0.

C. If the consumer provides $3,000 in cash, the creditor may disclose a downpayment of $3,000 or of $1,000.

2(a)(19) Dwelling

1. *Scope.* A dwelling need not be the consumer's *principal* residence to fit the definition, and thus a vacation or second home could be a dwelling. However, for purposes of the definition of residential mortgage transaction and the right to rescind, a dwelling must be the principal residence of the consumer. (*See* the commentary to §§1026.2(a)(24), 1026.15, and 1026.23.)

2. *Use as a residence.* Mobile homes, boats, and trailers are dwellings if they are in fact used as residences, just as are condominium and cooperative units. Recreational vehicles, campers, and the like not used as residences are not dwellings.

3. *Relation to exemptions.* Any transaction involving a security interest in a consumer's principal dwelling (as well as in any real property) remains subject to the regulation despite the general exemption in §1026.3(b).

2(a)(20) Open-End Credit

1. *General.* This definition describes the characteristics of open-end credit (for which the applicable disclosure and other rules are contained in Subpart B), as distinct from closed-end credit. Open-end credit is consumer credit that is extended under a plan and meets *all 3* criteria set forth in the definition.

2. *Existence of a plan.* i. The definition requires that there be a plan, which connotes a contractual arrangement between the creditor and the consumer.

ii. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61, a plan means a program where the consumer is obligated contractually to repay any credit extended by the creditor. For example, a plan includes a program under which a creditor routinely extends credit from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner where the prepaid card can be used from time to time to draw, transfer, or authorize the draw or transfer of credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, and the consumer is obligated contractually to repay those credit transactions. Such a program constitutes a plan notwithstanding that, for example, the creditor has not agreed in writing to extend credit for those transactions, the creditor retains discretion not to extend credit for those transactions, or the creditor does not extend credit for those transactions once the consumer has exceeded a certain amount of credit. See §1026.61(a) and related commentary for guidance on the applicability of this regulation to credit accessible by hybrid prepaid-credit cards.

iii. Some creditors offer programs containing a number of different credit features. The consumer has a single account with the institution that can be accessed repeatedly via a number of sub-accounts established for the different program features and rate structures. Some features of the program might be used repeatedly (for example, an overdraft line) while others might be used infrequently (such as the part of the credit line available for secured credit). If the program as a whole is subject to prescribed terms and otherwise meets the definition of open-end credit, such a program would be considered a single, multifeatured plan.

3. *Repeated transactions.* Under this criterion, the creditor must reasonably contemplate repeated transactions. This means that the credit plan must be usable from time to time and the creditor must legitimately expect that there will be repeat business rather than a one-time credit extension. The creditor must expect repeated dealings with consumers under the credit plan as a whole and need not believe a consumer will reuse a particular feature of the plan. The determination of whether a creditor can reasonably contemplate repeated transactions requires an objective analysis. Information that much of the creditor's customer base with accounts under the plan make repeated transactions over some period of time is relevant to the determination, particularly when the plan is opened primarily for the financing of infrequently purchased products or services. A standard based on reasonable belief by a creditor necessarily includes some margin for judgmental error. The fact that particular consumers do not return for further credit extensions does not prevent a plan from having been properly characterized as open-end. For example, if much of the customer base of a clothing store makes repeat purchases, the fact that some consumers use the plan only once would not affect the characterization of the store's plan as open-end credit. The criterion regarding

repeated transactions is a question of fact to be decided in the context of the creditor's type of business and the creditor's relationship with its customers. For example, it would be more reasonable for a bank or depository institution to contemplate repeated transactions with a customer than for a seller of aluminum siding to make the same assumption about its customers.

4. *Finance charge on an outstanding balance.* i. The requirement that a finance charge may be computed and imposed from time to time on the outstanding balance means that there is no specific amount financed for the plan for which the finance charge, total of payments, and payment schedule can be calculated. A plan may meet the definition of open-end credit even though a finance charge is not normally imposed, provided the creditor has the right, under the plan, to impose a finance charge from time to time on the outstanding balance. For example, in some plans, a finance charge is not imposed if the consumer pays all or a specified portion of the outstanding balance within a given time period. Such a plan could meet the finance charge criterion, if the creditor has the right to impose a finance charge, even though the consumer actually pays no finance charges during the existence of the plan because the consumer takes advantage of the option to pay the balance (either in full or in installments) within the time necessary to avoid finance charges.

ii. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61, any service, transaction, activity, or carrying charges imposed on the covered separate credit feature, and any such charges imposed on the asset feature of the prepaid account to the extent that the amount of the charge exceeds comparable charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card, generally is a finance charge. *See* §1026.4(a) and (b)(11). Such charges include a periodic fee to participate in the covered separate credit feature, regardless of whether this fee is imposed on the credit feature or on the asset feature of the prepaid account. With respect to credit from a covered separate credit feature accessible by a hybrid prepaid-credit card, any service, transaction, activity, or carrying charges that are finance charges under §1026.4 constitute finance charges imposed from time to time on an outstanding unpaid balance as described in §1026.2(a)(20) if there is no specific amount financed for the credit feature for which the finance charge, total of payments, and payment schedule can be calculated.

5. *Reusable line.* The total amount of credit that may be extended during the existence of an open-end plan is unlimited because available credit is generally replenished as earlier advances are repaid. A line of credit is self-replenishing even though the plan itself has a fixed expiration date, as long as during the plan's existence the consumer may use the line, repay, and reuse the credit. The creditor may occasionally or routinely verify credit information such as the consumer's continued income and employment status or information for security purposes but, to meet the definition of open-end credit, such verification of credit information may not be done as a condition of granting a consumer's request for a particular advance under the plan. In general, a credit line is self-replenishing if the consumer can take further advances as outstanding balances are repaid without being required to separately apply for those additional advances. A credit card account where the plan as a whole replenishes meets the self-replenishing criterion, notwithstanding the fact that a credit card issuer may verify credit information from time to time in connection with specific transactions. This criterion of unlimited credit distinguishes open-end credit from a series of advances made pursuant to a closed-end credit loan commitment. For example:

i. Under a closed-end commitment, the creditor might agree to lend a total of $10,000 in a series of advances as needed by the consumer. When a consumer has borrowed the full $10,000, no more is advanced under that particular agreement, even if there has been repayment of a portion of the debt. (*See* §1026.2(a)(17)(iv) for disclosure requirements when a credit card is used to obtain the advances.)

ii. This criterion does not mean that the creditor must establish a specific credit limit for the line of credit or that the line of credit must always be replenished to its original amount. The creditor may reduce a credit limit or refuse to extend new credit in a particular case due to changes in the creditor's financial condition or the consumer's creditworthiness. (The rules in §1026.40(f), however, limit the ability of a creditor to suspend credit advances for home equity plans.) While consumers should have a reasonable expectation of obtaining credit as long as they remain current and within any preset credit limits, further extensions of credit need not be an absolute right in order for the plan to meet the self-replenishing criterion.6. *Verifications of collateral value.* Creditors that otherwise meet the requirements of §1026.2(a)(20) extend open-end credit notwithstanding the fact that the creditor must verify collateral values to comply with Federal, state, or other applicable law or verifies the value of collateral in connection with a particular advance under the plan.

7. *Open-end real estate mortgages.* Some credit plans call for negotiated advances under so-called open-end real estate mortgages. Each such plan must be independently

measured against the definition of open-end credit, regardless of the terminology used in the industry to describe the plan. The fact that a particular plan is called an open-end real estate mortgage, for example, does not, by itself, mean that it is open-end credit under the regulation.

2(a)(21) Periodic Rate

1. *Basis.* The periodic rate may be stated as a percentage (for example, 1 and ½% per month) or as a decimal equivalent (for example, .015 monthly). It may be based on any portion of a year the creditor chooses. Some creditors use 1/360 of an annual rate as their periodic rate. These creditors:

i. May disclose a 1/360 rate as a *daily* periodic rate, without further explanation, if it is in fact only applied 360 days per year. But if the creditor applies that rate for 365 days, the creditor must note that fact and, of course, disclose the true annual percentage rate.

ii. Would have to apply the rate to the balance to disclose the annual percentage rate with the degree of accuracy required in the regulation (that is, within 1/8th of 1 percentage point of the rate based on the actual 365 days in the year).

2. *Transaction charges. Periodic rate* does not include initial one-time transaction charges, even if the charge is computed as a percentage of the transaction amount.

2(a)(22) Person

1. *Joint ventures.* A joint venture is an organization and is therefore a person.

2. *Attorneys.* An attorney and his or her client are considered to be the same person for purposes of this part when the attorney is acting within the scope of the attorney-client relationship with regard to a particular transaction.

3. *Trusts.* A trust and its trustee are considered to be the same person for purposes of this part.

2(a)(23) Prepaid Finance Charge

1. *General.* Prepaid finance charges must be taken into account under §1026.18(b) in computing the disclosed amount financed, and must be disclosed if the creditor provides an itemization of the amount financed under §1026.18(c).

2. *Examples.* i. Common examples of prepaid finance charges include:

A. Buyer's points.

B. Service fees.

C. Loan fees.

D. Finder's fees.

E. Loan-guarantee insurance.

F. Credit-investigation fees.

ii. However, in order for these or any other finance charges to be considered prepaid, they must be either paid separately in cash or check or withheld from the proceeds. Prepaid finance charges include any portion of the finance charge paid prior to or at closing or settlement.

3. *Exclusions. Add-on* and *discount* finance charges are not prepaid finance charges for purposes of this part. Finance charges are not *prepaid* merely because they are precomputed, whether or not a portion of the charge will be rebated to the consumer upon prepayment. (*See* the commentary to §1026.18(b).)

4. *Allocation of lump-sum payments.* In a credit sale transaction involving a lump-sum payment by the consumer and a discount or other item that is a finance charge under §1026.4, the discount or other item is a prepaid finance charge to the extent the lump-sum payment is not applied to the cash price. For example, a seller sells property to a consumer for $10,000, requires the consumer to pay $3,000 at the time of the purchase, and finances the remainder as a closed-end credit transaction. The cash price of the property is $9,000. The seller is the creditor in the transaction and therefore the $1,000 difference between the credit and cash prices (the discount) is a finance charge. (See the commentary to §1026.4(b)(9) and (c)(5).) If the creditor applies the entire $3,000 to the cash price and adds the $1,000 finance charge to the interest on the $6,000 to arrive at the total finance charge, all of the $3,000 lump-sum payment is a downpayment and the discount is not a prepaid finance charge. However, if the creditor only applies $2,000 of the lump-sum payment to the cash price, then $2,000 of the $3,000 is a downpayment and the $1,000 discount is a prepaid finance charge.

2(a)(24) Residential Mortgage Transaction

1. *Relation to other sections.* This term is important in five provisions in the regulation:

i. Section 1026.4(c)(7)—exclusions from the finance charge.

ii. Section 1026.15(f)—exemption from the right of rescission.

iii. Section 1026.18(q)—whether or not the obligation is assumable.

iv. Section 1026.20(b)—disclosure requirements for assumptions.

v. Section 1026.23(f)—exemption from the right of rescission.

2. *Lien status.* The definition is not limited to first lien transactions. For example, a consumer might assume a paid-down first mortgage (or borrow part of the purchase price) and borrow the balance of the purchase price from a creditor who takes a second mortgage. The second mortgage transaction is a *residential mortgage transaction* if the dwelling purchased is the consumer's principal residence.

3. *Principal dwelling.* A consumer can have only *one* principal dwelling at a time. Thus, a vacation or other second home would not be a principal dwelling. However, if a consumer buys or builds a new dwelling that

will become the consumer's principal dwelling within a year or upon the completion of construction, the new dwelling is considered the principal dwelling for purposes of applying this definition to a particular transaction. (*See* the commentary to §§1026.15(a) and 1026.23(a).)

4. *Construction financing.* If a transaction meets the definition of a residential mortgage transaction and the creditor chooses to disclose it as several transactions under §1026.17(c)(6), each one is considered to be a residential mortgage transaction, even if different creditors are involved. For example:

i. The creditor makes a construction loan to finance the initial construction of the consumer's principal dwelling, and the loan will be disbursed in five advances. The creditor gives six sets of disclosures (five for the construction phase and one for the permanent phase). Each one is a residential mortgage transaction.

ii. One creditor finances the initial construction of the consumer's principal dwelling and another creditor makes a loan to satisfy the construction loan and provide permanent financing. Both transactions are residential mortgage transactions.

5. *Acquisition.* i. A residential mortgage transaction finances the acquisition of a consumer's principal dwelling. The term does not include a transaction involving a consumer's principal dwelling if the consumer had previously purchased and acquired some interest to the dwelling, even though the consumer had not acquired full legal title.

ii. Examples of new transactions involving a previously acquired dwelling include the financing of a balloon payment due under a land sale contract and an extension of credit made to a joint owner of property to buy out the other joint owner's interest. In these instances, disclosures are not required under §1026.18(q) (assumability policies). However, the rescission rules of §§1026.15 and 1026.23 do apply to these new transactions.

iii. In other cases, the disclosure and rescission rules do not apply. For example, where a buyer enters into a written agreement with the creditor holding the seller's mortgage, allowing the buyer to assume the mortgage, if the buyer had previously purchased the property and agreed with the seller to make the mortgage payments, §1026.20(b) does not apply (assumptions involving residential mortgages).

6. *Multiple purpose transactions.* A transaction meets the definition of this section if any part of the loan proceeds will be used to finance the acquisition or initial construction of the consumer's principal dwelling. For example, a transaction to finance the initial construction of the consumer's principal dwelling is a residential mortgage transaction even if a portion of the funds will be disbursed directly to the consumer or used to satisfy a loan for the purchase of the land on which the dwelling will be built.

7. *Construction on previously acquired vacant land.* A residential mortgage transaction includes a loan to finance the construction of a consumer's principal dwelling on a vacant lot previously acquired by the consumer.

2(a)(25) Security Interest

1. *Threshold test.* The threshold test is whether a particular interest in property is recognized as a security interest under applicable law. The regulation does not determine whether a particular interest is a security interest under applicable law. If the creditor is unsure whether a particular interest is a security interest under applicable law (for example, if statutes and case law are either silent or inconclusive on the issue), the creditor may at its option consider such interests as security interests for Truth in Lending purposes. However, the regulation and the commentary do exclude specific interests, such as after-acquired property and accessories, from the scope of the definition regardless of their categorization under applicable law, and these named exclusions may not be disclosed as security interests under the regulation. (But see the discussion of exclusions elsewhere in the commentary to §1026.2(a)(25).)

2. *Exclusions.* The general definition of security interest excludes three groups of interests: incidental interests, interests in after-acquired property, and interests that arise solely by operation of law. These interests may not be disclosed with the disclosures required under §§1026.18, 1026.19(e) and (f), and 1026.38(l)(6), but the creditor is not precluded from preserving these rights elsewhere in the contract documents, or invoking and enforcing such rights, if it is otherwise lawful to do so. If the creditor is unsure whether a particular interest is one of the excluded interests, the creditor may, at its option, consider such interests as security interests for purposes of the Truth in Lending Act (15 U.S.C. 1601 *et seq.*) and Regulation Z.

3. *Incidental interests.* i. Incidental interests in property that are not security interests include, among other things:

A. Assignment of rents.

B. Right to condemnation proceeds.

C. Interests in accessories and replacements.

D. Interests in escrow accounts, such as for taxes and insurance.

E. Waiver of homestead or personal property rights.

ii. The notion of an *incidental interest* does not encompass an explicit security interest in an insurance policy if that policy is the primary collateral for the transaction—for example, in an insurance premium financing transaction.

4. *Operation of law.* Interests that arise solely by operation of law are excluded from the general definition. Also excluded are interests arising by operation of law that are merely repeated or referred to in the contract. However, if the creditor has an interest that arises by operation of law, such as a vendor's lien, and takes an independent security interest in the same property, such as a UCC security interest, the latter interest is a disclosable security interest unless otherwise provided.

5. *Rescission rules.* Security interests that arise solely by operation of law are security interests for purposes of rescission. Examples of such interests are mechanics' and materialmen's liens.

6. *Specificity of disclosure.* A creditor need not separately disclose multiple security interests that it may hold in the same collateral. The creditor need only disclose that the transaction is secured by the collateral, even when security interests from prior transactions remain of record and a new security interest is taken in connection with the transaction. In disclosing the fact that the transaction is secured by the collateral, the creditor also need not disclose how the security interest arose. For example, in a closed-end credit transaction, a rescission notice need not specifically state that a new security interest is "acquired" or an existing security interest is "retained" in the transaction. The acquisition or retention of a security interest in the consumer's principal dwelling instead may be disclosed in a rescission notice with a general statement such as the following: "Your home is the security for the new transaction."

Paragraph 2(a)(27)

2(a)(27)(i) Successor in interest

1. *Joint tenants and tenants by the entirety.* If a consumer who has an ownership interest as a joint tenant or tenant by the entirety in a dwelling securing a closed-end consumer credit transaction dies, a surviving joint tenant or tenant by the entirety with a right of survivorship in the property is a successor in interest as defined in §1026.2(a)(27)(i).

2. *Beneficiaries of* inter vivos *trusts.* In the event of a transfer into an *inter vivos* trust in which the consumer is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property, the beneficiaries of the *inter vivos* trust rather than the *inter vivos* trust itself are considered to be the successors in interest for purposes of §1026.2(a)(27)(i). For example, assume Consumer A transfers her home into such an *inter vivos* trust for the benefit of her spouse and herself. As of the transfer date, Consumer A and her spouse are considered successors in interest and, upon confirmation, are consumers for purposes of certain provisions of this part. If the creditor has not released Consumer A from the loan obligation, Consumer A also remains a consumer more generally for purposes of this part.

2(b) Rules of Construction

1. [Reserved]

2. *Amount.* The numerical amount must be a dollar amount unless otherwise indicated. For example, in a closed-end transaction (Subpart C), the amount financed and the amount of any payment must be expressed as a dollar amount. In some cases, an amount should be expressed as a percentage. For example, in disclosures provided before the first transaction under an open-end plan (Subpart B), creditors are permitted to explain how the amount of any finance charge will be determined; where a cash-advance fee (which is a finance charge) is a percentage of each cash advance, the amount of the finance charge for that fee is expressed as a percentage.

Section 1026.3—Exempt Transactions

1. *Relationship to §1026.12.* The provisions in §1026.12(a) and (b) governing the issuance of credit cards and the limitations on liability for their unauthorized use apply to all credit cards, even if the credit cards are issued for use in connection with extensions of credit that otherwise are exempt under this section.

3(a) Business, Commercial, Agricultural, or Organizational Credit

1. *Primary purposes.* A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt. (See comment 3(a)–2, however, with respect to credit cards.)

2. *Business purpose purchases.* i. *Business-purpose credit cards—extensions of credit for consumer purposes.* If a business-purpose credit card is issued to a person, the provisions of the regulation do not apply, other than as provided in §§1026.12(a) and 1026.12(b), even if extensions of credit for consumer purposes are occasionally made using that business-purpose credit card. For example, the billing error provisions set forth in §1026.13 do not apply to consumer-purpose extensions of credit using a business-purpose credit card.

ii. *Consumer-purpose credit cards—extensions of credit for business purposes.* If a consumer-purpose credit card is issued to a person, the provisions of the regulation apply, even to occasional extensions of credit for business purposes made using that consumer-purpose credit card. For example, a consumer may assert a billing error with respect to any extension of credit using a consumer-purpose credit card, even if the specific extension of credit on such credit card or open-end credit plan that is the subject of the dispute was made for business purposes.

3. *Factors.* In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:

i. *General.* A. The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.

B. The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.

C. The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.

D. The size of the transaction. The larger the transaction, the more likely it is to be business purpose.

E. The borrower's statement of purpose for the loan.

ii. *Business-purpose examples.* Examples of business-purpose credit include:

A. A loan to expand a business, even if it is secured by the borrower's residence or personal property.

B. A loan to improve a principal residence by putting in a business office.

C. A business account used occasionally for consumer purposes.

iii. *Consumer-purpose examples.* Examples of consumer-purpose credit include:

A. Credit extensions by a company to its employees or agents if the loans are used for personal purposes.

B. A loan secured by a mechanic's tools to pay a child's tuition.

C. A personal account used occasionally for business purposes.

4. *Non-owner-occupied rental property.* Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule. (*See* comment 3(a)–5, however, for rules relating to owner-occupied rental property.)

5. *Owner-occupied rental property.* If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:

i. Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than 2 housing units.

ii. Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than 4 housing units. Since the amended statute defines dwelling to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition. Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is business or consumer credit should be made by considering the factors listed in comment 3(a)–3.

6. *Business credit later refinanced.* Business-purpose credit that is exempt from the regulation may later be rewritten for consumer purposes. Such a transaction is consumer credit requiring disclosures only if the existing obligation is satisfied and replaced by a new obligation made for consumer purposes undertaken by the same obligor.

7. *Credit card renewal.* A consumer-purpose credit card that is subject to the regulation may be converted into a business-purpose credit card at the time of its renewal, and the resulting business-purpose credit card would be exempt from the regulation. Conversely, a business-purpose credit card that is exempt from the regulation may be converted into a consumer-purpose credit card at the time of its renewal, and the resulting consumer-purpose credit card would be subject to the regulation.

8. *Agricultural purpose.* An agricultural purpose includes the planting, propagating, nurturing, harvesting, catching, storing, exhibiting, marketing, transporting, processing, or manufacturing of food, beverages (including alcoholic beverages), flowers, trees, livestock, poultry, bees, wildlife, fish, or shellfish by a natural person engaged in farming, fishing, or growing crops, flowers, trees, livestock, poultry, bees, or wildlife. The exemption also applies to a transaction involving real property that includes a dwelling (for example, the purchase of a farm with a homestead) if the transaction is primarily for agricultural purposes.

9. *Organizational credit.* The exemption for transactions in which the borrower is not a natural person applies, for example, to loans to corporations, partnerships, associations, churches, unions, and fraternal organizations. The exemption applies regardless of the purpose of the credit extension and regardless of the fact that a natural person may guarantee or provide security for the credit. *But see* comment 3(a)–10 concerning credit extended to trusts.

10. *Trusts.* Credit extended for consumer purposes to certain trusts is considered to be credit extended to a natural person rather than credit extended to an organization. Specifically:

i. *Trusts for tax or estate planning purposes.* In some instances, a creditor may extend credit for consumer purposes to a trust that a consumer has created for tax or estate planning purposes (or both). Consumers sometimes place their assets in trust, with themselves or themselves and their families or other prospective heirs as beneficiaries, to obtain certain tax benefits and to facilitate the future administration of their estates. During their lifetimes, however, such consumers may continue to use the assets and/or income of such trusts as their property. A creditor extending credit to finance the acquisition of, for example, a consumer's dwelling that is held in such a trust, or to refinance existing debt secured by such a dwelling, may prepare the note, security instrument, and similar loan documents for execution by a trustee, rather than the beneficiaries of the trust. Regardless of the capacity or capacities in which the loan documents are executed, assuming the transaction is primarily for personal, family, or household purposes, the transaction is subject to the regulation because in substance (if not form) consumer credit is being extended.

ii. *Land trusts.* In some jurisdictions, a financial institution financing a residential real estate transaction for an individual uses a land trust mechanism. Title to the property is conveyed to the land trust for which the financial institution itself is trustee. The underlying installment note is executed by the financial institution in its capacity as trustee and payment is secured by a trust deed, reflecting title in the financial institution as trustee. In some instances, the consumer executes a personal guaranty of the indebtedness. The note provides that it is payable only out of the property specifically described in the trust deed and that the trustee has no personal liability on the note. Assuming the transactions are primarily for personal, family, or household purposes, these transactions are subject to the regulation because in substance (if not form) consumer credit is being extended.

3(b) Credit Over Applicable Threshold Amount

1. *Threshold amount.* For purposes of §1026.3(b), the threshold amount in effect during a particular period is the amount stated in comment 3(b)–3 below for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 3(b)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of §1026.3(b), the threshold amount in effect during a particular period is the amount stated below for that period.

i. Prior to July 21, 2011, the threshold amount is $25,000.

ii. From July 21, 2011 through December 31, 2011, the threshold amount is $50,000.

iii. From January 1, 2012 through December 31, 2012, the threshold amount is $51,800.

iv. From January 1, 2013 through December 31, 2013, the threshold amount is $53,000.

v. From January 1, 2014 through December 31, 2014, the threshold amount is $53,500.

vi. From January 1, 2015 through December 31, 2015, the threshold amount is $54,600.

vii. From January 1, 2016 through December 31, 2016, the threshold amount is $54,600.

viii. From January 1, 2017 through December 31, 2017, the threshold amount is $54,600.

ix. From January 1, 2018 through December 31, 2018, the threshold amount is $55,800.

x. From January 1, 2019 through December 31, 2019, the threshold amount is $57,200.

xi. From January 1, 2020 through December 31, 2020, the threshold amount is $58,300.

xii. From January 1, 2021 through December 31, 2021, the threshold amount is $58,300.

xiii. From January 1, 2022 through December 31, 2022, the threshold amount is $61,000.

4. *Open-end credit.* i. *Qualifying for exemption.* An open-end account is exempt under § 1026.3(b) (unless secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling) if either of the following conditions is met:

A. The creditor makes an initial extension of credit at or after account opening that exceeds the threshold amount in effect at the time the initial extension is made. If a creditor makes an initial extension of credit after account opening that does not exceed the threshold amount in effect at the time the extension is made, the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable), including but not limited to the requirements of § 1026.6 (account-opening disclosures), § 1026.7 (periodic statements), § 1026.52 (limitations on fees), and § 1026.55 (limitations on increasing annual percentage rates, fees, and charges). For example:

1. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $60,000. In this circumstance, no requirements of this part apply to the account.

2. Assume that the threshold amount in effect on January 1 is $50,000. On February 1, an account is opened but the creditor does not make an initial extension of credit at that time. On July 1, the creditor makes an initial extension of credit of $50,000 or less. In this circumstance, the account is not exempt and the creditor must have satisfied all of the applicable requirements of this part from the date the account was opened (or earlier, if applicable).

B. The creditor makes a firm written commitment at account opening to extend a total amount of credit in excess of the threshold amount in effect at the time the account is opened with no requirement of additional credit information for any advances on the account (except as permitted from time to time with respect to open-end accounts pursuant to § 1026.2(a)(20)).

ii. *Subsequent changes generally.* Subsequent changes to an open-end account or the threshold amount may result in the account no longer qualifying for the exemption in § 1026.3(b). In these circumstances, the creditor must begin to comply with all of the applicable requirements of this part within a reasonable period of time after the account ceases to be exempt. Once an account ceases to be exempt, the requirements of this part apply to any balances on the account. The creditor, however, is not required to comply with the requirements of this part with respect to the period of time during which the account was exempt. For example, if an open-end credit account ceases to be exempt, the creditor must within a reasonable period of time provide the disclosures required by § 1026.6 reflecting the current terms of the account and begin to provide periodic statements consistent with § 1026.7. However, the creditor is not required to disclose fees or charges imposed while the account was exempt. Furthermore, if the creditor provided disclosures consistent with the requirements of this part while the account was exempt, it is not required to provide disclosures required by § 1026.6 reflecting the current terms of the account. See also comment 3(b)–6.

iii. *Subsequent changes when exemption is based on initial extension of credit.* If a creditor makes an initial extension of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount, including an increase pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. Furthermore, in these circumstances, the account remains exempt even if there are no further extensions of credit, subsequent extensions of credit do not exceed the threshold amount, the account balance is subsequently reduced below the threshold amount (such as through repayment of the extension), or the credit limit for the account is subsequently reduced below the threshold amount. However, if the initial extension of credit on an account does not exceed the threshold amount in effect at the time of the extension, the account is not exempt under § 1026.3(b) even if a subsequent extension exceeds the threshold amount or if the account balance later exceeds the threshold amount (for example, due to the subsequent accrual of interest).

iv. *Subsequent changes when exemption is based on firm commitment.*

A. *General.* If a creditor makes a firm written commitment at account opening to extend a total amount of credit that exceeds the threshold amount in effect at that time, the open-end account remains exempt under § 1026.3(b) regardless of a subsequent increase in the threshold amount pursuant to § 1026.3(b)(1)(ii) as a result of an increase in the CPI–W. However, see comment 3(b)–8 with respect to the increase in the threshold amount from $25,000 to $50,000. If an open-end account is exempt under § 1026.3(b) based on a firm commitment to extend credit, the account remains exempt even if the amount of credit actually extended does not exceed the threshold amount. In contrast, if the firm commitment does not exceed the threshold amount at account opening, the account is not exempt under § 1026.3(b) even if the account balance later exceeds the threshold amount. In addition, if a creditor reduces a firm commitment, the account ceases to be exempt unless the reduced firm commitment exceeds the threshold amount in effect at the time of the reduction. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under §1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If during year one the creditor reduces its firm commitment to $53,000, the account remains exempt under §1026.3(b). However, if during year one the creditor reduces its firm commitment to $40,000, the account is no longer exempt under §1026.3(b).

2. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under §1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. If the threshold amount is $56,000 on January 1 of year six as a result of increases in the CPI–W, the account remains exempt. However, if the creditor reduces its firm commitment to $54,000 on July 1 of year six, the account ceases to be exempt under §1026.3(b).

B. *Initial extension of credit.* If an open-end account qualifies for a §1026.3(b) exemption at account opening based on a firm commitment, that account may also subsequently qualify for a §1026.3(b) exemption based on an initial extension of credit. However, that initial extension must be a single advance in excess of the threshold amount in effect at the time the extension is made. In addition, the account must continue to qualify for an exemption based on the firm commitment until the initial extension of credit is made. For example:

1. Assume that, at account opening in year one, the threshold amount in effect is $50,000 and the account is exempt under §1026.3(b) based on the creditor's firm commitment to extend $55,000 in credit. The account is not used for an extension of credit during year one. On January 1 of year two, the threshold amount is increased to $51,000 pursuant to §1026.3(b)(1)(ii) as a result of an increase in the CPI–W. On July 1 of year two, the consumer uses the account for an initial extension of $52,000. As a result of this extension of credit, the account remains exempt under §1026.3(b) even if, after July 1 of year two, the creditor reduces the firm commitment to $51,000 or less.

2. Same facts as in paragraph 4.iv.B.1 of this section except that the consumer uses the account for an initial extension of $30,000 on July 1 of year two and for an extension of $22,000 on July 15 of year two. In these circumstances, the account is not exempt under §1026.3(b) based on the $30,000 initial extension of credit because that extension did not exceed the applicable threshold amount ($51,000), although the account remains exempt based on the firm commitment to extend $55,000 in credit.

3. Same facts as in paragraph 4.iv.B.1 of this section except that, on April 1 of year two, the creditor reduces the firm commitment to $50,000, which is below the $51,000 threshold then in effect. Because the account ceases to qualify for a §1026.3(b) exemption on April 1 of year two, the account does not qualify for a §1026.3(b) exemption based on a $52,000 initial extension of credit on July 1 of year two.

5. *Closed-end credit.* i. *Qualifying for exemption.* A closed-end loan is exempt under §1026.3(b) (unless the extension of credit is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling; or is a private education loan as defined in §1026.46(b)(5)), if either of the following conditions is met:

A. The creditor makes an extension of credit at consummation that exceeds the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under §1026.3(b) even if the amount owed is subsequently reduced below the threshold amount (such as through repayment of the loan).

B. The creditor makes a commitment at consummation to extend a total amount of credit in excess of the threshold amount in effect at the time of consummation. In these circumstances, the loan remains exempt under §1026.3(b) even if the total amount of credit extended does not exceed the threshold amount.

ii. *Subsequent changes.* If a creditor makes a closed-end extension of credit or commitment to extend closed-end credit that exceeds the threshold amount in effect at the time of consummation, the closed-end loan remains exempt under §1026.3(b) regardless of a subsequent increase in the threshold amount. However, a closed-end loan is not exempt under §1026.3(b) merely because it is used to satisfy and replace an existing exempt loan, unless the new extension of credit is itself exempt under the applicable threshold amount. For example, assume a closed-end loan that qualified for a §1026.3(b) exemption at consummation in year one is refinanced in year ten and that the new loan amount is less than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of this part with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, which is not exempt under §1026.3(b). See also comment 3(b)–6.

6. *Addition of a security interest in real property or a dwelling after account opening or consummation.* i. *Open-end credit.* For open-end accounts, if after account opening a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, a previously exempt account ceases to be exempt under §1026.3(b) and the creditor must begin

to comply with all of the applicable requirements of this part within a reasonable period of time. See comment 3(b)–4.ii. If a security interest is taken in the consumer's principal dwelling, the creditor must also give the consumer the right to rescind the security interest consistent with §1026.15.

ii. *Closed-end credit.* For closed-end loans, if after consummation a security interest is taken in real property, or in personal property used or expected to be used as the consumer's principal dwelling, an exempt loan remains exempt under §1026.3(b). However, the addition of a security interest in the consumer's principal dwelling is a transaction for purposes of §1026.23, and the creditor must give the consumer the right to rescind the security interest consistent with that section. See §1026.23(a)(1) and its commentary. In contrast, if a closed-end loan that is exempt under §1026.3(b) is satisfied and replaced by a loan that is secured by real property, or by personal property used or expected to be used as the consumer's principal dwelling, the new loan is not exempt under §1026.3(b), and the creditor must comply with all of the applicable requirements of this part. See comment 3(b)–5.

7. *Application to extensions secured by mobile homes.* Because a mobile home can be a dwelling under §1026.2(a)(19), the exemption in §1026.3(b) does not apply to a credit extension secured by a mobile home that is used or expected to be used as the principal dwelling of the consumer. See comment 3(b)–6.

8. *Transition rule for open-end accounts exempt prior to July 21, 2011.* Section 1026.3(b)(2) applies only to open-end accounts opened prior to July 21, 2011. Section 1026.3(b)(2) does not apply if a security interest is taken by the creditor in real property, or in personal property used or expected to be used as the consumer's principal dwelling. If, on July 20, 2011, an open-end account is exempt under §1026.3(b) based on a firm commitment to extend credit in excess of $25,000, the account remains exempt under §1026.3(b)(2) until December 31, 2011 (unless the firm commitment is reduced to $25,000 or less). If the firm commitment is increased on or before December 31, 2011 to an amount in excess of $50,000, the account remains exempt under §1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W. If the firm commitment is not increased on or before December 31, 2011 to an amount in excess of $50,000, the account ceases to be exempt under §1026.3(b) based on a firm commitment to extend credit. For example:

i. Assume that, on July 20, 2011, the account is exempt under §1026.3(b) based on the creditor's firm commitment to extend $30,000 in credit. On November 1, 2011, the creditor increases the firm commitment on the account to $55,000. In these circumstances, the account remains exempt under §1026.3(b)(1) regardless of subsequent increases in the threshold amount as a result of increases in the CPI–W.

ii. Same facts as paragraph 8.i of this section except, on November 1, 2011, the creditor increases the firm commitment on the account to $40,000. In these circumstances, the account ceases to be exempt under §1026.3(b)(2) after December 31, 2011, and the creditor must begin to comply with the applicable requirements of this part.

3(c) Public Utility Credit

1. *Examples.* Examples of public utility services include:

i. *General.* A. Gas, water, or electrical services.

B. Cable television services.

C. Installation of new sewer lines, water lines, conduits, telephone poles, or metering equipment in an area not already serviced by the utility.

ii. *Extensions of credit not covered.* The exemption does not apply to extensions of credit, for example:

A. To purchase appliances such as gas or electric ranges, grills, or telephones.

B. To finance home improvements such as new heating or air conditioning systems.

3(d) Securities or Commodities Accounts

1. *Coverage.* This exemption does not apply to a transaction with a broker registered solely with the state, or to a separate credit extension in which the proceeds are used to purchase securities.

3(e) Home Fuel Budget Plans

1. *Definition.* Under a typical home fuel budget plan, the fuel dealer estimates the total cost of fuel for the season, bills the customer for an average monthly payment, and makes an adjustment in the final payment for any difference between the estimated and the actual cost of the fuel. Fuel is delivered as needed, no finance charge is assessed, and the customer may withdraw from the plan at any time. Under these circumstances, the arrangement is exempt from the regulation, even if a charge to cover the billing costs is imposed.

3(f) Student Loan Programs

1. *Coverage.* This exemption applies to loans made, insured, or guaranteed under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070 *et seq.*). This exemption does not apply to private education loans as defined by §1026.46(b)(5).

3(h) Partial exemption for certain mortgage loans.

1. *Partial exemption.* Section 1026.3(h) exempts certain transactions from the disclosures described in §1026.19(g), and, under certain circumstances, §1026.19(e) and (f). Section 1026.3(h) exempts transactions from §1026.19(e) and (f) if the creditor chooses to provide disclosures described in §1026.18 that comply with this part pursuant to §1026.3(h)(6)(i), but does not exempt transactions from §1026.19(e) and (f) if the creditor chooses to provide disclosures described in §1026.19(e) and (f) that comply with this part pursuant to §1026.3(h)(6)(ii). Creditors may provide, at their option, either the disclosures described in §1026.18 or the disclosures described in §1026.19(e) and (f). In providing these disclosures, creditors must comply with all provisions of this part relating to those disclosures. Section 1026.3(h) does not exempt transactions from any of the other requirements of this part, to the extent they are applicable. For transactions that would otherwise be subject to §1026.19(e), (f), and (g), creditors must comply with all other applicable requirements of this part, including the consumer's right to rescind the transaction under §1026.23, to the extent that provision is applicable.

2. *Establishing compliance.* 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) must be reflected in the loan contract. The other requirements of §1026.3(h) need not be reflected in the loan contract, but the creditor must retain evidence of compliance with those provisions, as required by §1026.25(a) or (c), as applicable. In particular, because the exemption in §1026.3(h) means the creditor is not required to provide the disclosures of closing costs under §1026.37 or §1026.38 (unless the creditor chooses to provide disclosures described in §1026.19(e) and (f) that comply with this part), the creditor must retain evidence reflecting that the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, a bona fide and reasonable application fee, and a bona fide and reasonable housing counseling fee, and that the total of application and housing counseling fees is less than 1 percent of the amount of credit extended, in accordance with §1026.3(h)(5). Unless the itemization of the amount financed provided to the consumer sufficiently details this requirement, the creditor must establish compliance with §1026.3(h)(5) by some other written document and retain it in accordance with §1026.25(a) or (c), as applicable.

3. *Relationship to partial exemption for certain federally related mortgage loans.* Regulation X provides a partial exemption from certain Regulation X disclosure requirements in 12 CFR 1024.5(d). The partial exemption in Regulation X, 12 CFR 1024.5(d)(2) provides that certain Regulation X disclosure requirements do not apply to a federally related mortgage loan, as defined in Regulation X, 12 CFR 1024.2(b), that satisfies the criteria in §1026.3(h) of this part. For a federally related mortgage loan that is not otherwise covered by Regulation Z, lenders may satisfy the criteria in §1026.3(h)(6) by providing the disclosures described in §1026.18 that comply with this part or the disclosures described in §1026.19(e) and (f) that comply with this part.

4. *Recording fees.* See comment 37(g)(1)–1 for a discussion of what constitutes a recording fee.

5. *Transfer taxes.* See comment 37(g)(1)–3 for a discussion of what constitutes a transfer tax.

Section 1026.4—Finance Charge

4(a) Definition

1. *Charges in comparable cash transactions.* Charges imposed uniformly in cash and credit transactions are not finance charges. In determining whether an item is a finance charge, the creditor should compare the credit transaction in question with a similar cash transaction. A creditor financing the sale of property or services may compare charges with those payable in a similar cash transaction by the seller of the property or service.

i. For example, the following items are not finance charges:

A. Taxes, license fees, or registration fees paid by both cash and credit customers.

B. Discounts that are available to cash and credit customers, such as quantity discounts.

C. Discounts available to a particular group of consumers because they meet certain criteria, such as being members of an organization or having accounts at a particular financial institution. This is the case even if an individual must pay cash to obtain the discount, provided that credit customers who are members of the group and do not qualify for the discount pay no more than the nonmember cash customers.

D. Charges for a service policy, auto club membership, or policy of insurance against latent defects offered to or required of both cash and credit customers for the same price.

ii. In contrast, the following items are finance charges:

A. Inspection and handling fees for the staged disbursement of construction-loan proceeds.

B. Fees for preparing a Truth in Lending disclosure statement, if permitted by law (for example, the Real Estate Settlement Procedures Act prohibits such charges in certain transactions secured by real property).

C. Charges for a required maintenance or service contract imposed only in a credit transaction.

iii. If the charge in a credit transaction exceeds the charge imposed in a comparable cash transaction, only the difference is a finance charge. For example:

A. If an escrow agent is used in both cash and credit sales of real estate and the agent's charge is $100 in a cash transaction and $150 in a credit transaction, only $50 is a finance charge.

2. *Costs of doing business.* Charges absorbed by the creditor as a cost of doing business are not finance charges, even though the creditor may take such costs into consideration in determining the interest rate to be charged or the cash price of the property or service sold. However, if the creditor separately imposes a charge on the consumer to cover certain costs, the charge is a finance charge if it otherwise meets the definition. For example:

i. A discount imposed on a credit obligation when it is assigned by a seller-creditor to another party is not a finance charge as long as the discount is not separately imposed on the consumer. (*See* § 1026.4(b)(6).)

ii. A tax imposed by a state or other governmental body on a creditor is not a finance charge if the creditor absorbs the tax as a cost of doing business and does not separately impose the tax on the consumer. (For additional discussion of the treatment of taxes, see other commentary to § 1026.4(a).)

3. *Forfeitures of interest.* If the creditor reduces the interest rate it pays or stops paying interest on the consumer's deposit account or any portion of it for the term of a credit transaction (including, for example, an overdraft on a checking account or a loan secured by a certificate of deposit), the interest lost is a finance charge. (See the commentary to § 1026.4(c)(6).) For example:

i. A consumer borrows $5,000 for 90 days and secures it with a $10,000 certificate of deposit paying 15% interest. The creditor charges the consumer an interest rate of 6% on the loan and stops paying interest on $5,000 of the $10,000 certificate for the term of the loan. The interest lost is a finance charge and must be reflected in the annual percentage rate on the loan.

ii. However, the consumer must be entitled to the interest that is not paid in order for the lost interest to be a finance charge. For example:

A. A consumer wishes to buy from a financial institution a $10,000 certificate of deposit paying 15% interest but has only $4,000. The financial institution offers to lend the consumer $6,000 at an interest rate of 6% but will pay the 15% interest only on the amount of the consumer's deposit, $4,000. The creditor's failure to pay interest on the $6,000 does not result in an additional finance charge on the extension of credit, provided the consumer is entitled by the deposit agreement with the financial institution to interest only on the amount of the consumer's deposit.

B. A consumer enters into a combined time deposit/credit agreement with a financial institution that establishes a time deposit account and an open-end line of credit. The line of credit may be used to borrow against the funds in the time deposit. The agreement provides for an interest rate on any credit extension of, for example, 1%. In addition, the agreement states that the creditor will pay 0% interest on the amount of the time deposit that corresponds to the amount of the credit extension(s). The interest that is not paid on the time deposit by the financial institution is not a finance charge (and therefore does not affect the annual percentage rate computation).

4. *Treatment of transaction fees on credit card plans.* Except with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61, which are addressed in more detail in §§ 1026.4(b)(11) and 1026.61, any transaction charge imposed on a cardholder by a card issuer is a finance charge, regardless of whether the issuer imposes the same, greater, or lesser charge on withdrawals of funds from an asset account such as a checking or savings account. For example:

i. Any charge imposed on a credit cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is a finance charge regardless of whether the card issuer imposes a charge on its debit cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account.

ii. Any charge imposed on a credit cardholder for making a purchase or obtaining a cash advance outside the United States, with a foreign merchant, or in a foreign currency is a finance charge, regardless of whether a charge is imposed on debit cardholders for such transactions. The following principles apply in determining what is a foreign transaction fee and the amount of the fee:

A. Included are (1) fees imposed when transactions are made in a foreign currency and converted to U.S. dollars; (2) fees imposed when transactions are made in U.S. dollars outside the U.S.; and (3) fees imposed when transactions are made (whether in a foreign currency or in U.S. dollars) with a foreign merchant, such as via a merchant's Web site. For example, a consumer may use a credit card to make a purchase in Bermuda, in U.S. dollars, and the card issuer may impose a fee because the transaction took place outside the United States.

B. Included are fees imposed by the card issuer and fees imposed by a third party that performs the conversion, such as a credit card network or the card issuer's corporate parent. (For example, in a transaction processed through a credit card network, the network may impose a 1 percent charge and the card-issuing bank may impose an additional 2 percent charge, for a total of a 3 percentage point foreign transaction fee being imposed on the consumer.)

C. Fees imposed by a third party are included only if they are directly passed on to the consumer. For example, if a credit card network imposes a 1 percent fee on the card issuer, but the card issuer absorbs the fee as a cost of doing business (and only passes it on to consumers in the general sense that the interest and fees are imposed on all its customers to recover its costs), then the fee is not a foreign transaction fee and need not be disclosed. In another example, if the credit card network imposes a 1 percent fee for a foreign transaction on the card issuer, and the card issuer imposes this same fee on the consumer who engaged in the foreign transaction, then the fee is a foreign transaction fee and a finance charge.

D. A card issuer is not required to disclose a fee imposed by a merchant. For example, if the merchant itself performs the currency conversion and adds a fee, this fee need not be disclosed by the card issuer. Under §1026.9(d), a card issuer is not obligated to disclose finance charges imposed by a party honoring a credit card, such as a merchant, although the merchant is required to disclose such a finance charge if the merchant is subject to the Truth in Lending Act and Regulation Z.

E. The foreign transaction fee is determined by first calculating the dollar amount of the transaction by using a currency conversion rate outside the card issuer's and third party's control. Any amount in excess of that dollar amount is a foreign transaction fee. Conversion rates outside the card issuer's and third party's control include, for example, a rate selected from the range of rates available in the wholesale currency exchange markets, an average of the highest and lowest rates available in such markets, or a government-mandated or government-managed exchange rate (or a rate selected from a range of such rates).

F. The rate used for a particular transaction need not be the same rate that the card issuer (or third party) itself obtains in its currency conversion operations. In addition, the rate used for a particular transaction need not be the rate in effect on the date of the transaction (purchase or cash advance).

5. *Taxes.* i. Generally, a tax imposed by a state or other governmental body solely on a creditor is a finance charge if the creditor separately imposes the charge on the consumer.

ii. In contrast, a tax is not a finance charge (even if it is collected by the creditor) if applicable law imposes the tax:

A. Solely on the consumer;

B. On the creditor and the consumer jointly;

C. On the credit transaction, without indicating which party is liable for the tax; or

D. On the creditor, if applicable law directs or authorizes the creditor to pass the tax on to the consumer. (For purposes of this section, if applicable law is silent as to passing on the tax, the law is deemed not to authorize passing it on.)

iii. For example, a stamp tax, property tax, intangible tax, or any other state or local tax imposed on the consumer, or on the credit transaction, is not a finance charge even if the tax is collected by the creditor.

iv. In addition, a tax is not a finance charge if it is excluded from the finance charge by another provision of the regulation or commentary (for example, if the tax is imposed uniformly in cash and credit transactions).

4(a)(1) Charges by Third Parties

1. *Choosing the provider of a required service.* An example of a third-party charge included in the finance charge is the cost of required mortgage insurance, even if the consumer is allowed to choose the insurer.

2. *Annuities associated with reverse mortgages.* Some creditors offer annuities in connection with a reverse-mortgage transaction. The amount of the premium is a finance charge if the creditor requires the purchase of the annuity incident to the credit. Examples include the following:

i. The credit documents reflect the purchase of an annuity from a specific provider or providers.

ii. The creditor assesses an additional charge on consumers who do not purchase an annuity from a specific provider.

iii. The annuity is intended to replace in whole or in part the creditor's payments to the consumer either immediately or at some future date.

4(a)(2) Special Rule; Closing Agent Charges

1. *General.* This rule applies to charges by a third party serving as the closing agent for the particular loan. An example of a closing agent charge included in the finance charge is a courier fee where the creditor requires the use of a courier.

2. *Required closing agent.* If the creditor requires the use of a closing agent, fees charged by the closing agent are included in the finance charge only if the creditor requires the particular service, requires the imposition of the charge, or retains a portion of the charge. Fees charged by a third-party

closing agent may be otherwise excluded from the finance charge under §1026.4. For example, a fee that would be paid in a comparable cash transaction may be excluded under §1026.4(a). A charge for conducting or attending a closing is a finance charge and may be excluded only if the charge is included in and is incidental to a lump-sum fee excluded under §1026.4(c)(7).

4(a)(3) Special Rule; Mortgage Broker Fees

1. *General*. A fee charged by a mortgage broker is excluded from the finance charge if it is the type of fee that is also excluded when charged by the creditor. For example, to exclude an application fee from the finance charge under §1026.4(c)(1), a mortgage broker must charge the fee to all applicants for credit, whether or not credit is extended.

2. *Coverage*. This rule applies to charges paid by consumers to a mortgage broker in connection with a consumer credit transaction secured by real property or a dwelling.

3. *Compensation by lender*. The rule requires all mortgage broker fees to be included in the finance charge. Creditors sometimes compensate mortgage brokers under a separate arrangement with those parties. Creditors may draw on amounts paid by the consumer, such as points or closing costs, to fund their payment to the broker. Compensation paid by a creditor to a mortgage broker under an agreement is not included as a separate component of a consumer's total finance charge (although this compensation may be reflected in the finance charge if it comes from amounts paid by the consumer to the creditor that are finance charges, such as points and interest).

4(b) Examples of Finance Charges

1. *Relationship to other provisions*. Charges or fees shown as examples of finance charges in §1026.4(b) may be excludable under §1026.4(c), (d), or (e). For example:

i. Premiums for credit life insurance, shown as an example of a finance charge under §1026.4(b)(7), may be excluded if the requirements of §1026.4(d)(1) are met.

ii. Appraisal fees mentioned in §1026.4(b)(4) are excluded for real property or residential mortgage transactions under §1026.4(c)(7).

Paragraph 4(b)(2)

1. *Checking or transaction account charges*. A charge imposed in connection with a credit feature on a checking or transaction account (other than a prepaid account as defined in §1026.61) is a finance charge under §1026.4(b)(2) to the extent the charge exceeds the charge for a similar account without a credit feature. If a charge for an account with a credit feature does not exceed the charge for an account without a credit feature, the charge is not a finance charge under §1026.4(b)(2). To illustrate:

i. A $5 service charge is imposed on an account with an overdraft line of credit (where the institution has agreed in writing to pay an overdraft), while a $3 service charge is imposed on an account without a credit feature; the $2 difference is a finance charge. (If the difference is not related to account activity, however, it may be excludable as a participation fee. See the commentary to §1026.4(c)(4).)

ii. A $5 service charge is imposed for each item that results in an overdraft on an account with an overdraft line of credit, while a $25 service charge is imposed for paying or returning each item on a similar account without a credit feature; the $5 charge is not a finance charge.

2. *Prepaid accounts*. Fee or charges related to credit offered in connection with prepaid accounts as defined in §1026.61 are discussed in §§1026.4(b)(11) and 1026.61 and related commentary.

Paragraph 4(b)(3)

1. *Assumption fees*. The assumption fees mentioned in §1026.4(b)(3) are finance charges only when the assumption occurs and the fee is imposed on the new buyer. The assumption fee is a finance charge in the new buyer's transaction.

Paragraph 4(b)(5)

1. *Credit loss insurance*. Common examples of the insurance against credit loss mentioned in §1026.4(b)(5) are mortgage guaranty insurance, holder in due course insurance, and repossession insurance. Such premiums must be included in the finance charge only for the period that the creditor requires the insurance to be maintained.

2. *Residual value insurance*. Where a creditor requires a consumer to maintain residual value insurance or where the creditor is a beneficiary of a residual value insurance policy written in connection with an extension of credit (as is the case in some forms of automobile balloon-payment financing, for example), the premiums for the insurance must be included in the finance charge for the period that the insurance is to be maintained. If a creditor pays for residual-value insurance and absorbs the payment as a cost of doing business, such costs are not considered finance charges. (See comment 4(a)–2.)

Paragraphs 4(b)(7) and (b)(8)

1. *Pre-existing insurance policy*. The insurance discussed in §1026.4(b)(7) and (b)(8) does not include an insurance policy (such as a life or an automobile collision insurance policy) that is already owned by the consumer, even if the policy is assigned to or otherwise made payable to the creditor to satisfy an insurance requirement. Such a policy is not

''written in connection with'' the transaction, as long as the insurance was not purchased for use in that credit extension, since it was previously owned by the consumer.

2. *Insurance written in connection with a transaction.* Credit insurance sold before or after an open-end (not home-secured) plan is opened is considered ''written in connection with a credit transaction.'' Insurance sold after consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of §1026.40 is not considered ''written in connection with'' the credit transaction if the insurance is written because of the consumer's default (for example, by failing to obtain or maintain required property insurance) or because the consumer requests insurance after consummation or the opening of a home-equity plan subject to the requirements of §1026.40 (although credit-sale disclosures may be required for the insurance sold after consummation if it is financed).

3. *Substitution of life insurance.* The premium for a life insurance policy purchased and assigned to satisfy a credit life insurance requirement must be included in the finance charge, but only to the extent of the cost of the credit life insurance if purchased from the creditor or the actual cost of the policy (if that is less than the cost of the insurance available from the creditor). If the creditor does not offer the required insurance, the premium to be included in the finance charge is the cost of a policy of insurance of the type, amount, and term required by the creditor.

4. *Other insurance.* Fees for required insurance not of the types described in §1026.4(b)(7) and (b)(8) are finance charges and are not excludable. For example, the premium for a hospitalization insurance policy, if it is required to be purchased only in a credit transaction, is a finance charge.

Paragraph 4(b)(9)

1. *Discounts for payment by other than credit.* The discounts to induce payment by other than credit mentioned in §1026.4(b)(9) include, for example, the following situation: The seller of land offers individual tracts for $10,000 each. If the purchaser pays cash, the price is $9,000, but if the purchaser finances the tract with the seller the price is $10,000. The $1,000 difference is a finance charge for those who buy the tracts on credit.

2. *Exception for cash discounts.* i. Creditors may exclude from the finance charge discounts offered to consumers for using cash or another means of payment instead of using a credit card or an open-end plan. The discount may be in whatever amount the seller desires, either as a percentage of the regular price (as defined in section 103(z) of the Act, as amended) or a dollar amount. Pursuant to section 167(b) of the Act, this provision applies only to transactions involving an open-end credit plan or a credit card (whether open-end or closed-end credit is extended on the card). The merchant must offer the discount to prospective buyers whether or not they are cardholders or members of the open-end credit plan. The merchant may, however, make other distinctions. For example:

A. The merchant may limit the discount to payment by cash and not offer it for payment by check or by use of a debit card.

B. The merchant may establish a discount plan that allows a 15% discount for payment by cash, a 10% discount for payment by check, and a 5% discount for payment by a particular credit card. None of these discounts is a finance charge.

ii. Pursuant to section 171(c) of the Act, discounts excluded from the finance charge under this paragraph are also excluded from treatment as a finance charge or other charge for credit under any state usury or disclosure laws.

3. *Determination of the regular price.* i. The *regular price* is critical in determining whether the difference between the price charged to cash customers and credit customers is a *discount* or a *surcharge*, as these terms are defined in amended section 103 of the Act. The *regular price* is defined in section 103 of the Act as—* * * the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit account or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted * * *.

ii. For example, in the sale of motor vehicle fuel, the tagged or posted price is the price displayed at the pump. As a result, the higher price (the open-end credit or credit card price) must be displayed at the pump, either alone or along with the cash price. Service station operators may designate separate pumps or separate islands as being for either cash or credit purchases and display only the appropriate prices at the various pumps. If a pump is capable of displaying on its meter either a cash or a credit price depending upon the consumer's means of payment, both the cash price and the credit price must be displayed at the pump. A service station operator may display the cash price of fuel by itself on a curb sign, as long as the sign clearly indicates that the price is limited to cash purchases.

Paragraph 4(b)(10)

1. *Definition.* Debt cancellation coverage provides for payment or satisfaction of all or part of a debt when a specified event occurs. The term ''debt cancellation coverage'' includes guaranteed automobile protection, or ''GAP,'' agreements, which pay or satisfy the

remaining debt after property insurance benefits are exhausted. Debt suspension coverage provides for suspension of the obligation to make one or more payments on the date(s) otherwise required by the credit agreement, when a specified event occurs. The term ''debt suspension'' does not include loan payment deferral arrangements in which the triggering event is the bank's unilateral decision to allow a deferral of payment and the borrower's unilateral election to do so, such as by skipping or reducing one or more payments (''skip payments'').

2. *Coverage written in connection with a transaction.* Coverage sold after consummation in closed-end credit transactions or after the opening of a home-equity plan subject to the requirements of §1026.40 is not ''written in connection with'' the credit transaction if the coverage is written because the consumer requests coverage after consummation or the opening of a home-equity plan subject to the requirements of §1026.40 (although credit-sale disclosures may be required for the coverage sold after consummation if it is financed). Coverage sold before or after an open-end (not home-secured) plan is opened is considered ''written in connection with a credit transaction.''

Paragraph 4(b)(11)

1. *Credit in connection with a prepaid card.* Section 1026.61 governs credit offered in connection with a prepaid card.

i. A separate credit feature that meets the conditions of §1026.61(a)(2)(i) is defined as a covered separate credit feature accessible by a hybrid prepaid-credit card. *See* §1026.61(a)(2)(i) and comment 61(a)(2)–4. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. The rules for classification of fees or charges as finance charges with respect to the covered separate credit feature are specified in §1026.4(b)(11) and related commentary.

ii. If a prepaid card can access a non-covered separate credit feature as described in §1026.61(a)(2)(ii), the card is not a hybrid prepaid-credit card with respect to that credit feature. In that case:

A. Section 1026.4(b)(11) and related commentary do not apply to fees or charges imposed on the non-covered separate credit feature; instead, the general rules set forth in §1026.4 determine whether these fees or charges are finance charges; and

B. Fees or charges on the asset feature of the prepaid account are not finance charges under §1026.4 with respect to the non-covered separate credit feature. See comment 61(a)(2)–5.iii for guidance on the applicability of this regulation in connection with non-covered credit features accessible by prepaid cards.

iii. If the prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to §1026.61(a)(4), with regard to that credit, fees charged on the asset feature of the prepaid account in accordance with §1026.61(a)(4)(ii)(B) are not finance charges.

Paragraph 4(b)(11)(i)

1. *Transaction fees imposed on the covered separate credit feature.* Consistent with comment 4(a)–4, any transaction charge imposed on a cardholder by a card issuer on a covered separate credit feature accessible by a hybrid prepaid-credit card is a finance charge. Transaction charges that are imposed on the asset feature of a prepaid account are subject to §1026.4(b)(11)(ii) and related commentary, instead of §1026.4(b)(11)(i).

Paragraph 4(b)(11)(ii)

1. *Fees or charges imposed on the asset feature of a prepaid account.* i. Under §1026.4(b)(11)(ii), with regard to a covered separate credit feature and an asset feature of a prepaid account that are both accessible by a hybrid prepaid-credit card as defined §1026.61, any fee or charge imposed on the asset feature of the prepaid account is a finance charge to the extent that the amount of the fee or charge exceeds comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessible by a hybrid prepaid-credit card. This comment provides guidance with respect to comparable fees under §1026.4(b)(11)(ii) for the two types of credit extensions on a covered separate credit feature. *See* §1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii. Comment 4(b)(11)(ii)–1.ii provides guidance for credit extensions where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. Comment 4(b)(11)(ii)–1.iii provides guidance for credit extensions where a consumer draws or transfers credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

ii. Where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of authorizing, settling, or otherwise completing a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, any per transaction fees imposed on the asset feature of prepaid accounts, including load and transfer fees, for such credit from the credit feature are comparable only to per transaction fees for each transaction to access funds in the asset feature of a prepaid account that are imposed on prepaid accounts in the same prepaid account program that does not have such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of §1026.4(b)(11)(ii). To illustrate:

A. Assume a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Also, assume that the prepaid account issuer charges $0.50 per transaction on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, the $0.50 per transaction fee imposed on the asset feature of the prepaid account with a covered separate credit feature is not a finance charge.

B. Assume same facts as in paragraph A above, except that assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account for each transaction where the hybrid prepaid-credit card accesses credit from the covered separate credit feature in the course of the transaction. In this case, the additional $0.75 is a finance charge.

C. Assume a prepaid account issuer charges $0.50 on prepaid accounts without a covered separate credit feature for each transaction that accesses funds in the asset feature of the prepaid accounts. Assume also that the prepaid account issuer charges both a $0.50 per transaction fee and a $1.25 transfer fee on the asset feature of prepaid accounts in the same prepaid program where the hybrid prepaid-credit card accesses credit from a covered separate credit feature in the course of a transaction. In this case, both fees charged on a per-transaction basis for the credit transaction (*i.e.*, a combined fee of $1.75 per transaction) must be compared to the $0.50 per transaction fee to access funds in the asset feature of the prepaid account without a covered separate credit feature. Accordingly, the $1.25 excess is a finance charge.

D. Assume same facts as in paragraph C above, except that assume the prepaid account issuer also charges a load fee of $1.25 whenever funds are transferred or loaded from a separate asset account, such as from a deposit account via a debit card, in the course of a transaction on prepaid accounts without a covered separate credit feature, in addition to charging a $0.50 per transaction fee. The $1.25 excess in paragraph C is still a finance charge because load or transfer fees that are charged on the asset feature of prepaid account for credit from the covered separate credit feature are compared only to per transaction fees imposed for accessing funds in the asset feature of the prepaid account for prepaid accounts without such a credit feature. Per transaction fees for a transaction that is conducted to load or draw funds into a prepaid account from some other source are not comparable for purposes of §1026.4(b)(11)(ii).

iii. A consumer may choose in a particular circumstance to draw or transfer credit from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, a consumer may use the prepaid card at the prepaid account issuer's website to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. *See* §1026.61(a)(2)(i)(B) and comment 61(a)(2)–4.ii. In these situations, load or transfer fees imposed for draws or transfers of credit from the covered separate credit feature outside the course of a transaction are compared only with fees, if any, to load funds as a direct deposit of salary from an employer or a direct deposit of government benefits that are charged on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account or from a non-covered separate credit feature are not comparable for purposes of §1026.4(b)(11)(ii). To illustrate:

A. Assume a prepaid account issuer charges a $1.25 load fee to transfer funds from a non-covered separate credit feature, such as a non-covered separate credit card account, into prepaid accounts that do not have a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without such a credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a non-covered separate credit feature are not comparable for purposes of §1026.4(b)(11)(ii).

B. Assume that a prepaid account issuer charges a $1.25 load fee for a one-time transfer of funds from a separate asset account, such as from a deposit account via a debit card, to a prepaid account without a covered separate credit feature and does not charge a fee for a direct deposit of salary from an employer or a direct deposit of government benefits on those prepaid accounts. Assume the prepaid account issuer charges $1.25 on the asset feature of a prepaid account with a covered separate credit feature to load funds from the covered separate credit feature outside the course of a transaction. In this case, the $1.25 fee imposed on the asset feature of the prepaid account with a covered separate credit feature is a finance charge because no fee is charged for a direct deposit of salary from an employer or a direct deposit of government benefits on prepaid accounts without a covered separate credit feature. Fees imposed on prepaid accounts without a covered separate credit feature for a one-time load or transfer of funds from a separate asset account are not comparable for purposes of §1026.4(b)(11)(ii).

2. *Relation to Regulation E.* See Regulation E, 12 CFR 1005.18(g), which only permits a financial institution to charge the same or higher fees on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts in the same prepaid account program without such a credit feature. Under that provision, a financial institution cannot charge a lower fee on the asset feature of a prepaid account with a covered separate credit feature accessible by a hybrid prepaid-credit card than the amount of a comparable fee it charges on prepaid accounts without such a credit feature in the same prepaid account program.

4(c) Charges Excluded From the Finance Charge

Paragraph 4(c)(1)

1. *Application fees.* An application fee that is excluded from the finance charge is a charge to recover the costs associated with processing applications for credit. The fee may cover the costs of services such as credit reports, credit investigations, and appraisals. The creditor is free to impose the fee in only certain of its loan programs, such as mortgage loans. However, if the fee is to be excluded from the finance charge under §1026.4(c)(1), it must be charged to all applicants, not just to applicants who are approved or who actually receive credit.

Paragraph 4(c)(2)

1. *Late payment charges.* i. Late payment charges can be excluded from the finance charge under §1026.4(c)(2) whether or not the person imposing the charge continues to extend credit on the account or continues to provide property or services to the consumer. In determining whether a charge is for actual unanticipated late payment on a 30-day account, for example, factors to be considered include:

A. The terms of the account. For example, is the consumer required by the account terms to pay the account balance in full each month? If not, the charge may be a finance charge.

B. The practices of the creditor in handling the accounts. For example, regardless of the terms of the account, does the creditor allow consumers to pay the accounts over a period of time without demanding payment in full or taking other action to collect? If no effort is made to collect the full amount due, the charge may be a finance charge.

ii. section 1026.4(c)(2) applies to late payment charges imposed for failure to make payments as agreed, as well as failure to pay an account in full when due.

2. *Other excluded charges.* Charges for ''delinquency, default, or a similar occurrence'' include, for example, charges for reinstatement of credit privileges or for submitting as payment a check that is later returned unpaid.

Paragraph 4(c)(3)

1. *Assessing interest on an overdraft balance.* Except with respect to credit offered in connection with a prepaid account as defined in §1026.61, a charge on an overdraft balance computed by applying a rate of interest to the amount of the overdraft is not a finance charge, even though the consumer agrees to the charge in the account agreement, unless the financial institution agrees in writing that it will pay such items.

2. *Credit accessed in connection with a prepaid account.* See comment 4(b)(11)–1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in §1026.61 are finance charges.

Paragraph 4(c)(4)

1. *Participation fees—periodic basis.* The participation fees described in §1026.4(c)(4) do not necessarily have to be formal membership fees, nor are they limited to credit card plans. Except as provided in §1026.4(c)(4) for covered separate credit features accessible by hybrid prepaid-credit cards as defined in §1026.61, the provision applies to any credit plan in which payment of a fee is a condition of access to the plan itself, but it does not apply to fees imposed separately on individual closed-end transactions. The fee may be charged on a monthly, annual, or other periodic basis; a one-time, non-recurring fee imposed at the time an account is opened is not a fee that is charged on a periodic basis,

and may not be treated as a participation fee.

2. *Participation fees—exclusions.* Minimum monthly charges, charges for non-use of a credit card, and other charges based on either account activity or the amount of credit available under the plan are not excluded from the finance charge by §1026.4(c)(4). Thus, for example, a fee that is charged and then refunded to the consumer based on the extent to which the consumer uses the credit available would be a finance charge. (See the commentary to §1026.4(b)(2). Also, see comment 14(c)–2 for treatment of certain types of fees excluded in determining the annual percentage rate for the periodic statement.)

3. *Credit accessed in connection with by a prepaid account.* See comment 4(b)(11)–1 for guidance on when fees imposed with regard to credit accessed in connection with a prepaid account as defined in §1026.61 are finance charges.

Paragraph 4(c)(5)

1. *Seller's points.* The seller's points mentioned in §1026.4(c)(5) include any charges imposed by the creditor upon the noncreditor seller of property for providing credit to the buyer or for providing credit on certain terms. These charges are excluded from the finance charge even if they are passed on to the buyer, for example, in the form of a higher sales price. Seller's points are frequently involved in real estate transactions guaranteed or insured by governmental agencies. A *commitment fee* paid by a noncreditor seller (such as a real estate developer) to the creditor should be treated as seller's points. Buyer's points (that is, points charged to the buyer by the creditor), however, are finance charges.

2. *Other seller-paid amounts.* Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation or settlement on the borrower's behalf by a noncreditor seller. The creditor should treat the payment made by the seller as seller's points and exclude it from the finance charge if, based on the seller's payment, the consumer is not legally bound to the creditor for the charge. A creditor who gives disclosures before the payment has been made should base them on the best information reasonably available.

Paragraph 4(c)(6)

1. *Lost interest.* Certain Federal and state laws mandate a percentage differential between the interest rate paid on a deposit and the rate charged on a loan secured by that deposit. In some situations, because of usury limits the creditor must reduce the interest rate paid on the deposit and, as a result, the consumer loses some of the interest that would otherwise have been earned. Under §1026.4(c)(6), such ''lost interest'' need not be included in the finance charge. This rule applies only to an interest reduction imposed because a rate differential is required by law and a usury limit precludes compliance by any other means. If the creditor imposes a differential that exceeds that required, only the lost interest attributable to the excess amount is a finance charge. (See the commentary to §1026.4(a).)

4(c)(7) Real-Estate Related Fees

1. *Real estate or residential mortgage transaction charges.* The list of charges in §1026.4(c)(7) applies both to residential mortgage transactions (which may include, for example, the purchase of a mobile home) and to other transactions secured by real estate. The fees are excluded from the finance charge even if the services for which the fees are imposed are performed by the creditor's employees rather than by a third party. In addition, the cost of verifying or confirming information connected to the item is also excluded. For example, credit-report fees cover not only the cost of the report but also the cost of verifying information in the report. In all cases, charges excluded under §1026.4(c)(7) must be bona fide and reasonable.

2. *Lump-sum charges.* If a lump sum charged for several services includes a charge that is not excludable, a portion of the total should be allocated to that service and included in the finance charge. However, a lump sum charged for conducting or attending a closing (for example, by a lawyer or a title company) is excluded from the finance charge if the charge is primarily for services related to items listed in §1026.4(c)(7) (for example, reviewing or completing documents), even if other incidental services such as explaining various documents or disbursing funds for the parties are performed. The entire charge is excluded even if a fee for the incidental services would be a finance charge if it were imposed separately.

3. *Charges assessed during the loan term.* Real estate or residential mortgage transaction charges excluded under §1026.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit,

the entire fee may be treated as a finance charge.

4(d) Insurance and Debt Cancellation and Debt Suspension Coverage

1. *General.* Section 1026.4(d) permits insurance premiums and charges and debt cancellation and debt suspension charges to be excluded from the finance charge. The required disclosures must be made in writing, except as provided in §1026.4(d)(4). The rules on location of insurance and debt cancellation and debt suspension disclosures for closed-end transactions are in §1026.17(a). For purposes of §1026.4(d), all references to insurance also include debt cancellation and debt suspension coverage unless the context indicates otherwise.

2. *Timing of disclosures.* If disclosures are given early, for example under §1026.17(f) or §1026.19(a), the creditor need not redisclose if the actual premium is different at the time of consummation. If insurance disclosures are not given at the time of early disclosure and insurance is in fact written in connection with the transaction, the disclosures under §1026.4(d) must be made in order to exclude the premiums from the finance charge.

3. *Premium rate increases.* The creditor should disclose the premium amount based on the rates currently in effect and need not designate it as an estimate even if the premium rates may increase. An increase in insurance rates after consummation of a closed-end credit transaction or during the life of an open-end credit plan does not require redisclosure in order to exclude the additional premium from treatment as a finance charge.

4. *Unit-cost disclosures.* i. *Open-end credit.* The premium or fee for insurance or debt cancellation or debt suspension for the initial term of coverage may be disclosed on a unit-cost basis in open-end credit transactions. The cost per unit should be based on the initial term of coverage, unless one of the options under comment 4(d)–12 is available.

ii. *Closed-end credit.* One of the transactions for which unit-cost disclosures (such as 50 cents per year for each $100 of the amount financed) may be used in place of the total insurance premium involves a particular kind of insurance plan. For example, a consumer with a current indebtedness of $8,000 is covered by a plan of credit life insurance coverage with a maximum of $10,000. The consumer requests an additional $4,000 loan to be covered by the same insurance plan. Since the $4,000 loan exceeds, in part, the maximum amount of indebtedness that can be covered by the plan, the creditor may properly give the insurance-cost disclosures on the $4,000 loan on a unit-cost basis.

5. *Required credit life insurance; debt cancellation or suspension coverage.* Credit life, accident, health, or loss-of-income insurance, and debt cancellation and suspension coverage described in §1026.4(b)(10), must be voluntary in order for the premium or charges to be excluded from the finance charge. Whether the insurance or coverage is in fact required or optional is a factual question. If the insurance or coverage is required, the premiums must be included in the finance charge, whether the insurance or coverage is purchased from the creditor or from a third party. If the consumer is required to elect one of several options—such as to purchase credit life insurance, or to assign an existing life insurance policy, or to pledge security such as a certificate of deposit—and the consumer purchases the credit life insurance policy, the premium must be included in the finance charge. (If the consumer assigns a preexisting policy or pledges security instead, no premium is included in the finance charge. The security interest would be disclosed under §1026.6(a)(4), §1026.6(b)(5)(ii), or §1026.18(m). See the commentary to §1026.4(b)(7) and (b)(8).)

6. *Other types of voluntary insurance.* Insurance is not credit life, accident, health, or loss-of-income insurance if the creditor or the credit account of the consumer is not the beneficiary of the insurance coverage. If the premium for such insurance is not imposed by the creditor as an incident to or a condition of credit, it is not covered by §1026.4.

7. *Signatures.* If the creditor offers a number of insurance options under §1026.4(d), the creditor may provide a means for the consumer to sign or initial for each option, or it may provide for a single authorizing signature or initial with the options selected designated by some other means, such as a check mark. The insurance authorization may be signed or initialed by any consumer, as defined in §1026.2(a)(11), or by an authorized user on a credit card account.

8. *Property insurance.* To exclude property insurance premiums or charges from the finance charge, the creditor must allow the consumer to choose the insurer and disclose that fact. This disclosure must be made whether or not the property insurance is available from or through the creditor. The requirement that an option be given does not require that the insurance be readily available from other sources. The premium or charge must be disclosed only if the consumer elects to purchase the insurance from the creditor; in such a case, the creditor must also disclose the term of the property insurance coverage if it is less than the term of the obligation.

9. *Single-interest insurance.* Blanket and specific single-interest coverage are treated the same for purposes of the regulation. A charge for either type of single-interest insurance may be excluded from the finance charge if:

i. The insurer waives any right of subrogation.

ii. The other requirements of § 1026.4(d)(2) are met. This includes, of course, giving the consumer the option of obtaining the insurance from a person of the consumer's choice. The creditor need not ascertain whether the consumer is able to purchase the insurance from someone else.

10. *Single-interest insurance defined.* The term *single-interest insurance* as used in the regulation refers only to the types of coverage traditionally included in the term *vendor's single-interest insurance* (or *VSI*), that is, protection of tangible property against normal property damage, concealment, confiscation, conversion, embezzlement, and skip. Some comprehensive insurance policies may include a variety of additional coverages, such as repossession insurance and holder-in-due-course insurance. These types of coverage do not constitute single-interest insurance for purposes of the regulation, and premiums for them do not qualify for exclusion from the finance charge under § 1026.4(d). If a policy that is primarily VSI also provides coverages that are not VSI or other property insurance, a portion of the premiums must be allocated to the nonexcludable coverages and included in the finance charge. However, such allocation is not required if the total premium in fact attributable to all of the non-VSI coverages included in the policy is $1.00 or less (or $5.00 or less in the case of a multiyear policy).

11. *Initial term.* i. The initial term of insurance or debt cancellation or debt suspension coverage determines the period for which a premium amount must be disclosed, unless one of the options discussed under comment 4(d)–12 is available. For purposes of § 1026.4(d), the initial term is the period for which the insurer or creditor is obligated to provide coverage, even though the consumer may be allowed to cancel the coverage or coverage may end due to nonpayment before that term expires.

ii. For example: A. The initial term of a property insurance policy on an automobile that is written for one year is one year even though premiums are paid monthly and the term of the credit transaction is four years.

B. The initial term of an insurance policy is the full term of the credit transaction if the consumer pays or finances a single premium in advance.

12. *Initial term; alternative.* i. *General.* A creditor has the option of providing cost disclosures on the basis of one year of insurance or debt cancellation or debt suspension coverage instead of a longer initial term (provided the premium or fee is clearly labeled as being for one year) if:

A. The initial term is indefinite or not clear, or

B. The consumer has agreed to pay a premium or fee that is assessed periodically but the consumer is under no obligation to continue the coverage, whether or not the consumer has made an initial payment.

ii. *Open-end plans.* For open-end plans, a creditor also has the option of providing unit-cost disclosure on the basis of a period that is less than one year if the consumer has agreed to pay a premium or fee that is assessed periodically, for example monthly, but the consumer is under no obligation to continue the coverage.

iii. *Examples.* To illustrate:

A. A credit life insurance policy providing coverage for a 30-year mortgage loan has an initial term of 30 years, even though premiums are paid monthly and the consumer is not required to continue the coverage. Disclosures may be based on the initial term, but the creditor also has the option of making disclosures on the basis of coverage for an assumed initial term of one year.

13. *Loss-of-income insurance.* The loss-of-income insurance mentioned in § 1026.4(d) includes involuntary unemployment insurance, which provides that some or all of the consumer's payments will be made if the consumer becomes unemployed involuntarily.

4(d)(3) Voluntary Debt Cancellation or Debt Suspension Fees

1. *General.* Fees charged for the specialized form of debt cancellation agreement known as guaranteed automobile protection (''GAP'') agreements must be disclosed according to § 1026.4(d)(3) rather than according to § 1026.4(d)(2) for property insurance.

2. *Disclosures.* Creditors can comply with § 1026.4(d)(3) by providing a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation or debt suspension coverage constitutes insurance under state law. (See Model Clauses and Samples at G–16 and H–17 in appendix G and appendix H to part 1026 for guidance on how to provide the disclosure required by § 1026.4(d)(3)(iii) for debt suspension products.)

3. *Multiple events.* If debt cancellation or debt suspension coverage for two or more events is provided at a single charge, the entire charge may be excluded from the finance charge if at least one of the events is accident or loss of life, health, or income and the conditions specified in § 1026.4(d)(3) or, as applicable, § 1026.4(d)(4), are satisfied.

4. *Disclosures in programs combining debt cancellation and debt suspension features.* If the consumer's debt can be cancelled under certain circumstances, the disclosure may be modified to reflect that fact. The disclosure could, for example, state (in addition to the language required by § 1026.4(d)(3)(iii)) that ''In some circumstances, my debt may be cancelled.'' However, the disclosure would not be permitted to list the specific events that would result in debt cancellation.

4(d)(4) Telephone Purchases

1. *Affirmative request.* A creditor would not satisfy the requirement to obtain a consumer's affirmative request if the "request" was a response to a script that uses leading questions or negative consent. A question asking whether the consumer wishes to enroll in the credit insurance or debt cancellation or suspension plan and seeking a yes-or-no response (such as "Do you want to enroll in this optional debt cancellation plan?") would not be considered leading.

4(e) Certain Security Interest Charges

1. *Examples.* i. *Excludable charges.* Sums must be actually paid to public officials to be excluded from the finance charge under §1026.4(e)(1) and (e)(3). Examples are charges or other fees required for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents, as well as intangible property or other taxes even when the charges or fees are imposed by the state solely on the creditor and charged to the consumer (if the tax must be paid to record a security agreement). (See comment 4(a)–5 regarding the treatment of taxes, generally.)

ii. *Charges not excludable.* If the obligation is between the creditor and a third party (an assignee, for example), charges or other fees for filing or recording security agreements, mortgages, continuation statements, termination statements, and similar documents relating to that obligation are not excludable from the finance charge under this section.

2. *Itemization.* The various charges described in §1026.4(e)(1) and (e)(3) may be totaled and disclosed as an aggregate sum, or they may be itemized by the specific fees and taxes imposed. If an aggregate sum is disclosed, a general term such as security interest fees or filing fees may be used.

3. *Notary fees.* In order for a notary fee to be excluded under §1026.4(e)(1), all of the following conditions must be met:

i. The document to be notarized is one used to perfect, release, or continue a security interest.

ii. The document is required by law to be notarized.

iii. A notary is considered a public official under applicable law.

iv. The amount of the fee is set or authorized by law.

4. *Nonfiling insurance.* The exclusion in §1026.4(e)(2) is available only if nonfiling insurance is purchased. If the creditor collects and simply retains a fee as a sort of "self-insurance" against nonfiling, it may not be excluded from the finance charge. If the nonfiling insurance premium exceeds the amount of the fees excludable from the finance charge under §1026.4(e)(1), only the excess is a finance charge. For example:

i. The fee for perfecting a security interest is $5.00 and the fee for releasing the security interest is $3.00. The creditor charges $10.00 for nonfiling insurance. Only $8.00 of the $10.00 is excludable from the finance charge.

4(f) Prohibited Offsets

1. *Earnings on deposits or investments.* The rule that the creditor shall not deduct any earnings by the consumer on deposits or investments applies whether or not the creditor has a security interest in the property.

SUBPART B—OPEN-END CREDIT

Section 1026.5—General Disclosure Requirements

5(a) Form of Disclosures

5(a)(1) General

1. *Clear and conspicuous standard.* The "clear and conspicuous" standard generally requires that disclosures be in a reasonably understandable form. Disclosures for credit card applications and solicitations under §1026.60, highlighted account-opening disclosures under §1026.6(b)(1), highlighted disclosure on checks that access a credit card under §1026.9(b)(3), highlighted change-in-terms disclosures under §1026.9(c)(2)(iv)(D), and highlighted disclosures when a rate is increased due to delinquency, default or for a penalty under §1026.9(g)(3)(ii) must also be readily noticeable to the consumer.

2. *Clear and conspicuous—reasonably understandable form.* Except where otherwise provided, the reasonably understandable form standard does not require that disclosures be segregated from other material or located in any particular place on the disclosure statement, or that numerical amounts or percentages be in any particular type size. For disclosures that are given orally, the standard requires that they be given at a speed and volume sufficient for a consumer to hear and comprehend them. (See comment 5(b)(1)(ii)–1.) Except where otherwise provided, the standard does not prohibit:

i. Pluralizing required terminology ("finance charge" and "annual percentage rate").

ii. Adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations.

iii. Sending promotional material with the required disclosures.

iv. Using commonly accepted or readily understandable abbreviations (such as "mo." for "month" or "TX" for "Texas") in making any required disclosures.

v. Using codes or symbols such as "APR" (for annual percentage rate), "FC" (for finance charge), or "Cr" (for credit balance), so long as a legend or description of the code or symbol is provided on the disclosure statement.

3. *Clear and conspicuous—readily noticeable standard.* To meet the readily noticeable standard, disclosures for credit card applications and solicitations under §1026.60, highlighted account-opening disclosures under §1026.6(b)(1), highlighted disclosures on checks that access a credit card account under §1026.9(b)(3), highlighted change-in-terms disclosures under §1026.9(c)(2)(iv)(D), and highlighted disclosures when a rate is increased due to delinquency, default or penalty pricing under §1026.9(g)(3)(ii) must be given in a minimum of 10-point font. (See special rule for font size requirements for the annual percentage rate for purchases under §§1026.60(b)(1) and 1026.6(b)(2)(i).)

4. *Integrated document.* The creditor may make both the account-opening disclosures (§1026.6) and the periodic-statement disclosures (§1026.7) on more than one page, and use both the front and the reverse sides, except where otherwise indicated, so long as the pages constitute an integrated document. An integrated document would not include disclosure pages provided to the consumer at different times or disclosures interspersed on the same page with promotional material. An integrated document would include, for example:

i. Multiple pages provided in the same envelope that cover related material and are folded together, numbered consecutively, or clearly labeled to show that they relate to one another; or

ii. A brochure that contains disclosures and explanatory material about a range of services the creditor offers, such as credit, checking account, and electronic fund transfer features.

5. *Disclosures covered.* Disclosures that must meet the ''clear and conspicuous'' standard include all required communications under this subpart. Therefore, disclosures made by a person other than the card issuer, such as disclosures of finance charges imposed at the time of honoring a consumer's credit card under §1026.9(d), and notices, such as the correction notice required to be sent to the consumer under §1026.13(e), must also be clear and conspicuous.

Paragraph 5(a)(1)(ii)(A)

1. *Electronic disclosures.* Disclosures that need not be provided in writing under §1026.5(a)(1)(ii)(A) may be provided in writing, orally, or in electronic form. If the consumer requests the service in electronic form, such as on the creditor's Web site, the specified disclosures may be provided in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*).

Paragraph 5(a)(1)(iii)

1. *Disclosures not subject to E-Sign Act.* See the commentary to §1026.5(a)(1)(ii)(A) regarding disclosures (in addition to those specified under §1026.5(a)(1)(iii)) that may be provided in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

5(a)(2) Terminology

1. *When disclosures must be more conspicuous.* For home-equity plans subject to §1026.40, the terms *finance charge* and *annual percentage rate,* when required to be used with a number, must be disclosed more conspicuously than other required disclosures, except in the cases provided in §1026.5(a)(2)(ii). At the creditor's option, *finance charge* and *annual percentage rate* may also be disclosed more conspicuously than the other required disclosures even when the regulation does not so require. The following examples illustrate these rules:

i. In disclosing the annual percentage rate as required by §1026.6(a)(1)(ii), the term *annual percentage rate* is subject to the *more conspicuous* rule.

ii. In disclosing the amount of the finance charge, required by §1026.7(a)(6)(i), the term *finance charge* is subject to the *more conspicuous* rule.

iii. Although neither *finance charge* nor *annual percentage rate* need be emphasized when used as part of general informational material or in textual descriptions of other terms, emphasis is permissible in such cases. For example, when the terms appear as part of the explanations required under §1026.6(a)(1)(iii) and (a)(1)(iv), they may be equally conspicuous as the disclosures required under §§1026.6(a)(1)(ii) and 1026.7(a)(7).

2. *Making disclosures more conspicuous.* In disclosing the terms *finance charge* and *annual percentage rate* more conspicuously for home-equity plans subject to §1026.40, only the words *finance charge* and *annual percentage rate* should be accentuated. For example, if the term *total finance charge* is used, only *finance charge* should be emphasized. The disclosures may be made more conspicuous by, for example:

i. Capitalizing the words when other disclosures are printed in lower case.

ii. Putting them in bold print or a contrasting color.

iii. Underlining them.

iv. Setting them off with asterisks.

v. Printing them in larger type.

3. *Disclosure of figures—exception to more conspicuous rule.* For home-equity plans subject to §1026.40, the terms *annual percentage rate* and *finance charge* need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

4. *Consistent terminology.* Language used in disclosures required in this subpart must be

close enough in meaning to enable the consumer to relate the different disclosures; however, the language need not be identical.

5(b) Time of Disclosures

5(b)(1) Account-Opening Disclosures

5(b)(1)(i) General Rule

1. *Disclosure before the first transaction.* When disclosures must be furnished "before the first transaction," account-opening disclosures must be delivered before the consumer becomes obligated on the plan. Examples include:

i. *Purchases.* The consumer makes the first purchase, such as when a consumer opens a credit plan and makes purchases contemporaneously at a retail store, except when the consumer places a telephone call to make the purchase and opens the plan contemporaneously. (See commentary to §1026.5(b)(1)(iii) below.)

ii. *Advances.* The consumer receives the first advance. If the consumer receives a cash advance check at the same time the account-opening disclosures are provided, disclosures are still timely if the consumer can, after receiving the disclosures, return the cash advance check to the creditor without obligation (for example, without paying finance charges).

2. *Reactivation of suspended account.* If an account is temporarily suspended (for example, because the consumer has exceeded a credit limit, or because a credit card is reported lost or stolen) and then is reactivated, no new account-opening disclosures are required.

3. *Reopening closed account.* If an account has been closed (for example, due to inactivity, cancellation, or expiration) and then is reopened, new account-opening disclosures are required. No new account-opening disclosures are required, however, when the account is closed merely to assign it a new number (for example, when a credit card is reported lost or stolen) and the "new" account then continues on the same terms.

4. *Converting closed-end to open-end credit.* If a closed-end credit transaction is converted to an open-end credit account under a written agreement with the consumer, account-opening disclosures under §1026.6 must be given before the consumer becomes obligated on the open-end credit plan. (See the commentary to §1026.17 on converting open-end credit to closed-end credit.)

5. *Balance transfers.* A creditor that solicits the transfer by a consumer of outstanding balances from an existing account to a new open-end plan must furnish the disclosures required by §1026.6 so that the consumer has an opportunity, after receiving the disclosures, to contact the creditor before the balance is transferred and decline the transfer. For example, assume a consumer responds to a card issuer's solicitation for a credit card account subject to §1026.60 that offers a range of balance transfer annual percentage rates, based on the consumer's creditworthiness. If the creditor opens an account for the consumer, the creditor would comply with the timing rules of this section by providing the consumer with the annual percentage rate (along with the fees and other required disclosures) that would apply to the balance transfer in time for the consumer to contact the creditor and withdraw the request. A creditor that permits consumers to withdraw the request by telephone has met this timing standard if the creditor does not effect the balance transfer until 10 days after the creditor has sent account-opening disclosures to the consumer, assuming the consumer has not contacted the creditor to withdraw the request. Card issuers that are subject to the requirements of §1026.60 may establish procedures that comply with both §§1026.60 and 1026.6 in a single disclosure statement.

6. *Substitution or replacement of credit card accounts.* i. *Generally.* When a card issuer substitutes or replaces an existing credit card account with another credit card account, the card issuer must either provide notice of the terms of the new account consistent with §1026.6(b) or provide notice of the changes in the terms of the existing account consistent with §1026.9(c)(2). Whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§1026.6(b) and 1026.9(c)(2) is determined in light of all the relevant facts and circumstances. For additional requirements and limitations related to the substitution or replacement of credit card accounts, see §§1026.12(a) and 1026.55(d) and comments 12(a)(1)–1 through –8, 12(a)(2)–1 through –9, 55(b)(3)–3, and 55(d)–1 through –3.

ii. *Relevant facts and circumstances.* Listed below are facts and circumstances that are relevant to whether a substitution or replacement results in the opening of a new account or a change in the terms of an existing account for purposes of the disclosure requirements in §§1026.6(b) and 1026.9(c)(2). When most of the facts and circumstances listed below are present, the substitution or replacement likely constitutes the opening of a new account for which §1026.6(b) disclosures are appropriate. When few of the facts and circumstances listed below are present, the substitution or replacement likely constitutes a change in the terms of an existing account for which §1026.9(c)(2) disclosures are appropriate.

A. Whether the card issuer provides the consumer with a new credit card;

B. Whether the card issuer provides the consumer with a new account number;

C. Whether the account provides new features or benefits after the substitution or replacement (such as rewards on purchases);

D. Whether the account can be used to conduct transactions at a greater or lesser number of merchants after the substitution or replacement (such as when a retail card is replaced with a cobranded general purpose credit card that can be used at a wider number of merchants);

E. Whether the card issuer implemented the substitution or replacement on an individualized basis (such as in response to a consumer's request); and

F. Whether the account becomes a different type of open-end plan after the substitution or replacement (such as when a charge card is replaced by a credit card).

iii. *Replacement as a result of theft or unauthorized use.* Notwithstanding paragraphs i and ii above, a card issuer that replaces a credit card or provides a new account number because the consumer has reported the card stolen or because the account appears to have been used for unauthorized transactions is not required to provide a notice under §§1026.6(b) or 1026.9(c)(2) unless the card issuer has changed a term of the account that is subject to §§1026.6(b) or 1026.9(c)(2).

5(b)(1)(ii) Charges Imposed as Part of an Open-End (Not Home-Secured) Plan

1. *Disclosing charges before the fee is imposed.* Creditors may disclose charges imposed as part of an open-end (not home-secured) plan orally or in writing at any time before a consumer agrees to pay the fee or becomes obligated for the charge, unless the charge is specified under §1026.6(b)(2). (Charges imposed as part of an open-end (not home-secured plan) that are not specified under §1026.6(b)(2) may alternatively be disclosed in electronic form; see the commentary to §1026.5(a)(1)(ii)(A).) Creditors must provide such disclosures at a time and in a manner that a consumer would be likely to notice them. For example, if a consumer telephones a card issuer to discuss a particular service, a creditor would meet the standard if the creditor clearly and conspicuously discloses the fee associated with the service that is the topic of the telephone call orally to the consumer. Similarly, a creditor providing marketing materials in writing to a consumer about a particular service would meet the standard if the creditor provided a clear and conspicuous written disclosure of the fee for that service in those same materials. A creditor that provides written materials to a consumer about a particular service but provides a fee disclosure for another service not promoted in such materials would not meet the standard. For example, if a creditor provided marketing materials promoting payment by Internet, but included the fee for a replacement card on such materials with no explanation, the creditor would not be disclosing the fee at a time and in a manner that the consumer would be likely to notice the fee.

5(b)(1)(iii) Telephone Purchases

1. *Return policies.* In order for creditors to provide disclosures in accordance with the timing requirements of this paragraph, consumers must be permitted to return merchandise purchased at the time the plan was established without paying mailing or return-shipment costs. Creditors may impose costs to return subsequent purchases of merchandise under the plan, or to return merchandise purchased by other means such as a credit card issued by another creditor. A reasonable return policy would be of sufficient duration that the consumer is likely to have received the disclosures and had sufficient time to make a decision about the financing plan before his or her right to return the goods expires. Return policies need not provide a right to return goods if the consumer consumes or damages the goods, or for installed appliances or fixtures, provided there is a reasonable repair or replacement policy to cover defective goods or installations. If the consumer chooses to reject the financing plan, creditors comply with the requirements of this paragraph by permitting the consumer to pay for the goods with another reasonable form of payment acceptable to the merchant and keep the goods although the creditor cannot require the consumer to do so.

5(b)(1)(iv) Membership Fees

1. *Membership fees.* See §1026.60(b)(2) and related commentary for guidance on fees for issuance or availability of a credit or charge card.

2. *Rejecting the plan.* If a consumer has paid or promised to pay a membership fee including an application fee excludable from the finance charge under §1026.4(c)(1) before receiving account-opening disclosures, the consumer may, after receiving the disclosures, reject the plan and not be obligated for the membership fee, application fee, or any other fee or charge. A consumer who has received the disclosures and uses the account, or makes a payment on the account after receiving a billing statement, is deemed not to have rejected the plan.

3. *Using the account.* A consumer uses an account by obtaining an extension of credit after receiving the account-opening disclosures, such as by making a purchase or obtaining an advance. A consumer does not "use" the account by activating the account. A consumer also does not "use" the account when the creditor assesses fees on the account (such as start-up fees or fees associated with credit insurance or debt cancellation or suspension programs agreed to as a part of the application and before the consumer receives account-opening disclosures).

For example, the consumer does not ''use'' the account when a creditor sends a billing statement with start-up fees, there is no other activity on the account, the consumer does not pay the fees, and the creditor subsequently assesses a late fee or interest on the unpaid fee balances. A consumer also does not ''use'' the account by paying an application fee excludable from the finance charge under §1026.4(c)(1) prior to receiving the account-opening disclosures.

4. *Home-equity plans.* Creditors offering home-equity plans subject to the requirements of §1026.40 are subject to the requirements of §1026.40(h) regarding the collection of fees.

5(b)(2) Periodic Statements

5(b)(2)(i) Statement Required

1. *Periodic statements not required.* Periodic statements need not be sent in the following cases:

i. If the creditor adjusts an account balance so that at the end of the cycle the balance is less than $1—so long as no finance charge has been imposed on the account for that cycle.

ii. If a statement was returned as undeliverable. If a new address is provided, however, within a reasonable time before the creditor must send a statement, the creditor must resume sending statements. Receiving the address at least 20 days before the end of a cycle would be a reasonable amount of time to prepare the statement for that cycle. For example, if an address is received 22 days before the end of the June cycle, the creditor must send the periodic statement for the June cycle. (*See* §1026.13(a)(7).)

2. *Termination of draw privileges.* When a consumer's ability to draw on an open-end account is terminated without being converted to closed-end credit under a written agreement, the creditor must continue to provide periodic statements to those consumers entitled to receive them under §1026.5(b)(2)(i), for example, when the draw period of an open-end credit plan ends and consumers are paying off outstanding balances according to the account agreement or under the terms of a workout agreement that is not converted to a closed-end transaction. In addition, creditors must continue to follow all of the other open-end credit requirements and procedures in subpart B.

3. *Uncollectible accounts.* An account is deemed uncollectible for purposes of §1026.5(b)(2)(i) when a creditor has ceased collection efforts, either directly or through a third party.

4. *Instituting collection proceedings.* Creditors institute a delinquency collection proceeding by filing a court action or initiating an adjudicatory process with a third party. Assigning a debt to a debt collector or other third party would not constitute instituting a collection proceeding.

5(b)(2)(ii) Timing Requirements

1. *Mailing or delivery of periodic statements.* A creditor is not required to determine the specific date on which a periodic statement is mailed or delivered to an individual consumer for purposes of §1026.5(b)(2)(ii). A creditor complies with §1026.5(b)(2)(ii) if it has adopted reasonable procedures designed to ensure that periodic statements are mailed or delivered to consumers no later than a certain number of days after the closing date of the billing cycle and adds that number of days to the 21-day or 14-day period required by §1026.5(b)(2)(ii) when determining, as applicable, the payment due date for purposes of §1026.5(b)(2)(ii)(A), the date on which any grace period expires for purposes of §1026.5(b)(2)(ii)(B)(*1*), or the date after which the payment will be treated as late for purposes of §1026.5(b)(2)(ii)(B)(*2*). For example:

A. If a creditor has adopted reasonable procedures designed to ensure that periodic statements for a credit card account under an open-end (not home-secured) consumer credit plan or an account under an open-end consumer credit plan that provides a grace period are mailed or delivered to consumers no later than three days after the closing date of the billing cycle, the payment due date for purposes of §1026.5(b)(2)(ii)(A) and the date on which any grace period expires for purposes of §1026.5(b)(2)(ii)(B)(*1*) must be no less than 24 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitations in §1026.5(b)(2)(ii)(A) and (b)(2)(ii)(B)(*1*) on treating a payment as late and imposing finance charges apply for 24 days after the closing date of the billing cycle.

B. If a creditor has adopted reasonable procedures designed to ensure that periodic statements for an account under an open-end consumer credit plan that does not provide a grace period are mailed or delivered to consumers no later than five days after the closing date of the billing cycle, the date on which a payment must be received in order to avoid being treated as late for purposes of §1026.5(b)(2)(ii)(B)(*2*) must be no less than 19 days after the closing date of the billing cycle. Similarly, in these circumstances, the limitation in §1026.5(b)(2)(ii)(B)(*2*) on treating a payment as late for any purpose applies for 19 days after the closing date of the billing cycle.

2. *Treating a payment as late for any purpose.* Treating a payment as late for any purpose includes increasing the annual percentage rate as a penalty, reporting the consumer as delinquent to a credit reporting agency, assessing a late fee or any other fee, initiating collection activities, or terminating benefits (such as rewards on purchases) based on the

consumer's failure to make a payment within a specified amount of time or by a specified date. The prohibitions in §1026.5(b)(2)(ii)(A)(*2*) and (b)(2)(B)(*2*)(*ii*) on treating a payment as late for any purpose apply only during the 21-day or 14-day period (as applicable) following mailing or delivery of the periodic statement stating the due date for that payment and only if the required minimum periodic payment is received within that period. For example:

i. Assume that, for a credit card account under an open-end (not home-secured) consumer credit plan, a periodic statement mailed on April 4 states that a required minimum periodic payment of $50 is due on April 25. If the card issuer does not receive any payment on or before April 25, §1026.5(b)(2)(ii)(A)(*2*) does not prohibit the card issuer from treating the required minimum periodic payment as late.

ii. Same facts as in paragraph i above. On April 20, the card issuer receives a payment of $30 and no additional payment is received on or before April 25. Section 1026.5(b)(2)(ii)(A)(*2*) does not prohibit the card issuer from treating the required minimum periodic payment as late.

iii. Same facts as in paragraph i above. On May 4, the card issuer has not received the $50 required minimum periodic payment that was due on April 25. The periodic statement mailed on May 4 states that a required minimum periodic payment of $150 is due on May 25. Section 1026.5(b)(2)(ii)(A)(*2*) does not permit the card issuer to treat the $150 required minimum periodic payment as late until April 26. However, the card issuer may continue to treat the $50 required minimum periodic payment as late during this period.

iv. Assume that, for an account under an open-end consumer credit plan that does not provide a grace period, a periodic statement mailed on September 10 states that a required minimum periodic payment of $100 is due on September 24. If the creditor does not receive any payment on or before September 24, §1026.5(b)(2)(ii)(B)(*2*)(*ii*) does not prohibit the creditor from treating the required minimum periodic payment as late.

3. *Grace periods*. i. *Definition of grace period*. For purposes of §1026.5(b)(2)(ii)(B), "grace period" means a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. A deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of §1026.5(b)(2)(ii)(B). Similarly, a period following the payment due date during which a late payment fee will not be imposed is not a grace period for purposes of §1026.5(b)(2)(ii)(B). *See* comments 7(b)(11)–1, 7(b)(11)–2, and 54(a)(1)–2.

ii. *Applicability of §1026.5(b)(2)(ii)(B)(1)*. Section 1026.5(b)(2)(ii)(B)(*1*) applies if an account is eligible for a grace period when the periodic statement is mailed or delivered. Section 1026.5(b)(2)(ii)(B)(*1*) does not require the creditor to provide a grace period or prohibit the creditor from placing limitations and conditions on a grace period to the extent consistent with §1026.5(b)(2)(ii)(B) and §1026.54. *See* comment 54(a)(1)–1. Furthermore, the prohibition in §1026.5(b)(2)(ii)(B)(*1*)(*ii*) applies only during the 21-day period following mailing or delivery of the periodic statement and applies only when the creditor receives a payment within that 21-day period that satisfies the terms of the grace period.

iii. *Example*. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth of the month. Assume also that, under the terms of the account, the balance at the end of a billing cycle must be paid in full by the following payment due date in order for the account to remain eligible for the grace period. At the end of the April billing cycle, the balance on the account is $500. The grace period applies to the $500 balance because the balance for the March billing cycle was paid in full on April 25. Accordingly, §1026.5(b)(2)(ii)(B)(*1*)(*i*) requires the creditor to have reasonable procedures designed to ensure that the periodic statement reflecting the $500 balance is mailed or delivered on or before May 4. Furthermore, §1026.5(b)(2)(ii)(B)(*1*)(*ii*) requires the creditor to have reasonable procedures designed to ensure that the creditor does not impose finance charges as a result of the loss of the grace period if a $500 payment is received on or before May 25. However, if the creditor receives a payment of $300 on April 25, §1026.5(b)(2)(ii)(B)(*1*)(*ii*) would not prohibit the creditor from imposing finance charges as a result of the loss of the grace period (to the extent permitted by §1026.54).

4. *Application of §1026.5(b)(2)(ii) to charge card and charged-off accounts*. i. *Charge card accounts*. For purposes of §1026.5(b)(2)(ii)(A)(*1*), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to §1026.7(b)(11)(i)(A). Because §1026.7(b)(11)(ii) provides that §1026.7(b)(11)(i) does not apply to periodic statements provided solely for charge card accounts other than covered separate credit features that are charge card accounts accessible by hybrid prepaid-credit cards as defined in §1026.61, §1026.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. However, in these circumstances, §1026.5(b)(2)(ii)(A)(*2*) requires the card issuer

to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement. A card issuer that complies with §1026.5(b)(2)(ii)(A) as discussed above with respect to a charge card account has also complied with §1026.5(b)(2)(ii)(B)(*2*). Section 1026.5(b)(2)(ii)(B)(*1*) does not apply to charge card accounts because, for purposes of §1026.5(b)(2)(ii)(B), a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate and, consistent with §1026.2(a)(15)(iii), charge card accounts do not impose a finance charge based on a periodic rate.

ii. *Charged-off accounts.* For purposes of §1026.5(b)(2)(ii)(A)(*1*), the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan is the date the card issuer is required to disclose on the periodic statement pursuant to §1026.7(b)(11)(i)(A). Because §1026.7(b)(11)(ii) provides that §1026.7(b)(11)(i) does not apply to periodic statements provided for charged-off accounts where full payment of the entire account balance is due immediately, §1026.5(b)(2)(ii)(A)(*1*) also does not apply to the mailing or delivery of periodic statements provided solely for such accounts. Furthermore, although §1026.5(b)(2)(ii)(A)(*2*) requires the card issuer to have reasonable procedures designed to ensure that a payment is not treated as late for any purpose during the 21-day period following mailing or delivery of the statement, §1026.5(b)(2)(ii)(A)(*2*) does not prohibit a card issuer from continuing to treat prior payments as late during that period. *See* comment 5(b)(2)(ii)–2. Similarly, although §1026.5(b)(2)(ii)(B)(*2*) applies to open-end consumer credit accounts in these circumstances, §1026.5(b)(2)(ii)(B)(*2*)(*ii*) does not prohibit a creditor from continuing treating prior payments as late during the 14-day period following mailing or delivery of a periodic statement. Section 1026.5(b)(2)(ii)(B)(*1*) does not apply to charged-off accounts where full payment of the entire account balance is due immediately because such accounts do not provide a grace period.

5. *Consumer request to pick up periodic statements.* When a consumer initiates a request, the creditor may permit, but may not require, the consumer to pick up periodic statements. If the consumer wishes to pick up a statement, the statement must be made available in accordance with §1026.5(b)(2)(ii).

6. *Deferred interest and similar promotional programs.* See comment 7(b)–1.iv.

5(c) Basis of Disclosures and Use of Estimates

1. *Legal obligation.* The disclosures should reflect the credit terms to which the parties are legally bound at the time of giving the disclosures.

i. The legal obligation is determined by applicable state or other law.

ii. 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.

iii. The legal obligation normally is presumed to be contained in the contract that evidences the agreement. But this may be rebutted if another agreement between the parties legally modifies that contract.

2. *Estimates—obtaining information.* 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 disclosures are made. The reasonably available standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information. In using estimates, the creditor is not required to disclose the basis for the estimated figures, but may include such explanations as additional information. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to insurance companies for the cost of insurance.

3. *Estimates—redisclosure.* If the creditor makes estimated disclosures, redisclosure is not required for that consumer, even though more accurate information becomes available before the first transaction. For example, in an open-end plan to be secured by real estate, the creditor may estimate the appraisal fees to be charged; such an estimate might reasonably be based on the prevailing market rates for similar appraisals. If the exact appraisal fee is determinable after the estimate is furnished but before the consumer receives the first advance under the plan, no new disclosure is necessary.

5(d) Multiple Creditors; Multiple Consumers

1. *Multiple creditors.* Under §1026.5(d):

i. Creditors must choose which of them will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. All disclosures for the open-end credit plan must be given, even if the disclosing creditor would not otherwise have been obligated to make a particular disclosure.

2. *Multiple consumers.* Disclosures may be made to either obligor on a joint account. Disclosure responsibilities are not satisfied by giving disclosures to only a surety or guarantor for a principal obligor or to an authorized user. In rescindable transactions, however, separate disclosures must be given to each consumer who has the right to rescind under §1026.15.

3. *Card issuer and person extending credit not the same person.* Section 127(c)(4)(D) of the Truth in Lending Act (15 U.S.C. 1637(c)(4)(D)) contains rules pertaining to charge card issuers with plans that allow access to an open-end credit plan that is maintained by a person other than the charge card issuer. These rules are not implemented in Regulation Z (although they were formerly implemented in §1026.60(f)). However, the statutory provisions remain in effect and may be used by charge card issuers with plans meeting the specified criteria.

5(e) Effect of Subsequent Events

1. *Events causing inaccuracies.* Inaccuracies in disclosures are not violations if attributable to events occurring after 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 provide a new disclosure(s) under §1026.9(c).

2. *Use of inserts.* When changes in a creditor's plan affect required disclosures, the creditor may use inserts with outdated disclosure forms. Any insert:

i. Should clearly refer to the disclosure provision it replaces.

ii. Need not be physically attached or affixed to the basic disclosure statement.

iii. May be used only until the supply of outdated forms is exhausted.

Section 1026.6—Account-Opening Disclosures

6(a) Rules Affecting Home-Equity Plans

6(a)(1) Finance Charge

Paragraph 6(a)(1)(i)

1. *When finance charges accrue.* Creditors are not required to disclose a specific date when finance charges will begin to accrue. Creditors may provide a general explanation such as that the consumer has 30 days from the closing date to pay the new balance before finance charges will accrue on the account.

2. *Grace periods.* In disclosing whether or not a grace period exists, the creditor need not use "free period," "free-ride period," "grace period" or any other particular descriptive phrase or term. For example, a statement that "the finance charge begins on the date the transaction is posted to your account" adequately discloses that no grace period exists. In the same fashion, a statement that "finance charges will be imposed on any new purchases only if they are not paid in full within 25 days after the close of the billing cycle" indicates that a grace period exists in the interim.

Paragraph 6(a)(1)(ii)

1. *Range of balances.* The range of balances disclosure is inapplicable:

i. If only one periodic rate may be applied to the entire account balance.

ii. If only one periodic rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic rate on purchase balances of $0–$500, and a 1% monthly periodic rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

2. *Variable-rate disclosures—coverage.* i. *Examples.* This section covers open-end credit plans under which rate changes are specifically set forth in the account agreement and are tied to an index or formula. A creditor would use variable-rate disclosures for plans involving rate changes such as the following:

A. Rate changes that are tied to the rate the creditor pays on its six-month certificates of deposit.

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. An open-end credit plan in which the employee receives a lower rate contingent upon employment (that is, with the rate to be increased upon termination of employment) is not a variable-rate plan.

3. *Variable-rate plan—rate(s) in effect.* In disclosing the rate(s) in effect at the time of the account-opening disclosures (as is required by §1026.6(a)(1)(ii)), the creditor may use an insert showing the current rate; may give the rate as of a specified date and then update the disclosure from time to time, for example, each calendar month; or may disclose an estimated rate under §1026.5(c).

4. *Variable-rate plan—additional disclosures required.* In addition to disclosing the rates in effect at the time of the account-opening disclosures, the disclosures under §1026.6(a)(1)(ii) also must be made.

5. *Variable-rate plan—index.* The index to be used must be clearly identified; the creditor need not give, however, an explanation of how the index is determined or provide instructions for obtaining it.

6. *Variable-rate plan—circumstances for increase.* i. Circumstances under which the rate(s) may increase include, for example:

A. An increase in the Treasury bill rate.

B. An increase in the Federal Reserve discount rate.

ii. The creditor must disclose when the increase will take effect; for example:

A. "An increase will take effect on the day that the Treasury bill rate increases," or

B. "An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle."

7. *Variable-rate plan—limitations on increase.* In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. (A maximum interest rate must be included in dwelling-secured open-end credit plans under which the interest rate may be changed. *See* §1026.30 and the commentary to that section.) Legal limits such as usury or rate ceilings under state or Federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. ''The rate on the plan will not exceed 25% annual percentage rate.''

ii. ''Not more than ½ percent increase in the annual percentage rate per year will occur.''

8. *Variable-rate plan—effects of increase.* Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

9. *Variable-rate plan—change-in-terms notice not required.* No notice of a change in terms is required for a rate increase under a variable-rate plan as defined in comment 6(a)(1)(ii)–2.

10. *Discounted variable-rate plans.* In some variable-rate plans, 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 is lower than the rate would be if it were calculated using the index or formula.

i. 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 current Treasury bill rate 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, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors use an initial rate that is not calculated using the index or formula for later rate adjustments, the account-opening disclosure statement should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required in §1026.6(a)(1)(ii).

iii. In disclosing the current periodic and annual percentage rates that would be applied using the index or formula, the creditor may use any of the disclosure options described in comment 6(a)(1)(ii)–3.

11. *Increased penalty rates.* If the initial rate may increase upon the occurrence of one or more specific events, such as a late payment or an extension of credit that exceeds the credit limit, the creditor must disclose the initial rate and the increased penalty rate that may apply. If the penalty rate is based on an index and an increased margin, the issuer must disclose the index and the margin. The creditor must also disclose the specific event or events that may result in the increased rate, such as ''22% APR, if 60 days late.'' If the penalty rate cannot be determined at the time disclosures are given, the creditor must provide an explanation of the specific event or events that may result in the increased rate. At the creditor's option, the creditor may disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments.'' The creditor need not disclose an increased rate that is imposed when credit privileges are permanently terminated.

Paragraph 6(a)(1)(iii)

1. *Explanation of balance computation method.* A shorthand phrase such as ''previous balance method'' does not suffice in explaining the balance computation method. (See Model Clauses G–1 and G–1(A) to part 1026.)

2. *Allocation of payments.* Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances. For example, the creditor need not disclose that payments are applied to late charges, overdue balances, and finance charges before being applied to the principal balance; or in a multifeatured plan, that payments are applied first to finance charges, then to purchases, and then to cash advances. (*See* comment 7–1 for definition of multifeatured plan.)

Paragraph 6(a)(1)(iv)

1. *Finance charges.* In addition to disclosing the periodic rate(s) under §1026.6(a)(1)(ii), creditors must disclose any other type of finance charge that may be imposed, such as minimum, fixed, transaction, and activity charges; required insurance; or appraisal or credit report fees (unless excluded from the finance charge under §1026.4(c)(7)). Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less than a certain amount or the balance below which no finance charge will be imposed.

6(a)(2) Other Charges

1. *General; examples of other charges.* Under §1026.6(a)(2), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

i. Late-payment and over-the-credit-limit charges.

ii. Fees for providing documentary evidence of transactions requested under §1026.13 (billing error resolution).

iii. Charges imposed in connection with residential mortgage transactions or real estate transactions such as title, appraisal, and credit-report fees (see §1026.4(c)(7)).

iv. A tax imposed on the credit transaction by a state or other governmental body, such as a documentary stamp tax on cash advances. (*See* the commentary to §1026.4(a)).

v. A membership or participation fee for a package of services that includes an open-end credit feature, unless the fee is required whether or not the open-end credit feature is included. For example, a membership fee to join a credit union is not an ''other charge,'' even if membership is required to apply for credit. For example, if the primary benefit of membership in an organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature, the membership fee would be disclosed as an ''other charge.''

vi. Charges imposed for the termination of an open-end credit plan.

2. *Exclusions.* The following are examples of charges that are not ''other charges'':

i. Fees charged for documentary evidence of transactions for income tax purposes.

ii. Amounts payable by a consumer for collection activity after default; attorney's fees, whether or not automatically imposed; foreclosure costs; post-judgment interest rates imposed by law; and reinstatement or reissuance fees.

iii. Premiums for voluntary credit life or disability insurance, or for property insurance, that are not part of the finance charge.

iv. Application fees under §1026.4(c)(1).

v. A monthly service charge for a checking account with overdraft protection that is applied to all checking accounts, whether or not a credit feature is attached.

vi. Charges for submitting as payment a check that is later returned unpaid (See commentary to §1026.4(c)(2)).

vii. Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system. (*See* also comment 7(a)(2)–2.)

viii. Taxes and filing or notary fees excluded from the finance charge under §1026.4(e).

ix. A fee to expedite delivery of a credit card, either at account opening or during the life of the account, provided delivery of the card is also available by standard mail service (or other means at least as fast) without paying a fee for delivery.

x. A fee charged for arranging a single payment on the credit account, upon the consumer's request (regardless of how frequently the consumer requests the service), if the credit plan provides that the consumer may make payments on the account by another reasonable means, such as by standard mail service, without paying a fee to the creditor.

6(a)(3) Home-Equity Plan Information

1. *Additional disclosures required.* For home-equity plans, creditors must provide several of the disclosures set forth in §1026.40(d) along with the disclosures required under §1026.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. (*See* comment 40(d)(4)(iii)–1.)

2. *Form of disclosures.* The home-equity disclosures provided under this section must be in a form the consumer can keep, and are governed by §1026.5(a)(1). The segregation standard set forth in §1026.40(a) does not apply to home-equity disclosures provided under §1026.6.

3. *Disclosure of payment and variable-rate examples.* i. The payment-example disclosure in §1026.40(d)(5)(iii) and the variable-rate information in §1026.40(d)(12)(viii), (d)(12)(x), (d)(12)(xi), and (d)(12)(xii) need not be provided with the disclosures under §1026.6 if the disclosures under §1026.40(d) were provided in a form the consumer could keep; and the disclosures of the payment example under §1026.40(d)(5)(iii), the maximum-payment example under §1026.40(d)(12)(x) and the historical table under §1026.40(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen.

ii. For example, if a creditor offers three payment options (one for each of the categories described in the commentary to §1026.40(d)(5)), describes all three options in its early disclosures, and provides all of the disclosures in a retainable form, that creditor need not provide the §1026.40(d)(5)(iii) or (d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case with a separate disclosure form rather than a combined form, as discussed under §1026.40(a)), the disclosures under §1026.40(d)(5)(iii), (d)(12)(viii), (d)(12)(x), (d)(12)(xi) and (d)(12)(xii) must be given to any consumer who chooses one of the other two options. If the §1026.40(d)(5)(iii) and (d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

4. *Disclosures for the repayment period.* The creditor must provide disclosures about both the draw and repayment phases when giving the disclosures under §1026.6. Specifically,

the creditor must make the disclosures in §1026.6(a)(3), state the corresponding annual percentage rate, and provide the variable-rate information required in §1026.6(a)(1)(ii) for the repayment phase. To the extent the corresponding annual percentage rate, the information in §1026.6(a)(1)(ii), and any other required disclosures are the same for the draw and repayment phase, the creditor need not repeat such information, as long as it is clear that the information applies to both phases.

6(a)(4) Security Interests

1. *General.* Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.

2. *Identification of property.* Creditors sufficiently identify collateral by type by stating, for example, *motor vehicle* or *household appliances.* (Creditors should be aware, however, that the Federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number).

3. *Spreader clause.* If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) The creditor need not specifically identify the collateral; a reminder such as ''collateral securing other loans with us may also secure this loan'' is sufficient. At the creditor's option, a more specific description of the property involved may be given.

4. *Additional collateral.* If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under §1026.9(c) at the time the security is taken. (See comment 6(a)(4)–2.)

5. *Collateral from third party.* Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.

6(a)(5) Statement of Billing Rights

1. *See* the commentary to Model Forms G–3, G–3(A), G–4, and G–4(A).

6(b) Rules Affecting Open-End (Not Home-Secured) Plans

6(b)(1) Form of Disclosures; Tabular Format for Open-End (Not Home-Secured) Plans

1. *Relation to tabular summary for applications and solicitations.* See commentary to §1026.60(a), (b), and (c) regarding format and content requirements, except for the following:

i. Creditors must use the accuracy standard for annual percentage rates in §1026.6(b)(4)(ii)(G).

ii. Generally, creditors must disclose the specific rate for each feature that applies to the account. If the rates on an open-end (not home-secured) plan vary by state and the creditor is providing the account-opening table in person at the time the plan is established in connection with financing the purchase of goods or services the creditor may, at its option, disclose in the account-opening table (A) the rate applicable to the consumer's account, or (B) the range of rates, if the disclosure includes a statement that the rate varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the rate applicable to the consumer's account is disclosed.

iii. Creditors must explain whether or not a grace period exists for all features on the account. The row heading ''Paying Interest'' must be used if any one feature on the account does not have a grace period.

iv. Creditors must name the balance computation method used for each feature of the account and state that an explanation of the balance computation method(s) is provided in the account-opening disclosures.

v. Creditors must state that consumers' billing rights are provided in the account-opening disclosures.

vi. If fees on an open-end (not home-secured) plan vary by state and the creditor is providing the account-opening table in person at the time the plan is established in connection with financing the purchase of goods or services the creditor may, at its option, disclose in the account-opening table (A) the specific fee applicable to the consumer's account, or (B) the range of fees, if the disclosure includes a statement that the amount of the fee varies by state and refers the consumer to the account agreement or other disclosure provided with the account-opening table where the fee applicable to the consumer's account is disclosed.

vii. Creditors that must disclose the amount of available credit must state the initial credit limit provided on the account.

viii. Creditors must disclose directly beneath the table the circumstances under which an introductory rate may be revoked and the rate that will apply after the introductory rate is revoked. Issuers of credit card accounts under an open-end (not home-secured) consumer credit plan are subject to limitations on the circumstances under which an introductory rate may be revoked. (See comment 60(b)(1)–5 for guidance on how a card issuer may disclose the circumstances under which an introductory rate may be revoked.)

ix. The applicable forms providing safe harbors for account-opening tables are under appendix G–17 to part 1026.

2. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to §1026.6 disclosures.

3. *Terminology.* Section 1026.6(b)(1) generally requires that the headings, content, and format of the tabular disclosures be substantially similar, but need not be identical, to the tables in appendix G to part 1026; but see §1026.5(a)(2) for terminology requirements applicable to §1026.6(b).

6(b)(2) Required Disclosures for Account-Opening Table for Open-End (Not Home-Secured) Plans

1. *Fees imposed on the asset feature of a prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61, a creditor is required to disclose under §1026.6(b)(2) any fees or charges imposed on the asset feature that are charges imposed as part of the plan under §1026.6(b)(3) to the extent those fees fall within the categories of fees or charges required to be disclosed under §1026.6(b)(2). For example, assume that a creditor imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. In this case, the $0.75 excess is a charge imposed as part of the plan under §1026.6(b)(3) and must be disclosed under §1026.6(b)(2)(iv).

2. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* A creditor is not required to disclose under §1026.6(b)(2) any fee or charge imposed on the asset feature of a prepaid account that is not a charge imposed as part of the plan under §1026.6(b)(3). See §1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under §1026.6(b)(3).

6(b)(2)(iii) Fixed Finance Charge; Minimum Interest Charge

1. Example of brief statement. See Samples G–17(B), G–17(C), and G–17(D) for guidance on how to provide a brief description of a minimum interest charge.

6(b)(2)(v) Grace Period

1. *Grace period.* Creditors must state any conditions on the applicability of the grace period. A creditor, however, may not disclose under §1026.6(b)(2)(v) the limitations on the imposition of finance charges as a result of a loss of a grace period in §1026.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. Some creditors may offer a grace period on all types of transactions under which interest will not be charged on transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, §1026.6(b)(2)(v) requires that the creditor disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: ''Your due date is [at least] _____ days after the close of each billing cycle. We will not charge you any interest on your account if you pay your entire balance by the due date each month.'' However, other creditors may offer a grace period on all types of transactions under which interest may be charged on transactions even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, §1026.6(b)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

2. *No grace period.* Creditors may use the following language to describe that no grace period is offered, as applicable: ''We will begin charging interest on [applicable transactions] on the transaction date.''

3. *Grace period on some features.* Some creditors do not offer a grace period on cash advances and balance transfers, but offer a grace period for all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, §1026.6(b)(2)(v) requires that the creditor disclose the grace period for purchases and the conditions for its applicability, and the lack

of a grace period for cash advances and balance transfers using the following language, or substantially similar language, as applicable: ''Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.'' However, other creditors may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, §1026.6(a)(2)(v) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period. Also, some creditors may not offer a grace period on cash advances and balance transfers, and will begin charging interest on these transactions from a date other than the transaction date, such as the posting date. In these circumstances, §1026.6(a)(2)(v) requires the creditor to amend the above disclosure language to be accurate.

6(b)(2)(vi) Balance Computation Method

1. *Use of same balance computation method for all features.* In cases where the balance for each feature is computed using the same balance computation method, a single identification of the name of the balance computation method is sufficient. In this case, a creditor may use an appropriate name listed in §1026.60(g) (e.g., ''*average daily balance (including new purchases)*'') to satisfy the requirement to disclose the name of the method for all features on the account, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name ''*average daily balance (including new purchases)*'' listed in §1026.60(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in §1026.60(g) to refer more broadly to all new credit transactions, such as using the language ''new transactions'' or ''current transactions'' (*e.g., ''average daily balance (including new transactions)''*), rather than simply referring to new purchases when the same method is used to calculate the balances for all features of the account. *See* Samples G–17(B) and G–17(C) for guidance on how to disclose the balance computation method where the same method is used for all features on the account.

2. *Use of balance computation names in §1026.60(g) for balances other than purchases.* The names of the balance computation methods listed in §1026.60(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in §1026.60(g) to satisfy the requirements of §1026.6(b)(2)(vi) for features other than purchases, a creditor must revise the names listed in §1026.60(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in §1026.60(g)(i) to disclose it as ''*average daily balance (including new cash advances)*'' when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in §1026.60(g)(ii) to disclose it as ''*average daily balance (excluding new cash advances)*'' when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. *See* comment 6(b)(2)(vi)–1 for guidance on the use of one balance computation name when the same balance computation method is used for all features on the account.

6(b)(2)(xiii) Available Credit

1. *Right to reject the plan.* Creditors may use the following language to describe consumers' right to reject a plan after receiving account-opening disclosures: ''You may still reject this plan, provided that you have not yet used the account or paid a fee after receiving a billing statement. If you do reject the plan, you are not responsible for any fees or charges.''

6(b)(3) Disclosure of Charges Imposed as Part of Open-End (Not Home-Secured) Plans

1. *When finance charges accrue.* Creditors are not required to disclose a specific date when a cost that is a finance charge under §1026.4 will begin to accrue.

2. *Grace periods.* In disclosing in the account agreement or disclosure statement whether or not a grace period exists, the creditor need not use any particular descriptive phrase or term. However, the descriptive phrase or term must be sufficiently similar to the disclosures provided pursuant to §§1026.60(b)(5) and 1026.6(b)(2)(v) to satisfy a creditor's duty to provide consistent terminology under §1026.5(a)(2).

3. *No finance charge imposed below certain balance.* Creditors are not required to disclose the fact that no finance charge is imposed when the outstanding balance is less

than a certain amount or the balance below which no finance charge will be imposed.

Paragraph 6(b)(3)(ii)

1. *Failure to use the plan as agreed.* Late payment fees, over-the-limit fees, and fees for payments returned unpaid are examples of charges resulting from consumers' failure to use the plan as agreed.

2. *Examples of fees that affect the plan.* Examples of charges the payment, or nonpayment, of which affects the consumer's account are:

i. *Access to the plan.* Fees for using the card at the creditor's ATM to obtain a cash advance, fees to obtain additional cards including replacements for lost or stolen cards, fees to expedite delivery of cards or other credit devices, application and membership fees, and annual or other participation fees identified in §1026.4(c)(4).

ii. *Amount of credit extended.* Fees for increasing the credit limit on the account, whether at the consumer's request or unilaterally by the creditor.

iii. *Timing or method of billing or payment.* Fees to pay by telephone or via the Internet.

3. *Threshold test.* If the creditor is unsure whether a particular charge is a cost imposed as part of the plan, the creditor may at its option consider such charges as a cost imposed as part of the plan for purposes of the Truth in Lending Act.

Paragraph 6(b)(3)(iii)

Paragraph 6(b)(3)(iii)(B)

1. *Fees for package of services.* A fee to join a credit union is an example of a fee for a package of services that is not imposed as part of the plan, even if the consumer must join the credit union to apply for credit. In contrast, a membership fee is an example of a fee for a package of services that is considered to be imposed as part of a plan where the primary benefit of membership in the organization is the opportunity to apply for a credit card, and the other benefits offered (such as a newsletter or a member information hotline) are merely incidental to the credit feature.

Paragraph 6(b)(3)(iii)(D)

1. *Fees imposed on the asset feature of the prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card.* Under §1026.6(b)(3)(iii)(D), with regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61, a fee or charge imposed on the asset feature of the prepaid account is not a charge imposed as part of the plan under §1026.6(b)(3) with respect to a covered separate credit feature to the extent that the amount of the fee or charge does not exceed comparable fees or charges imposed on prepaid accounts in the same prepaid account program that do not have a covered separate credit feature accessed by a hybrid prepaid-credit card. To illustrate:

i. Assume a prepaid account issuer charges a $0.50 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card and a $0.50 transaction fee for purchases that access funds in the asset feature of a prepaid account in the same program without such a credit feature. The $0.50 fees are comparable fees and the $0.50 fee for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card is not a charge imposed as part of the plan. However, if in this example, the prepaid account issuer imposes a $1.25 per transaction fee on an asset feature of the prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, the $0.75 excess is a charge imposed as part of the plan. This $0.75 excess also is a finance charge under §1026.4(b)(11)(ii).

ii. See comment 4(b)(11)(ii)–1 for additional illustrations of when a prepaid account issuer is charging comparable per transaction fees or load or transfer fees on the prepaid account.

Paragraph 6(b)(3)(iii)(E)

1. *Fees imposed on the asset feature of a prepaid account in connection with a non-covered separate credit feature.* With regard to a non-covered separate credit feature accessible by a prepaid card as defined in §1026.61, under §1026.6(b)(3)(iii)(E), none of the fees or charges imposed on the asset balance of the prepaid account are charges imposed as part of the plan under §1026.6(b)(3) with respect to the non-covered separate credit feature. In addition, none of these fees or charges imposed on the asset feature of the prepaid account are finance charges with respect to the non-covered separate credit feature as discussed in comment 4(b)(11)–1.ii.B.

6(b)(4) Disclosure of Rates for Open-End (Not Home-Secured) Plans

6(b)(4)(i)(B) Range of Balances

1. *Range of balances.* Creditors are not required to disclose the range of balances:

i. If only one periodic interest rate may be applied to the entire account balance.

ii. If only one periodic interest rate may be applied to the entire balance for a feature (for example, cash advances), even though the balance for another feature (purchases) may be subject to two rates (a 1.5% monthly periodic interest rate on purchase balances of $0–$500, and a 1% periodic interest rate for balances above $500). In this example, the creditor must give a range of balances disclosure for the purchase feature.

6(b)(4)(i)(D) Balance Computation Method

1. *Explanation of balance computation method*. Creditors do not provide a sufficient explanation of a balance computation method by using a shorthand phrase such as ''previous balance method'' or the name of a balance computation method listed in §1026.60(g). (*See* Model Clauses G–1(A) in appendix G to part 1026. *See* §1026.6(b)(2)(vi) regarding balance computation descriptions in the account-opening summary.)

2. *Allocation of payments*. Creditors may, but need not, explain how payments and other credits are allocated to outstanding balances.

6(b)(4)(ii) Variable-Rate Accounts

1. *Variable-rate disclosures—coverage*. i. *Examples*. Examples of open-end plans that permit the rate to change and are considered variable-rate plans include:

A. Rate changes that are tied to the rate the creditor pays on its six-month certificates of deposit.

B. Rate changes that are tied to Treasury bill rates.

C. Rate changes that are tied to changes in the creditor's commercial lending rate.

ii. Examples of open-end plans that permit the rate to change and are not considered variable-rate include:

A. Rate changes that are invoked under a creditor's contract reservation to increase the rate without reference to such an index or formula (for example, a plan that simply provides that the creditor reserves the right to raise its rates).

B. Rate changes that are triggered by a specific event such as an open-end credit plan in which the employee receives a lower rate contingent upon employment, and the rate increases upon termination of employment.

2. *Variable-rate plan—circumstances for increase*. i. The following are examples that comply with the requirement to disclose circumstances under which the rate(s) may increase:

A. ''The Treasury bill rate increases.''

B. ''The Federal Reserve discount rate increases.''

ii. Disclosing the frequency with which the rate may increase includes disclosing when the increase will take effect; for example:

A. ''An increase will take effect on the day that the Treasury bill rate increases.''

B. ''An increase in the Federal Reserve discount rate will take effect on the first day of the creditor's billing cycle.''

3. *Variable-rate plan—limitations on increase*. In disclosing any limitations on rate increases, limitations such as the maximum increase per year or the maximum increase over the duration of the plan must be disclosed. When there are no limitations, the creditor may, but need not, disclose that fact. Legal limits such as usury or rate ceilings under state or Federal statutes or regulations need not be disclosed. Examples of limitations that must be disclosed include:

i. ''The rate on the plan will not exceed 25% annual percentage rate.''

ii. ''Not more than ½; of 1% increase in the annual percentage rate per year will occur.''

4. *Variable-rate plan—effects of increase*. Examples of effects of rate increases that must be disclosed include:

i. Any requirement for additional collateral if the annual percentage rate increases beyond a specified rate.

ii. Any increase in the scheduled minimum periodic payment amount.

5. *Discounted variable-rate plans*. In some variable-rate plans, 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 is lower than the rate would be if it were calculated using the index or formula.

i. 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 current Treasury bill rate 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, or the creditor may disregard the index or formula and set the initial rate at 9 percent.

ii. When creditors disclose in the account-opening disclosures an initial rate that is not calculated using the index or formula for later rate adjustments, the disclosure should reflect:

A. The initial rate (expressed as a periodic rate and a corresponding annual percentage rate), together with a statement of how long the initial rate will remain in effect;

B. The current rate that would have been applied using the index or formula (also expressed as a periodic rate and a corresponding annual percentage rate); and

C. The other variable-rate information required by §1026.6(b)(4)(ii).

6(b)(4)(iii) Rate Changes Not Due to Index or Formula

1. *Events that cause the initial rate to change*. i. *Changes based on expiration of time period*. If the initial rate will change at the expiration of a time period, creditors that disclose the initial rate in the account-opening disclosure must identify the expiration date and

the fact that the initial rate will end at that time.

ii. *Changes based on specified contract terms.* If the account agreement provides that the creditor may change the initial rate upon the occurrence of a specified event or events, the creditor must identify the events or events. Examples include the consumer not making the required minimum payment when due, or the termination of an employee preferred rate when the employment relationship is terminated.

2. *Rate that will apply after initial rate changes.* i. *Increased margins.* If the initial rate is based on an index and the rate may increase due to a change in the margin applied to the index, the creditor must disclose the increased margin. If more than one margin could apply, the creditor may disclose the highest margin.

ii. *Risk-based pricing.* In some plans, the amount of the rate change depends on how the creditor weighs the occurrence of events specified in the account agreement that authorize the creditor to change rates, as well as other factors. Creditors must state the increased rate that may apply. At the creditor's option, the creditor may state the possible rates as a range, or by stating only the highest rate that could be assessed. The creditor must disclose the period for which the increased rate will remain in effect, such as ''until you make three timely payments,'' or if there is no limitation, the fact that the increased rate may remain indefinitely.

3. *Effect of rate change on balances.* Creditors must disclose information to consumers about the balance to which the new rate will apply and the balance to which the current rate at the time of the change will apply. Card issuers subject to §1026.55 may be subject to certain restrictions on the application of increased rates to certain balances.

6(b)(5) Additional Disclosures for Open-End (Not Home-Secured) Plans

6(b)(5)(i) Voluntary Credit Insurance, Debt Cancellation or Debt Suspension

1. *Timing.* Under §1026.4(d), disclosures required to exclude the cost of voluntary credit insurance or debt cancellation or debt suspension coverage from the finance charge must be provided before the consumer agrees to the purchase of the insurance or coverage. Creditors comply with §1026.6(b)(5)(i) if they provide those disclosures in accordance with §1026.4(d). For example, if the disclosures required by §1026.4(d) are provided at application, creditors need not repeat those disclosures at account opening.

6(b)(5)(ii) Security Interests

1. *General.* Creditors are not required to use specific terms to describe a security interest, or to explain the type of security or the creditor's rights with respect to the collateral.

2. *Identification of property.* Creditors sufficiently identify collateral by type by stating, for example, *motor vehicle* or *household appliances.* (Creditors should be aware, however, that the Federal credit practices rules, as well as some state laws, prohibit certain security interests in household goods.) The creditor may, at its option, provide a more specific identification (for example, a model and serial number.)

3. *Spreader clause.* If collateral for preexisting credit with the creditor will secure the plan being opened, the creditor must disclose that fact. (Such security interests may be known as ''spreader'' or ''dragnet'' clauses, or as ''cross-collateralization'' clauses.) The creditor need not specifically identify the collateral; a reminder such as ''collateral securing other loans with us may also secure this loan'' is sufficient. At the creditor's option, a more specific description of the property involved may be given.

4. *Additional collateral.* If collateral is required when advances reach a certain amount, the creditor should disclose the information available at the time of the account-opening disclosures. For example, if the creditor knows that a security interest will be taken in household goods if the consumer's balance exceeds $1,000, the creditor should disclose accordingly. If the creditor knows that security will be required if the consumer's balance exceeds $1,000, but the creditor does not know what security will be required, the creditor must disclose on the initial disclosure statement that security will be required if the balance exceeds $1,000, and the creditor must provide a change-in-terms notice under §1026.9(c) at the time the security is taken. (See comment 6(b)(5)(ii)–2.)

5. *Collateral from third party.* Security interests taken in connection with the plan must be disclosed, whether the collateral is owned by the consumer or a third party.

6(b)(5)(iii) Statement of Billing Rights

1. See the commentary to Model Forms G–3(A) and G–4(A).

Section 1026.7—Periodic Statement

1. *Multifeatured plans.* Some plans involve a number of different features, such as purchases, cash advances, or overdraft checking. Groups of transactions subject to different finance charge terms because of the dates on which the transactions took place are treated like different features for purposes of disclosures on the periodic statements. The commentary includes additional guidance for multifeatured plans.

7(a) Rules Affecting Home-Equity Plans

7(a)(1) Previous Balance

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

7(a)(2) Identification of Transactions

1. *Multifeatured plans.* In identifying transactions under §1026.7(a)(2) for multifeatured plans, creditors may, for example, choose to arrange transactions by feature (such as disclosing sale transactions separately from cash advance transactions) or in some other clear manner, such as by arranging the transactions in general chronological order.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

7(a)(3) Credits

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, *etc.*)—''credit'' would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (See the commentary to §1026.13(e) and (f).)

2. *Format.* A creditor may list credits relating to credit extensions (payments, rebates, *etc.*) together with other types of credits (such as deposits to a checking account), as long as the entries are identified so as to inform the consumer which type of credit each entry represents.

3. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

4. *Totals.* A total of amounts credited during the billing cycle is not required.

7(a)(4) Periodic Rates

1. *Disclosure of periodic rates—whether or not actually applied.* Except as provided in §1026.7(a)(4)(ii), any periodic rate that may be used to compute finance charges (and its corresponding annual percentage rate) must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the rate varies (such as when it is tied to a particular index), the creditor must disclose each rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic rates required only if imposition possible.* With regard to the periodic rate disclosure (and its corresponding annual percentage rate), only rates that *could have* been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing rates effective during the next billing cycle (because of a variable-rate plan), the rates required to be disclosed under §1026.7(a)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the monthly rate applied during May was 1.5%, but the creditor will increase the rate to 1.8% effective June 1, 1.5% (and its corresponding annual percentage rate) is the only required disclosure under §1026.7(a)(4) for the periodic statement reflecting the May account activity.

ii. If rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the *same* type of transaction (for example, if the finance charge consists of a monthly periodic rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), the creditor may do either of the following:

i. Disclose each periodic rate, the range of balances to which it is applicable, and the corresponding annual percentage rate for each. (For example, 1.5% monthly, 18% annual percentage rate; 0.1% monthly, 1.2% annual percentage rate.)

ii. Disclose one composite periodic rate (that is, 1.6% per month) along with the applicable range of balances and the corresponding annual percentage rate.

4. *Corresponding annual percentage rate.* In disclosing the annual percentage rate that corresponds to each periodic rate, the creditor may use ''corresponding annual percentage rate,'' ''nominal annual percentage rate,'' ''corresponding nominal annual percentage rate,'' or similar phrases.

5. *Rate same as actual annual percentage rate.* When the corresponding rate is the same as the annual percentage rate disclosed under §1026.7(a)(7), the creditor need disclose only one annual percentage rate, but must use the phrase ''annual percentage rate.''

6. *Range of balances.* See comment 6(a)(1)(ii)–1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

7(a)(5) Balance on Which Finance Charge Computed

1. *Limitation to periodic rates.* Section 1026.7(a)(5) only requires disclosure of the balance(s) to which a periodic rate was applied and does not apply to balances on which other kinds of finance charges (such as transaction charges) were imposed. For example, if a consumer obtains a $1,500 cash advance subject to both a 1% transaction fee and a 1% monthly periodic rate, the creditor need only disclose the balance subject to the monthly rate (which might include portions of earlier cash advances not paid off in previous cycles).

2. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the finance charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (*See* comment 7(a)(5)–5.)

3. *Monthly rate on average daily balance.* Creditors may apply a monthly periodic rate to an average daily balance.

4. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature or group of features subject to different periodic rates or different balance computation methods. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (*See*, for example, comment 7(a)(5)–5.)

5. *Daily rate on daily balances.* If the finance charge is computed on the balance each day by application of one or more daily periodic rates, the balance on which the finance charge was computed may be disclosed in any of the following ways for each feature:

i. If a single daily periodic rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor shall explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of the finance charge.

ii. If two or more daily periodic rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic rates imposed for the time that those rates were in effect, as long as the creditor explains that the finance charge is or may be determined by (*1*) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (*2*) multiplying each of the results by the applicable daily periodic rate, and (*3*) adding these products together.

6. *Explanation of balance computation method.* See the commentary to 6(a)(1)(iii).

7. *Information to compute balance.* In connection with disclosing the finance charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

8. *Non-deduction of credits.* The creditor need not specifically identify the total dollar

amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§1026.7(a)(3)) and indicating which credits will not be deducted in determining the balance (for example, ''credits after the 15th of the month are not deducted in computing the finance charge.'').

9. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(a)(5)–2. In these cases, one explanation of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method).

7(a)(6) Amount of Finance Charge and Other Charges

7(a)(6)(i) Finance Charges

1. *Total.* A total finance charge amount for the plan is not required.

2. *Itemization—types of finance charges.* Each type of finance charge (such as periodic rates, transaction charges, and minimum charges) imposed during the cycle must be separately itemized; for example, disclosure of only a combined finance charge attributable to both a minimum charge and transaction charges would not be permissible. Finance charges of the same type may be disclosed, however, individually or as a total. For example, five transaction charges of $1 may be listed separately or as $5.

3. *Itemization—different periodic rates.* Whether different periodic rates are applicable to different types of transactions or to different balance ranges, the creditor may give the finance charge attributable to each rate or may give a total finance charge amount. For example, if a creditor charges 1.5% per month on the first $500 of a balance and 1% per month on amounts over $500, the creditor may itemize the two components ($7.50 and $1.00) of the $8.50 charge, or may disclose $8.50.

4. *Multifeatured plans.* In a multifeatured plan, in disclosing the amount of the finance charge attributable to the application of periodic rates no total periodic rate disclosure for the entire plan need be given.

5. *Finance charges not added to account.* A finance charge that is not included in the new balance because it is payable to a third party (such as required life insurance) must still be shown on the periodic statement as a finance charge.

6. *Finance charges other than periodic rates.* See comment 6(a)(1)(iv)–1 for examples.

7. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, no disclosure is required of finance charges that have accrued since the last payment.

8. *Start-up fees.* Points, loan fees, and similar finance charges relating to the opening of the account that are paid prior to the issuance of the first periodic statement need not be disclosed on the periodic statement. If, however, these charges are financed as part of the plan, including charges that are paid out of the first advance, the charges must be disclosed as part of the finance charge on the first periodic statement. However, they need not be factored into the annual percentage rate. (*See* §1026.14(c)(3).)

7(a)(6)(ii) Other Charges

1. *Identification.* In identifying any *other charges* actually imposed during the billing cycle, the type is adequately described as *late charge* or *membership fee*, for example. Similarly, *closing costs* or *settlement costs*, for example, may be used to describe charges imposed in connection with real estate transactions that are excluded from the finance charge under §1026.4(c)(7), if the same term (such as *closing costs*) was used in the initial disclosures and if the creditor chose to itemize and individually disclose the costs included in that term. Even though the taxes and filing or notary fees excluded from the finance charge under §1026.4(e) are not required to be disclosed as *other charges* under §1026.6(a)(2), these charges may be included in the amount shown as *closing costs* or *settlement costs* on the periodic statement, if the charges were itemized and disclosed as part of the *closing costs* or *settlement costs* on the initial disclosure statement. (*See* comment 6(a)(2)–1 for examples of *other charges.*)

2. *Date.* The date of imposing or debiting *other charges* need not be disclosed.

3. *Total.* Disclosure of the total amount of other charges is optional.

4. *Itemization—types of other charges.* Each type of *other charge* (such as late-payment charges, over-the-credit-limit charges, and membership fees) imposed during the cycle must be separately itemized; for example,

disclosure of only a total of *other charges* attributable to both an over-the-credit-limit charge and a late-payment charge would not be permissible. *Other charges* of the same type may be disclosed, however, individually or as a total. For example, three fees of $3 for providing copies related to the resolution of a billing error could be listed separately or as $9.

7(a)(7) Annual Percentage Rate

1. *Plans subject to the requirements of §1026.40.* For home-equity plans subject to the requirements of §1026.40, creditors are not required to disclose an effective annual percentage rate. Creditors that state an annualized rate in addition to the corresponding annual percentage rate required by §1026.7(a)(4) must calculate that rate in accordance with §1026.14(c).

2. *Labels.* Creditors that choose to disclose an annual percentage rate calculated under §1026.14(c) and label the figure as "annual percentage rate" must label the periodic rate expressed as an annualized rate as the "corresponding APR," "nominal APR," or a similar phrase as provided in comment 7(a)(4)–4. Creditors also comply with the label requirement if the rate calculated under §1026.14(c) is described as the "effective APR" or something similar. For those creditors, the periodic rate expressed as an annualized rate could be labeled "annual percentage rate," consistent with the requirement under §1026.7(b)(4). If the two rates represent different values, creditors must label the rates differently to meet the clear and conspicuous standard under §1026.5(a)(1).

7(a)(8) Grace Period

1. *Terminology.* Although the creditor is required to indicate any time period the consumer may have to pay the balance outstanding without incurring additional finance charges, no specific wording is required, so long as the language used is consistent with that used on the account-opening disclosure statement. For example, "To avoid additional finance charges, pay the new balance before ____" would suffice.

7(a)(9) Address for Notice of Billing Errors

1. *Terminology.* The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number.* A telephone number, email address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by email or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

7(a)(10) Closing Date of Billing Cycle; New Balance

1. *Credit balances.* See comment 7(a)(1)–1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

7(b) Rules Affecting Open-End (Not Home-Secured) Plans

1. *Deferred interest or similar transactions.* Creditors offer a variety of payment plans for purchases that permit consumers to avoid interest charges if the purchase balance is paid in full by a certain date. "Deferred interest" has the same meaning as in §1026.16(h)(2) and associated commentary. The following provides guidance for a deferred interest or similar plan where, for example, no interest charge is imposed on a $500 purchase made in January if the $500 balance is paid by July 31.

i. *Annual percentage rates.* Under §1026.7(b)(4), creditors must disclose each annual percentage rate that may be used to compute the interest charge. Under some plans with a deferred interest or similar feature, if the deferred interest balance is not paid by a certain date, July 31 in this example, interest charges applicable to the billing cycles between the date of purchase in January and July 31 may be imposed. Annual percentage rates that may apply to the deferred interest balance ($500 in this example) if the balance is not paid in full by July 31 must appear on periodic statements for the billing cycles between the date of purchase and July 31. However, if the consumer does not pay the deferred interest balance by July 31, the creditor is not required to identify, on the periodic statement disclosing the interest charge for the deferred interest balance, annual percentage rates that have been disclosed in previous billing cycles between the date of purchase and July 31.

ii. *Balances subject to periodic rates.* Under §1026.7(b)(5), creditors must disclose the balances subject to interest during a billing cycle. The deferred interest balance ($500 in this example) is not subject to interest for billing cycles between the date of purchase and July 31 in this example. Periodic statements sent for those billing cycles should not include the deferred interest balance in the balance disclosed under § 1026.7(b)(5). This amount must be separately disclosed on periodic statements and identified by a term other than the term used to identify the balance disclosed under § 1026.7(b)(5) (such as "deferred interest balance"). During any billing cycle in which an interest charge on the deferred interest balance is debited to the account, the balance disclosed under § 1026.7(b)(5) should include the deferred interest balance for that billing cycle.

iii. *Amount of interest charge.* Under § 1026.7(b)(6)(ii), creditors must disclose interest charges imposed during a billing cycle. For some deferred interest purchases, the creditor may impose interest from the date of purchase if the deferred interest balance ($500 in this example) is not paid in full by July 31 in this example, but otherwise will not impose interest for billing cycles between the date of purchase and July 31. Periodic statements for billing cycles preceding July 31 in this example should not include in the interest charge disclosed under § 1026.7(b)(6)(ii) the amounts a consumer may owe if the deferred interest balance is not paid in full by July 31. In this example, the February periodic statement should not identify as interest charges interest attributable to the $500 January purchase. This amount must be separately disclosed on periodic statements and identified by a term other than "interest charge" (such as "contingent interest charge" or "deferred interest charge"). The interest charge on a deferred interest balance should be reflected on the periodic statement under § 1026.7(b)(6)(ii) for the billing cycle in which the interest charge is debited to the account.

iv. *Due date to avoid obligation for finance charges under a deferred interest or similar program.* Section 1026.7(b)(14) requires disclosure on periodic statements of the date by which any outstanding balance subject to a deferred interest or similar program must be paid in full in order to avoid the obligation for finance charges on such balance. This disclosure must appear on the front of any page of each periodic statement issued during the deferred interest period beginning with the first periodic statement issued during the deferred interest period that reflects the deferred interest or similar transaction.

7(b)(1) Previous Balance

1. *Credit balances.* If the previous balance is a credit balance, it must be disclosed in such a way so as to inform the consumer that it is a credit balance, rather than a debit balance.

2. *Multifeatured plans.* In a multifeatured plan, the previous balance may be disclosed either as an aggregate balance for the account or as separate balances for each feature (for example, a previous balance for purchases and a previous balance for cash advances). If separate balances are disclosed, a total previous balance is optional.

3. *Accrued finance charges allocated from payments.* Some open-end credit plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and reflected as an increase in the obligation. In such a plan, the previous balance need not reflect finance charges accrued since the last payment.

7(b)(2) Identification of Transactions

1. *Multifeatured plans.* Creditors may, but are not required to, arrange transactions by feature (such as disclosing purchase transactions separately from cash advance transactions). Pursuant to § 1026.7(b)(6), however, creditors must group all fees and all interest separately from transactions and may not disclose any fees or interest charges with transactions.

2. *Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems.* A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

7(b)(3) Credits

1. *Identification—sufficiency.* The creditor need not describe each credit by type (returned merchandise, rebate of finance charge, *etc.*)—"credit" would suffice—except if the creditor is using the periodic statement to satisfy the billing-error correction notice requirement. (*See* the commentary to § 1026.13(e) and (f).) Credits may be distinguished from transactions in any way that is clear and conspicuous, for example, by use of debit and credit columns or by use of plus signs and/or minus signs.

2. *Date.* If only one date is disclosed (that is, the crediting date as required by the regulation), no further identification of that date is necessary. More than one date may be disclosed for a single entry, as long as it is clear which date represents the date on which credit was given.

3. *Totals.* A total of amounts credited during the billing cycle is not required.

7(b)(4) Periodic Rates

1. *Disclosure of periodic interest rates—whether or not actually applied.* Except as provided

in §1026.7(b)(4)(ii), any periodic interest rate that may be used to compute finance charges, expressed as and labeled ''Annual Percentage Rate,'' must be disclosed whether or not it is applied during the billing cycle. For example:

i. If the consumer's account has both a purchase feature and a cash advance feature, the creditor must disclose the annual percentage rate for each, even if the consumer only makes purchases on the account during the billing cycle.

ii. If the annual percentage rate varies (such as when it is tied to a particular index), the creditor must disclose each annual percentage rate in effect during the cycle for which the statement was issued.

2. *Disclosure of periodic interest rates required only if imposition possible.* With regard to the periodic interest rate disclosure (and its corresponding annual percentage rate), only rates that could have been imposed during the billing cycle reflected on the periodic statement need to be disclosed. For example:

i. If the creditor is changing annual percentage rates effective during the next billing cycle (either because it is changing terms or because of a variable-rate plan), the annual percentage rates required to be disclosed under §1026.7(b)(4) are only those in effect during the billing cycle reflected on the periodic statement. For example, if the annual percentage rate applied during May was 18%, but the creditor will increase the rate to 21% effective June 1, 18% is the only required disclosure under §1026.7(b)(4) for the periodic statement reflecting the May account activity.

ii. If the consumer has an overdraft line that might later be expanded upon the consumer's request to include secured advances, the rates for the secured advance feature need not be given until such time as the consumer has requested and received access to the additional feature.

iii. If annual percentage rates applicable to a particular type of transaction changed after a certain date and the old rate is only being applied to transactions that took place prior to that date, the creditor need not continue to disclose the old rate for those consumers that have no outstanding balances to which that rate could be applied.

3. *Multiple rates—same transaction.* If two or more periodic rates are applied to the same balance for the same type of transaction (for example, if the interest charge consists of a monthly periodic interest rate of 1.5% applied to the outstanding balance and a required credit life insurance component calculated at 0.1% per month on the same outstanding balance), creditors must disclose the periodic interest rate, expressed as an 18% annual percentage rate and the range of balances to which it is applicable. Costs attributable to the credit life insurance component must be disclosed as a fee under §1026.7(b)(6)(iii).

4. *Fees.* Creditors that identify fees in accordance with §1026.7(b)(6)(iii) need not identify the periodic rate at which a fee would accrue if the fee remains unpaid. For example, assume a fee is imposed for a late payment in the previous cycle and that the fee, unpaid, would be included in the purchases balance and accrue interest at the rate for purchases. The creditor need not separately disclose that the purchase rate applies to the portion of the purchases balance attributable to the unpaid fee.

5. *Ranges of balances. See* comment 6(b)(4)(i)(B)–1. A creditor is not required to adjust the range of balances disclosure to reflect the balance below which only a minimum charge applies.

6. *Deferred interest transactions. See* comment 7(b)–1.i.

7(b)(5) Balance on Which Finance Charge Computed

1. *Split rates applied to balance ranges.* If split rates were applied to a balance because different portions of the balance fall within two or more balance ranges, the creditor need not separately disclose the portions of the balance subject to such different rates since the range of balances to which the rates apply has been separately disclosed. For example, a creditor could disclose a balance of $700 for purchases even though a monthly periodic rate of 1.5% applied to the first $500, and a monthly periodic rate of 1% to the remainder. This option to disclose a combined balance does not apply when the interest charge is computed by applying the split rates to each day's balance (in contrast, for example, to applying the rates to the average daily balance). In that case, the balances must be disclosed using any of the options that are available if two or more daily rates are imposed. (*See* comment 7(b)(5)–4.)

2. *Monthly rate on average daily balance.* Creditors may apply a monthly periodic rate to an average daily balance.

3. *Multifeatured plans.* In a multifeatured plan, the creditor must disclose a separate balance (or balances, as applicable) to which a periodic rate was applied for each feature. Separate balances are not required, however, merely because a grace period is available for some features but not others. A total balance for the entire plan is optional. This does not affect how many balances the creditor must disclose—or may disclose—within each feature. (See, for example, comments 7(b)(5)–4 and 7(b)(4)–5.)

4. *Daily rate on daily balance.* If a finance charge is computed on the balance each day by application of one or more daily periodic interest rates, the balance on which the interest charge was computed may be disclosed in any of the following ways for each feature:

i. If a single daily periodic interest rate is imposed, the balance to which it is applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. The sum of the daily balances during the billing cycle.

D. The average daily balance during the billing cycle, in which case the creditor may, at its option, explain that the average daily balance is or can be multiplied by the number of days in the billing cycle and the periodic rate applied to the product to determine the amount of interest.

ii. If two or more daily periodic interest rates may be imposed, the balances to which the rates are applicable may be stated as:

A. A balance for each day in the billing cycle.

B. A balance for each day in the billing cycle on which the balance in the account changes.

C. Two or more average daily balances, each applicable to the daily periodic interest rates imposed for the time that those rates were in effect. The creditor may, at its option, explain that interest is or may be determined by (*1*) multiplying each of the average balances by the number of days in the billing cycle (or if the daily rate varied during the cycle, by multiplying by the number of days the applicable rate was in effect), (*2*) multiplying each of the results by the applicable daily periodic rate, and (*3*) adding these products together.

5. *Information to compute balance.* In connection with disclosing the interest charge balance, the creditor need not give the consumer all of the information necessary to compute the balance if that information is not otherwise required to be disclosed. For example, if current purchases are included from the date they are posted to the account, the posting date need not be disclosed.

6. *Non-deduction of credits.* The creditor need not specifically identify the total dollar amount of credits not deducted in computing the finance charge balance. Disclosure of the amount of credits not deducted is accomplished by listing the credits (§1026.7(b)(3)) and indicating which credits will not be deducted in determining the balance (for example, "credits after the 15th of the month are not deducted in computing the interest charge.").

7. *Use of one balance computation method explanation when multiple balances disclosed.* Sometimes the creditor will disclose more than one balance to which a periodic rate was applied, even though each balance was computed using the same balance computation method. For example, if a plan involves purchases and cash advances that are subject to different rates, more than one balance must be disclosed, even though the same computation method is used for determining the balance for each feature. In these cases, one explanation or a single identification of the name of the balance computation method is sufficient. Sometimes the creditor separately discloses the portions of the balance that are subject to different rates because different portions of the balance fall within two or more balance ranges, even when a combined balance disclosure would be permitted under comment 7(b)(5)–1. In these cases, one explanation or a single identification of the name of the balance computation method is also sufficient (assuming, of course, that all portions of the balance were computed using the same method). In these cases, a creditor may use an appropriate name listed in §1026.60(g) (e.g., "*average daily balance (including new purchases)*") as the single identification of the name of the balance computation method applicable to all features, even though the name only refers to purchases. For example, if a creditor uses the average daily balance method including new transactions for all features, a creditor may use the name "*average daily balance (including new purchases)*" listed in §1026.60(g)(i) to satisfy the requirement to disclose the name of the balance computation method for all features. As an alternative, in this situation, a creditor may revise the balance computation names listed in §1026.60(g) to refer more broadly to all new credit transactions, such as using the language "new transactions" or "current transactions" (e.g., "*average daily balance (including new transactions)*"), rather than simply referring to new purchases, when the same method is used to calculate the balances for all features of the account.

8. *Use of balance computation names in §1026.60(g) for balances other than purchases.* The names of the balance computation methods listed in §1026.60(g) describe balance computation methods for purchases. When a creditor is disclosing the name of the balance computation methods separately for each feature, in using the names listed in §1026.60(g) to satisfy the requirements of §1026.7(b)(5) for features other than purchases, a creditor must revise the names listed in §1026.60(g) to refer to the other features. For example, when disclosing the name of the balance computation method applicable to cash advances, a creditor must revise the name listed in §1026.60(g)(i) to disclose it as "*average daily balance (including new cash advances)*" when the balance for cash advances is figured by adding the outstanding balance (including new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. Similarly, a creditor must revise the name listed in §1026.60(g)(ii) to disclose it as

''*average daily balance (excluding new cash advances)*'' when the balance for cash advances is figured by adding the outstanding balance (excluding new cash advances and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. *See* comment 7(b)(5)–7 for guidance on the use of one balance computation method explanation or name when multiple balances are disclosed.

7(b)(6) Charges Imposed

1. *Examples of charges. See* commentary to §1026.6(b)(3).

2. *Fees.* Costs attributable to periodic rates other than interest charges shall be disclosed as a fee. For example, if a consumer obtains credit life insurance that is calculated at 0.1% per month on an outstanding balance and a monthly interest rate of 1.5% applies to the same balance, the creditor must disclose the dollar cost attributable to interest as an ''interest charge'' and the credit insurance cost as a ''fee.''

3. *Total fees and interest charged for calendar year to date.* i. *Monthly statements.* Some creditors send monthly statements but the statement periods do not coincide with the calendar month. For creditors sending monthly statements, the following comply with the requirement to provide calendar year-to-date totals.

A. A creditor may disclose calendar-year-to-date totals at the end of the calendar year by separately aggregating finance charges attributable to periodic interest rates and fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2011 through January 9, 2012, may disclose the separate year-to-date totals for interest charged and fees imposed from January 10, 2011, through January 9, 2012. Alternatively, the creditor could provide a statement for the cycle ending January 9, 2012, showing the separate year-to-date totals for interest charged and fees imposed January 1, 2011, through December 31, 2011.

B. A creditor may disclose calendar-year-to-date totals at the end of the calendar year by separately aggregating finance charges attributable to periodic interest rates and fees for 12 monthly cycles, starting with the period that begins during December and finishing with the period that begins during November. For example, if statement periods begin on the 10th day of each month, the statement covering November 10, 2011 through December 9, 2011, may disclose the separate year-to-date totals for interest charged and fees imposed from December 10, 2010, through December 9, 2011.

ii. *Quarterly statements.* Creditors issuing quarterly statements may apply the guidance set forth for monthly statements to comply with the requirement to provide calendar year-to-date totals on quarterly statements.

4. *Minimum charge in lieu of interest.* A minimum charge imposed if a charge would otherwise have been determined by applying a periodic rate to a balance except for the fact that such charge is smaller than the minimum must be disclosed as a fee. For example, assume a creditor imposes a minimum charge of $1.50 in lieu of interest if the calculated interest for a billing period is less than that minimum charge. If the interest calculated on a consumer's account for a particular billing period is 50 cents, the minimum charge of $1.50 would apply. In this case, the entire $1.50 would be disclosed as a fee; the periodic statement would reflect the $1.50 as a fee, and $0 in interest.

5. *Adjustments to year-to-date totals.* In some cases, a creditor may provide a statement for the current period reflecting that fees or interest charges imposed during a previous period were waived or reversed and credited to the account. Creditors may, but are not required to, reflect the adjustment in the year-to-date totals, nor, if an adjustment is made, to provide an explanation about the reason for the adjustment. Such adjustments should not affect the total fees or interest charges imposed for the current statement period.

6. *Acquired accounts.* An institution that acquires an account or plan must include, as applicable, fees and charges imposed on the account or plan prior to the acquisition in the aggregate disclosures provided under §1026.7(b)(6) for the acquired account or plan. Alternatively, the institution may provide separate totals reflecting activity prior and subsequent to the account or plan acquisition. For example, a creditor that acquires an account or plan on August 12 of a given calendar year may provide one total for the period from January 1 to August 11 and a separate total for the period beginning on August 12.

7. *Account upgrades.* A creditor that upgrades, or otherwise changes, a consumer's plan to a different open-end credit plan must include, as applicable, fees and charges imposed for that portion of the calendar year prior to the upgrade or change in the consumer's plan in the aggregate disclosures provided pursuant to §1026.7(b)(6) for the new plan. For example, assume a consumer has incurred $125 in fees for the calendar year to date for a retail credit card account, which is then replaced by a cobranded credit card account also issued by the creditor. In this case, the creditor must reflect the $125 in fees incurred prior to the replacement of the retail credit card account in the calendar year-to-date totals provided for the cobranded credit card account. Alternatively,

the institution may provide two separate totals reflecting activity prior and subsequent to the plan upgrade or change.

7(b)(7) Change-in-Terms and Increased Penalty Rate Summary for Open-End (Not Home-Secured) Plan

1. *Location of summary tables.* If a change-in-terms notice required by §1026.9(c)(2) is provided on or with a periodic statement, a tabular summary of key changes must appear on the front of the statement. Similarly, if a notice of a rate increase due to delinquency or default or as a penalty required by §1026.9(g)(1) is provided on or with a periodic statement, information required to be provided about the increase, presented in a table, must appear on the front of the statement.

7(b)(8) Grace Period

1. *Terminology.* In describing the grace period, the language used must be consistent with that used on the account-opening disclosure statement. (*See* §1026.5(a)(2)(i).)

2. *Deferred interest transactions. See* comment 7(b)–1.iv.

3. *Limitation on the imposition of finance charges in §1026.54.* Section 1026.7(b)(8) does not require a card issuer to disclose the limitations on the imposition of finance charges as a result of a loss of a grace period in §1026.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period.

7(b)(9) Address for Notice of Billing Errors

1. *Terminology.* The periodic statement should indicate the general purpose for the address for billing-error inquiries, although a detailed explanation or particular wording is not required.

2. *Telephone number.* A telephone number, email address, or Web site location may be included, but the mailing address for billing-error inquiries, which is the required disclosure, must be clear and conspicuous. The address is deemed to be clear and conspicuous if a precautionary instruction is included that telephoning or notifying the creditor by email or Web site will not preserve the consumer's billing rights, unless the creditor has agreed to treat billing error notices provided by electronic means as written notices, in which case the precautionary instruction is required only for telephoning.

7(b)(10) Closing Date of Billing Cycle; New Balance

1. *Credit balances. See* comment 7(b)(1)–1.

2. *Multifeatured plans.* In a multifeatured plan, the new balance may be disclosed for each feature or for the plan as a whole. If separate new balances are disclosed, a total new balance is optional.

3. *Accrued finance charges allocated from payments.* Some plans provide that the amount of the finance charge that has accrued since the consumer's last payment is directly deducted from each new payment, rather than being separately added to each statement and therefore reflected as an increase in the obligation. In such a plan, the new balance need not reflect finance charges accrued since the last payment.

7(b)(11) Due Date; Late Payment Costs

1. *Informal periods affecting late payments.* Although the terms of the account agreement may provide that a card issuer may assess a late payment fee if a payment is not received by a certain date, the card issuer may have an informal policy or practice that delays the assessment of the late payment fee for payments received a brief period of time after the date upon which a card issuer has the contractual right to impose the fee. A card issuer must disclose the due date according to the legal obligation between the parties, and need not consider the end of an informal "courtesy period" as the due date under §1026.7(b)(11).

2. *Assessment of late payment fees.* Some state or other laws require that a certain number of days must elapse following a due date before a late payment fee may be imposed. In addition, a card issuer may be restricted by the terms of the account agreement from imposing a late payment fee until a payment is late for a certain number of days following a due date. For example, assume a payment is due on March 10 and the account agreement or state law provides that a late payment fee cannot be assessed before March 21. A card issuer must disclose the due date under the terms of the legal obligation (March 10 in this example), and not a date different than the due date, such as when the card issuer is restricted by the account agreement or state or other law from imposing a late payment fee unless a payment is late for a certain number of days following the due date (March 21 in this example). Consumers' rights under state law to avoid the imposition of late payment fees during a specified period following a due date are unaffected by the disclosure requirement. In this example, the card issuer would disclose March 10 as the due date for purposes of §1026.7(b)(11), but could not, under state law, assess a late payment fee before March 21.

3. *Fee or rate triggered by multiple events.* If a late payment fee or penalty rate is triggered after multiple events, such as two late payments in six months, the card issuer may, but is not required to, disclose the late payment and penalty rate disclosure each month. The disclosures must be included on any periodic statement for which a late payment could trigger the late payment fee or

penalty rate, such as after the consumer made one late payment in this example. For example, if a cardholder has already made one late payment, the disclosure must be on each statement for the following five billing cycles.

4. *Range of late fees or penalty rates.* A card issuer that imposes a range of late payment fees or rates on a credit card account under an open-end (not home-secured) consumer credit plan may state the highest fee or rate along with an indication lower fees or rates could be imposed. For example, a phrase indicating the late payment fee could be ''up to $29'' complies with this requirement.

5. *Penalty rate in effect.* If the highest penalty rate has previously been triggered on an account, the card issuer may, but is not required to, delete the amount of the penalty rate and the warning that the rate may be imposed for an untimely payment, as not applicable. Alternatively, the card issuer may, but is not required to, modify the language to indicate that the penalty rate has been increased due to previous late payments (if applicable).

6. *Same day each month.* The requirement that the due date be the same day each month means that the due date must generally be the same numerical date. For example, a consumer's due date could be the 25th of every month. In contrast, a due date that is the same relative date but not numerical date each month, such as the third Tuesday of the month, generally would not comply with this requirement. However, a consumer's due date may be the last day of each month, even though that date will not be the same numerical date. For example, if a consumer's due date is the last day of each month, it will fall on February 28th (or February 29th in a leap year) and on August 31st.

7. *Change in due date.* A creditor may adjust a consumer's due date from time to time provided that the new due date will be the same numerical date each month on an ongoing basis. For example, a creditor may choose to honor a consumer's request to change from a due date that is the 20th of each month to the 5th of each month, or may choose to change a consumer's due date from time to time for operational reasons. See comment 2(a)(4)–3 for guidance on transitional billing cycles.

8. *Billing cycles longer than one month.* The requirement that the due date be the same day each month does not prohibit billing cycles that are two or three months, provided that the due date for each billing cycle is on the same numerical date of the month. For example, a creditor that establishes two-month billing cycles could send a consumer periodic statements disclosing due dates of January 25, March 25, and May 25.

9. *Payment due date when the creditor does not accept or receive payments by mail.* If the due date in a given month falls on a day on which the creditor does not receive or accept payments by mail and the creditor is required to treat a payment received the next business day as timely pursuant to §1026.10(d), the creditor must disclose the due date according to the legal obligation between the parties, not the date as of which the creditor is permitted to treat the payment as late. For example, assume that the consumer's due date is the 4th of every month and the creditor does not accept or receive payments by mail on Thursday, July 4. Pursuant to §1026.10(d), the creditor may not treat a mailed payment received on the following business day, Friday, July 5, as late for any purpose. The creditor must nonetheless disclose July 4 as the due date on the periodic statement and may not disclose a July 5 due date.

7(b)(12) Repayment Disclosures

1. *Rounding.* In disclosing on the periodic statement the minimum payment total cost estimate, the estimated monthly payment for repayment in 36 months, the total cost estimate for repayment in 36 months, and the savings estimate for repayment in 36 months under §1026.7(b)(12)(i) or (b)(12)(ii) as applicable, a card issuer, at its option, must either round these disclosures to the nearest whole dollar or to the nearest cent. Nonetheless, an issuer's rounding for all of these disclosures must be consistent. An issuer may round all of these disclosures to the nearest whole dollar when disclosing them on the periodic statement, or may round all of these disclosures to the nearest cent. An issuer may not, however, round some of the disclosures to the nearest whole dollar, while rounding other disclosures to the nearest cent.

Paragraph 7(b)(12)(i)(F)

1. *Minimum payment repayment estimate disclosed on the periodic statement is three years or less.* Section 1026.7(b)(12)(i)(F)(*2*)(*i*) provides that a credit card issuer is not required to provide the disclosures related to repayment in 36 months if the minimum payment repayment estimate disclosed under §1026.7(b)(12)(i)(B) after rounding is 3 years or less. For example, if the minimum payment repayment estimate is 2 years 6 months to 3 years 5 months, issuers would be required under §1026.7(b)(12)(i)(B) to disclose that it would take 3 years to pay off the balance in full if making only the minimum payment. In these cases, an issuer would not be required to disclose the 36-month disclosures on the periodic statement because the minimum payment repayment estimate disclosed to the consumer on the periodic statement (after rounding) is 3 years or less.

7(b)(12)(iv) Provision of Information About Credit Counseling Services

1. *Approved organizations.* Section 1026.7(b)(12)(iv)(A) requires card issuers to provide information regarding at least three organizations that have been approved by the United States Trustee or a bankruptcy administrator pursuant to 11 U.S.C. 111(a)(1) to provide credit counseling services in, at the card issuer's option, either the state in which the billing address for the account is located or the state specified by the consumer. A card issuer does not satisfy the requirements in §1026.7(b)(12)(iv)(A) by providing information regarding providers that have been approved pursuant to 11 U.S.C. 111(a)(2) to offer personal financial management courses.

2. *Information regarding approved organizations.* i. *Provision of information obtained from United States Trustee or bankruptcy administrator.* A card issuer complies with the requirements of §1026.7(b)(12)(iv)(A) if, through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii), it provides the consumer with information obtained from the United States Trustee or a bankruptcy administrator, such as information obtained from the Web site operated by the United States Trustee. Section 1026.7(b)(12)(iv)(A) does not require a card issuer to provide information that is not available from the United States Trustee or a bankruptcy administrator. If, for example, the Web site address for an organization approved by the United States Trustee is not available from the Web site operated by the United States Trustee, a card issuer is not required to provide a Web site address for that organization. However, §1026.7(b)(12)(iv)(B) requires the card issuer to, at least annually, update the information it provides for consistency with the information provided by the United States Trustee or a bankruptcy administrator.

ii. *Provision of information consistent with request of approved organization.* If requested by an approved organization, a card issuer may at its option provide, in addition to the name of the organization obtained from the United States Trustee or a bankruptcy administrator, another name used by that organization through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii). In addition, if requested by an approved organization, a card issuer may at its option provide through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii) a street address, telephone number, or Web site address for the organization that is different than the street address, telephone number, or Web site address obtained from the United States Trustee or a bankruptcy administrator. However, if requested by an approved organization, a card issuer must not provide information regarding that organization through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii).

iii. *Information regarding approved organizations that provide credit counseling services in a language other than English.* A card issuer may at its option provide through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii) information regarding approved organizations that provide credit counseling services in languages other than English. In the alternative, a card issuer may at its option state that such information is available from the Web site operated by the United States Trustee. Disclosing this Web site address does not by itself constitute a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)–2.iv.

iv. *Statements regarding approval by the United States Trustee or a bankruptcy administrator.* Section 1026.7(b)(12)(iv) does not require a card issuer to disclose through the toll-free number disclosed pursuant to §1026.7(b)(12)(i) or (b)(12)(ii) that organizations have been approved by the United States Trustee or a bankruptcy administrator. However, if a card issuer chooses to make such a disclosure, §1026.7(b)(12)(iv) requires that the card issuer also disclose that:

A. The United States Trustee or a bankruptcy administrator has determined that the organizations meet the minimum requirements for nonprofit pre-bankruptcy budget and credit counseling;

B. The organizations may provide other credit counseling services that have not been reviewed by the United States Trustee or a bankruptcy administrator; and

C. The United States Trustee or the bankruptcy administrator does not endorse or recommend any particular organization.

3. *Automated response systems or devices.* At their option, card issuers may use toll-free telephone numbers that connect consumers to automated systems, such as an interactive voice response system, through which consumers may obtain the information required by §1026.7(b)(12)(iv) by inputting information using a touch-tone telephone or similar device.

4. *Toll-free telephone number.* A card issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by §1026.7(b)(12)(iv) is prominently disclosed to the consumer. For automated systems, the option to receive the information required by §1026.7(b)(12)(iv) is prominently disclosed to the consumer if it is listed as one of the options in the first menu of options given to the consumer, such as "Press or say '3' if you would like information about credit counseling services." If the automated system permits callers to select the language in

which the call is conducted and in which information is provided, the menu to select the language may precede the menu with the option to receive information about accessing credit counseling services.

5. *Third parties.* At their option, card issuers may use a third party to establish and maintain a toll-free telephone number for use by the issuer to provide the information required by §1026.7(b)(12)(iv).

6. *Web site address.* When making the repayment disclosures on the periodic statement pursuant to §1026.7(b)(12), a card issuer at its option may also include a reference to a Web site address (in addition to the toll-free telephone number) where its customers may obtain the information required by §1026.7(b)(12)(iv), so long as the information provided on the Web site complies with §1026.7(b)(12)(iv). The Web site address disclosed must take consumers directly to the Web page where information about accessing credit counseling may be obtained. In the alternative, the card issuer may disclose the Web site address for the Web page operated by the United States Trustee where consumers may obtain information about approved credit counseling organizations. Disclosing this Web site address does not by itself constitute a statement that organizations have been approved by the United States Trustee for purposes of comment 7(b)(12)(iv)–2.iv.

7. *Advertising or marketing information.* If a consumer requests information about credit counseling services, the card issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the information required by §1026.7(b)(12)(iv). Educational materials that do not solicit business are not considered advertisements or marketing materials for this purpose. Examples:

i. *Toll-free telephone number.* As described in comment 7(b)(12)(iv)–4, an issuer may provide a toll-free telephone number that is designed to handle customer service calls generally, so long as the option to receive the information required by §1026.7(b)(12)(iv) through that toll-free telephone number is prominently disclosed to the consumer. Once the consumer selects the option to receive the information required by §1026.7(b)(12)(iv), the issuer may not provide advertisements or marketing materials to the consumer (except for providing the name of the issuer) prior to providing the required information.

ii. *Web page.* If the issuer discloses a link to a Web site address as part of the disclosures pursuant to comment 7(b)(12)(iv)–6, the issuer may not provide advertisements or marketing materials (except for providing the name of the issuer) on the Web page accessed by the address prior to providing the information required by §1026.7(b)(12)(iv).

7(b)(12)(v) Exemptions

1. *Billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle.* Under §1026.7(b)(12)(v)(C), a card issuer is exempt from the repayment disclosure requirements set forth in §1026.7(b)(12) for a particular billing cycle where paying the minimum payment due for that billing cycle will pay the outstanding balance on the account for that billing cycle. For example, if the entire outstanding balance on an account for a particular billing cycle is $20 and the minimum payment is $20, an issuer would not need to comply with the repayment disclosure requirements for that particular billing cycle. In addition, this exemption would apply to a charged-off account where payment of the entire account balance is due immediately.

7(b)(13) Format Requirements

1. *Combined asset account and credit account statements.* Some financial institutions provide information about deposit account and open-end credit account activity on one periodic statement. For purposes of providing disclosures on the front of the first page of the periodic statement pursuant to §1026.7(b)(13), the first page of such a combined statement shall be the page on which credit transactions first appear. This guidance also applies to financial institutions that provide information about prepaid accounts and account activity in connection with covered separate credit features accessible by hybrid prepaid-credit cards as defined in §1026.61 on one periodic statement.

Section 1026.8—Identifying Transactions on Periodic Statements

8(a) Sale Credit

1. *Sale credit.* The term ''sale credit'' refers to a purchase in which the consumer uses a credit card or otherwise directly accesses an open-end line of credit (see comment 8(b)–1 if access is by means of a check) to obtain goods or services from a merchant, whether or not the merchant is the card issuer or creditor. See comment 8(a)–9 for guidance on when credit accessed by a hybrid prepaid-credit card from a covered separate credit feature is ''sale credit' or ''nonsale credit.'' ''Sale credit'' includes:

i. The purchase of funds-transfer services (such as a wire transfer) from an intermediary.

ii. The purchase of services from the card issuer or creditor. For the purchase of services that are costs imposed as part of the plan under §1026.6(b)(3), card issuers and creditors comply with the requirements for identifying transactions under this section by disclosing the fees in accordance with the requirements of §1026.7(b)(6). For the purchases of services that are not costs imposed as part of the plan, card issuers and creditors may, at their option, identify transactions under this section or in accordance with the requirements of §1026.7(b)(6).

2. *Amount—transactions not billed in full.* If sale transactions are not billed in full on any single statement, but are billed periodically in precomputed installments, the first periodic statement reflecting the transaction must show either the full amount of the transaction together with the date the transaction actually took place; or the amount of the first installment that was debited to the account together with the date of the transaction or the date on which the first installment was debited to the account. In any event, subsequent periodic statements should reflect each installment due, together with either any other identifying information required by §1026.8(a) (such as the seller's name and address in a three-party situation) or other appropriate identifying information relating the transaction to the first billing. The debiting date for the particular installment, or the date the transaction took place, may be used as the date of the transaction on these subsequent statements.

3. *Date—when a transaction takes place.* i. If the consumer conducts the transaction in person, the date of the transaction is the calendar date on which the consumer made the purchase or order, or secured the advance.

ii. For transactions billed to the account on an ongoing basis (other than installments to pay a precomputed amount), the date of the transaction is the date on which the amount is debited to the account. This might include, for example, monthly insurance premiums.

iii. For mail, Internet, or telephone orders, a creditor may disclose as the transaction date either the invoice date, the debiting date, or the date the order was placed by telephone or via the Internet.

iv. In a foreign transaction, the debiting date may be considered the transaction date.

4. *Date—sufficiency of description.* i. If the creditor discloses only the date of the transaction, the creditor need not identify it as the ''transaction date.'' If the creditor discloses more than one date (for example, the transaction date and the posting date), the creditor must identify each.

ii. The month and day sufficiently identify the transaction date, unless the posting of the transaction is delayed so long that the year is needed for a clear disclosure to the consumer.

5. *Same or related persons.* i. For purposes of identifying transactions, the term *same or related persons* refers to, for example:

A. Franchised or licensed sellers of a creditor's product or service.

B. Sellers who assign or sell open-end sales accounts to a creditor or arrange for such credit under a plan that allows the consumer to use the credit only in transactions with that seller.

ii. A seller is not related to the creditor merely because the seller and the creditor have an agreement authorizing the seller to honor the creditor's credit card.

6. *Brief identification—sufficiency of description.* The ''brief identification'' provision in §1026.8(a)(1)(i) requires a designation that will enable the consumer to reconcile the periodic statement with the consumer's own records. In determining the sufficiency of the description, the following rules apply:

i. While item-by-item descriptions are not necessary, reasonable precision is required. For example, ''merchandise,'' ''miscellaneous,'' ''second-hand goods,'' or ''promotional items'' would not suffice.

ii. A reference to a department in a sales establishment that accurately conveys the identification of the types of property or services available in the department is sufficient—for example, ''jewelry,'' or ''sporting goods.''

iii. A number or symbol that is related to an identification list printed elsewhere on the statement that reasonably identifies the transaction with the creditor is sufficient.

7. *Seller's name—sufficiency of description.* The requirement contemplates that the seller's name will appear on the periodic statement in essentially the same form as it appears on transaction documents provided to the consumer at the time of the sale. The seller's name may also be disclosed as, for example:

i. A more complete spelling of the name that was alphabetically abbreviated on the receipt or other credit document.

ii. An alphabetical abbreviation of the name on the periodic statement even if the name appears in a more complete spelling on the receipt or other credit document. Terms that merely indicate the form of a business entity, such as ''Inc.,'' ''Co.,'' or ''Ltd.,'' may always be omitted.

8. *Location of transaction.* i. If the seller has multiple stores or branches within a city, the creditor need not identify the specific branch at which the sale occurred.

ii. When no meaningful address is available because the consumer did not make the purchase at any fixed location of the seller, the creditor may omit the address, or may provide some other identifying designation, such as ''aboard plane,'' ''ABC Airways Flight,'' ''customer's home,'' ''telephone order,'' ''internet order'' or ''mail order.''

9. *Covered separate credit feature accessible by hybrid prepaid-credit card.* i. A transaction will be treated as a ''sale credit'' under §1026.8(a) in cases where a consumer uses a hybrid prepaid-credit card as defined in §1026.61 to make a purchase to obtain goods or services from a merchant with credit from a covered separate credit feature and the

credit is drawn directly from the covered separate credit feature without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature, and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. The $15 credit transaction will be treated as ''sale credit'' under §1026.8(a).

ii. On the other hand, a transaction will be treated as ''nonsale credit'' for purposes of §1026.8(b) in cases where a consumer uses a hybrid prepaid-credit card as defined in §1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from the credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, the $15 credit transaction is treated as ''nonsale credit'' under §1026.8(b). *See* comment 8(b)–1.vi below.

iii. If a transaction is ''sale credit'' as described above in comment 8(a)–9.i, the following applies:

A. If a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds in the asset feature of the prepaid account, and partially paid with credit from a covered separate credit feature, the amount to be disclosed under §1026.8(a) is the amount of the credit extension, not the total amount of the purchase transaction.

B. For a transaction at point of sale where credit from a covered separate credit feature is accessed by a hybrid prepaid-credit card, and that transaction partially involves the purchase of goods or services and partially involves other credit such as cash back given to the cardholder, the creditor must disclose the entire amount of the credit transaction as sale credit, including the part of the transaction that does not relate to the purchase of goods or services.

8(b) Nonsale Credit

1. *Nonsale credit.* The term ''nonsale credit'' refers to any form of loan credit including, for example:

i. A cash advance.

ii. An advance on a credit plan that is accessed by overdrafts on an asset account other than a prepaid account as defined in §1026.61.

iii. The use of a ''supplemental credit device'' in the form of a check or draft or the use of the overdraft credit plan accessed by a debit card, even if such use is in connection with a purchase of goods or services.

iv. Miscellaneous debits to remedy mispostings, returned checks, and similar entries.

v. An advance at an ATM on a covered separate credit feature accessed by a hybrid prepaid-credit card as defined in §1026.61. If a hybrid prepaid-credit card is used to obtain an advance at an ATM and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with a credit extension from the covered separate credit feature, the amount to be disclosed under §1026.8(b) is the amount of the credit extension, not the total amount of the ATM transaction.

vi. A transaction where a consumer uses a hybrid prepaid-credit card as defined in §1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase, as described in comment 8(a)–9.ii. In this scenario, the amount to be disclosed under §1026.8(b) is the amount of the credit extension, not the total amount of the purchase transaction.

2. *Amount—overdraft credit plans.* If credit is extended under an overdraft credit plan tied to an asset account other than a prepaid account as defined in §1026.61 or by means of a debit card tied to an overdraft credit plan:

i. The amount to be disclosed is that of the credit extension, not the face amount of the check or the total amount of the debit/credit transaction.

ii. The creditor may disclose the amount of the credit extensions on a cumulative daily basis, rather than the amount attributable to each check or each use of the debit card that accesses the credit plan.

3. *Date of transaction.* See comment 8(a)–4.

4. *Nonsale transaction—sufficiency of identification.* The creditor sufficiently identifies a nonsale transaction by describing the type of advance it represents, such as cash advance, loan, overdraft loan, or any readily understandable trade name for the credit program.

Section 1026.9—Subsequent Disclosure Requirements

9(a) Furnishing Statement of Billing Rights

9(a)(1) Annual Statement

1. *General.* The creditor may provide the annual billing rights statement:

i. By sending it in one billing period per year to each consumer that gets a periodic statement for that period; or

ii. By sending a copy to all of its accountholders sometime during the calendar year but not necessarily all in one billing period (for example, sending the annual notice in connection with renewal cards or when imposing annual membership fees).

2. *Substantially similar*. See the commentary to Model Forms G–3 and G–3(A) in appendix G to part 1026.

9(a)(2) Alternative Summary Statement

1. *Changing from long-form to short form statement and vice versa*. If the creditor has been sending the long-form annual statement, and subsequently decides to use the alternative summary statement, the first summary statement must be sent no later than 12 months after the last long-form statement was sent. Conversely, if the creditor wants to switch to the long-form, the first long-form statement must be sent no later than 12 months after the last summary statement.

2. *Substantially similar*. See the commentary to Model Forms G–4 and G–4(A) in appendix G to part 1026.

9(b) Disclosures for Supplemental Credit Access Devices and Additional Features

1. *Credit access device—examples*. *Credit access device* includes, for example, a blank check, payee-designated check, blank draft or order, or authorization form for issuance of a check; it does not include a check issued payable to a consumer representing loan proceeds or the disbursement of a cash advance.

2. *Credit account feature—examples*. A new credit account *feature* would include, for example:

i. The addition of overdraft checking to an existing account (although the regular checks that could trigger the overdraft feature are not themselves ''devices'').

ii. The option to use an existing credit card to secure cash advances, when previously the card could only be used for purchases.

Paragraph 9(b)(2)

1. *Different finance charge terms*. Except as provided in §1026.9(b)(3) for checks that access a credit card account, if the finance charge terms are different from those previously disclosed, the creditor may satisfy the requirement to give the finance charge terms either by giving a complete set of new account-opening disclosures reflecting the terms of the added device or feature or by giving only the finance charge disclosures for the added device or feature.

9(b)(3) Checks That Access a Credit Card Account

9(b)(3)(i) Disclosures

1. *Front of the page containing the checks*. The following would comply with the requirement that the tabular disclosures provided pursuant to §1026.9(b)(3) appear on the front of the page containing the checks:

i. Providing the tabular disclosure on the front of the first page on which checks appear, for an offer where checks are provided on multiple pages;

ii. Providing the tabular disclosure on the front of a mini-book or accordion booklet containing the checks; or

iii. Providing the tabular disclosure on the front of the solicitation letter, when the checks are printed on the front of the same page as the solicitation letter even if the checks can be separated by the consumer from the solicitation letter using perforations.

2. *Combined disclosures for checks and other transactions subject to the same terms*. A card issuer may include in the tabular disclosure provided pursuant to §1026.9(b)(3) disclosures regarding the terms offered on non-check transactions, provided that such transactions are subject to the same terms that are required to be disclosed pursuant to §1026.9(b)(3)(i) for the checks that access a credit card account. However, a card issuer may not include in the table information regarding additional terms that are not required disclosures for checks that access a credit card account pursuant to §1026.9(b)(3).

Paragraph 9(b)(3)(i)(D)

1. *Grace period*. A creditor may not disclose under §1026.9(b)(3)(i)(D) the limitations on the imposition of finance charges as a result of a loss of a grace period in §1026.54, or the impact of payment allocation on whether interest is charged on transactions as a result of a loss of a grace period. Some creditors may offer a grace period on credit extended by the use of an access check under which interest will not be charged on the check transactions if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, §1026.9(b)(3)(i)(D) requires that the creditor disclose the grace period using the following language, or substantially similar language, as applicable: ''Your due date is [at least] ____ days after the close of each billing cycle. We will not charge you any interest on check transactions if you pay your entire balance by the due date each month.'' However, other creditors may offer a grace period on check transactions under which interest may be charged on check transactions even if the consumer pays the outstanding balance shown on a

periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, §1026.9(b)(3)(i)(D) requires the creditor to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period. Creditors may use the following language to describe that no grace period on check transactions is offered, as applicable: "We will begin charging interest on these checks on the transaction date."

9(c) Change in Terms

9(c)(1) Rules Affecting Home-Equity Plans

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. The rules in §1026.40(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by §1026.9(c) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (But see §1026.40(f))

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under §1026.6(a) or increases the minimum payment, unless an exception under §1026.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

9(c)(1)(i) Written Notice Required

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 15 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 15 days prior to the billing cycle in which the change is to be implemented.

3. *Timing—advance notice not required.* Advance notice of 15 days is not necessary—that is, a notice of change in terms is required, but it may be mailed or delivered as late as the effective date of the change—in two circumstances:

i. If there is an increased periodic rate or any other finance charge attributable to the consumer's delinquency or default.

ii. If the consumer agrees to the particular change. This provision is intended for use in the unusual instance when a consumer substitutes collateral or when the creditor can advance additional credit only if a change relatively unique to that consumer is made, such as the consumer's providing additional security or paying an increased minimum payment amount. Therefore, the following are not "agreements" between the consumer and the creditor for purposes of §1026.9(c)(1)(i): The consumer's general acceptance of the creditor's contract reservation of the right to change terms; the consumer's use of the account (which might imply acceptance of its terms under state law); and the consumer's acceptance of a unilateral term change that is not particular to that consumer, but rather is of general applicability to consumers with that type of account.

4. *Form of change-in-terms notice.* A complete new set of the initial disclosures containing the changed term complies with §1026.9(c)(1)(i) if the change is highlighted in some way on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term change.

5. *Security interest change—form of notice.* A copy of the security agreement that describes the collateral securing the consumer's account may be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Changes to home-equity plans entered into on or after November 7, 1989.* Section 1026.9(c)(1) applies when, by written agreement under §1026.40(f)(3)(iii), a creditor changes the terms of a home-equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on terms different from those of the original plan. In disclosing the change:

i. If the index is changed, the maximum annual percentage rate is increased (to the limited extent permitted by §1026.30), or a variable-rate feature is added to a fixed-rate plan, the creditor must include the disclosures required by §1026.40(d)(12)(x) and (d)(12)(xi), unless these disclosures are unchanged from those given earlier.

ii. If the minimum payment requirement is changed, the creditor must include the disclosures required by §1026.40(d)(5)(iii) (and, in variable-rate plans, the disclosures required by §1026.40(d)(12)(x) and (d)(12)(xi)) unless the disclosures given earlier contained representative examples covering the new minimum payment requirement. (See the commentary to §1026.40(d)(5)(iii), (d)(12)(x) and (d)(12)(xi) for a discussion of representative examples.)

iii. When the terms are changed pursuant to a written agreement as described in §1026.40(f)(3)(iii), the advance-notice requirement does not apply.

9(c)(1)(ii) Notice not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges. (But see §1026.40(f).)

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as "You may skip your October payment," or "We will waive your finance charges for January," may serve as the change-in-terms notice.

9(c)(1)(iii) Notice to Restrict Credit

1. *Written request for reinstatement.* If a creditor requires the request for reinstatement of credit privileges to be in writing, the notice under §1026.9(c)(1)(iii) must state that fact.

2. *Notice not required.* A creditor need not provide a notice under this paragraph if, pursuant to the commentary to §1026.40(f)(2), a creditor freezes a line or reduces a credit line rather than terminating a plan and accelerating the balance.

9(c)(2) Rules Affecting Open-End (Not Home-Secured) Plans

1. *Changes initially disclosed.* Except as provided in §1026.9(g)(1), no notice of a change in terms need be given if the specific change is set forth initially consistent with any applicable requirements, such as rate or fee increases upon expiration of a specific period of time that were disclosed in accordance with §1026.9(c)(2)(v)(B) or rate increases under a properly disclosed variable-rate plan in accordance with §1026.9(c)(2)(v)(C). In contrast, notice must be given if the contract allows the creditor to increase a rate or fee at its discretion.

2. *State law issues.* Some issues are not addressed by §1026.9(c)(2) because they are controlled by state or other applicable laws. These issues include the types of changes a creditor may make, to the extent otherwise permitted by this part.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change affects any of the terms described in §1026.9(c)(2)(i), unless an exception under §1026.9(c)(2)(v) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 28-day grace period on purchases and the consumer will have fewer days during the billing cycle change. *See also* §1026.7(b)(11)(i)(A) regarding the general requirement that the payment due date for a credit card account under an open-end (not home-secured) consumer credit plan must be the same day each month.

4. *Relationship to §1026.9(b).* If a creditor adds a feature to the account on the type of terms otherwise required to be disclosed under §1026.6, the creditor must satisfy: The requirement to provide the finance charge disclosures for the added feature under §1026.9(b); and any applicable requirement to provide a change-in-terms notice under §1026.9(c), including any advance notice that must be provided. For example, if a creditor adds a balance transfer feature to an account more than 30 days after account-opening disclosures are provided, it must give the finance charge disclosures for the balance transfer feature under §1026.9(b) as well as comply with the change-in-terms notice requirements under §1026.9(c), including providing notice of the change at least 45 days

prior to the effective date of the change. Similarly, if a creditor makes a balance transfer offer on finance charge terms that are higher than those previously disclosed for balance transfers, it would also generally be required to provide a change-in-terms notice at least 45 days in advance of the effective date of the change. A creditor may provide a single notice under §1026.9(c) to satisfy the notice requirements of both paragraphs (b) and (c) of §1026.9. For checks that access a credit card account subject to the disclosure requirements in §1026.9(b)(3), a creditor is not subject to the notice requirements under §1026.9(c) even if the applicable rate or fee is higher than those previously disclosed for such checks. Thus, for example, the creditor need not wait 45 days before applying the new rate or fee for transactions made using such checks, but the creditor must make the required disclosures on or with the checks in accordance with §1026.9(b)(3).

9(c)(2)(i) Changes Where Written Advance Notice is Required

1. *Affected consumers.* Change-in-terms notices need only go to those consumers who may be affected by the change. For example, a change in the periodic rate for check overdraft credit need not be disclosed to consumers who do not have that feature on their accounts. If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to §1026.5(d) to determine the number of notices that must be given.

2. *Timing—effective date of change.* The rule that the notice of the change in terms be provided at least 45 days before the change takes effect permits mid-cycle changes when there is clearly no retroactive effect, such as the imposition of a transaction fee. Any change in the balance computation method, in contrast, would need to be disclosed at least 45 days prior to the billing cycle in which the change is to be implemented.

3. *Changes agreed to by the consumer. See also* comment 5(b)(1)(i)–6.

4. *Form of change-in-terms notice.* Except if §1026.9(c)(2)(iv) applies, a complete new set of the initial disclosures containing the changed term complies with §1026.9(c)(2)(i) if the change is highlighted on the disclosure statement, or if the disclosure statement is accompanied by a letter or some other insert that indicates or draws attention to the term being changed.

5. *Security interest change—form of notice.* A creditor must provide a description of any security interest it is acquiring under §1026.9(c)(2)(iv). A copy of the security agreement that describes the collateral securing the consumer's account may also be used as the notice, when the term change is the addition of a security interest or the addition or substitution of collateral.

6. *Examples. See* comment 55(a)–1 and 55(b)–3 for examples of how a card issuer that is subject to §1026.55 may comply with the timing requirements for notices required by §1026.9(c)(2)(i).

9(c)(2)(iii) Charges not Covered by §1026.6(b)(1) and (b)(2)

1. *Applicability.* Generally, if a creditor increases any component of a charge, or introduces a new charge, that is imposed as part of the plan under §1026.6(b)(3) but is not required to be disclosed as part of the account-opening summary table under §1026.6(b)(1) and (b)(2), the creditor must either, at its option (i) provide at least 45 days' written advance notice before the change becomes effective to comply with the requirements of §1026.9(c)(2)(i), or (ii) provide notice orally or in writing, or electronically if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that a consumer would be likely to notice the disclosure. (*See* the commentary under §1026.5(a)(1)(iii) regarding disclosure of such changes in electronic form.) For example, a fee for expedited delivery of a credit card is a charge imposed as part of the plan under §1026.6(b)(3) but is not required to be disclosed in the account-opening summary table under §1026.6(b)(1) and (b)(2). If a creditor changes the amount of that expedited delivery fee, the creditor may provide written advance notice of the change to affected consumers at least 45 days before the change becomes effective. Alternatively, the creditor may provide oral or written notice, or electronic notice if the consumer requests the service electronically, of the amount of the charge to an affected consumer before the consumer agrees to or becomes obligated to pay the charge, at a time and in a manner that the consumer would be likely to notice the disclosure. (*See* comment 5(b)(1)(ii)–1 for examples of disclosures given at a time and in a manner that the consumer would be likely to notice them.)

9(c)(2)(iv) Disclosure Requirements

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in §1026.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in §1026.6(b)(2)(i)(A). For example, if a creditor is changing from using a prime rate to using the LIBOR in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on the LIBOR.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor generally must provide a notice as otherwise required under §1026.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. However, a creditor is not required to provide a notice under §1026.9(c) if the creditor provides the disclosures required by §1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a variable rate to a lower non-variable rate. Similarly, a creditor is not required to provide a notice under §1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under §1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with §1026.55(b)(4).

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor generally must provide a notice as otherwise required under §1026.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. However, a creditor is not required to provide a notice under §1026.9(c) if the creditor provides the disclosures required by §1026.9(c)(2)(v)(B) or (c)(2)(v)(D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under §1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under §1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with §1026.55(b)(4). *See* comment 55(b)(2)–4 regarding the limitations in §1026.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under §1026.6(b)(1) and (b)(2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of ''Either $5 or 3% of the transaction amount, whichever is greater(Max: $100),'' and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: ''Either $10 or 3% of the transaction amount, whichever is greater (Max: $100).''

7. *Combining a notice described in §1026.9(c)(2)(iv) with a notice described in §1026.9(g)(3).* If a creditor is required to provide a notice described in §1026.9(c)(2)(iv) and a notice described in §1026.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. *Content.* Sample G–20 contains an example of how to comply with the requirements in §1026.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G–21 contains an example of how to comply with the requirements in §1026.9(c)(2)(iv) when the late payment fee on a credit card account is being increased, and the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with §1026.9(h).

9. *Clear and conspicuous standard. See* comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under §1026.9(c)(2)(iv)(A)(*1*).

10. *Terminology. See* §1026.5(a)(2) for terminology requirements applicable to disclosures required under §1026.9(c)(2)(iv)(A)(*1*).

11. *Reasons for increase.* i. *In general.* Section 1026.9(c)(2)(iv)(A)(*8*) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be

disclosed. However, the specific reasons disclosed under §1026.9(c)(2)(iv)(A)(*8*) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the notice of a rate increase triggered by a decrease of 100 points in a consumer's credit score may state that the increase is due to "a decline in your creditworthiness" or "a decline in your credit score." Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as "a change in market conditions." In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, §1026.9(c)(2)(iv)(A)(*8*) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.

ii. *Example.* Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer's credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer's credit score and the consumer's late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer's credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer's credit score.

9(c)(2)(v) Notice not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by §1026.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* i. *Skipped or reduced payments.* If a credit program allows consumers to skip or reduce one or more payments during the year, no notice of the change in terms is required either prior to the reduction in payments or upon resumption of the higher payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original payment schedule, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the skip feature may also be used to notify the consumer of the resumption of the original payment schedule, either by stating explicitly when the higher resumes or by indicating the duration of the skip option. Language such as "You may skip your October payment" may serve as the change-in-terms notice.

ii. *Temporary reductions in interest rates or fees.* If a credit program involves temporary reductions in an interest rate or fee, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate or fee if these features are disclosed in advance in accordance with the requirements of §1026.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate or fee, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate or fee must comply with the timing requirements of §1026.9(c)(2)(i) and the content and format requirements of §1026.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). *See* comment 55(b)–3 for guidance regarding the application of §1026.55 in these circumstances.

3. *Changing from a variable rate to a non-variable rate. See* comment 9(c)(2)(iv)–3.

4. *Changing from a non-variable rate to a variable rate. See* comment 9(c)(2)(iv)–4.

5. *Temporary rate or fee reductions offered by telephone.* The timing requirements of §1026.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by §1026.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) or the imposition of a fee that will be in effect for a specified period of time (a temporary fee) if:

i. The consumer accepts the offer of the temporary rate or temporary fee by telephone;

ii. The creditor permits the consumer to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by §1026.9(c)(2)(v)(B), except that the creditor need not permit the consumer to reject a temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate or temporary fee; and

iii. The disclosures required by §1026.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's account reinstated, if applicable, are disclosed to the consumer as part of the temporary rate or temporary fee offer.

6. *First listing.* The disclosures required by §1026.9(c)(2)(v)(B)(*1*) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate or fee in the disclosure provided to the consumer. For purposes of §1026.9(c)(2)(v)(B), the first statement of the temporary rate or fee is the most prominent listing on the front side of the first page of the disclosure. If the temporary rate or fee does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate or fee is the most prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, see §1026.16(g).

7. *Close proximity—point of sale.* Creditors providing the disclosures required by §1026.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate or fee that would apply after expiration of the period on a separate page or document from the temporary rate or fee and the length of the period, provided that the disclosure of the annual percentage rate or fee that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate or fee and length of the period.

8. *Disclosure of annual percentage rates.* If a rate disclosed pursuant to §1026.9(c)(2)(v)(B) or (c)(2)(v)(D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state ''After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate.''

9. *Deferred interest or similar programs.* If the applicable conditions are met, the exception in §1026.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of this comment and §1026.9(c)(2)(v)(B), ''deferred interest'' has the same meaning as in §1026.16(h)(2) and associated commentary. For such programs, a creditor must disclose pursuant to §1026.9(c)(2)(v)(B)(*1*) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under §1026.9(c)(2)(v)(B)(*1*) include:

i. ''No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%.''

ii. ''No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%.''

10. *Relationship between §§1026.9(c)(2)(v)(B) and 1026.6(b).* A disclosure of the information described in §1026.9(c)(2)(v)(B)(*1*) provided in the account-opening table in accordance with §1026.6(b) complies with the requirements of §1026.9(c)(2)(v)(B)(*2*), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)–6.

11. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in §1026.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to §1026.9(c)(2)(v)(D)(*2*) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), (b)(2)(viii), (b)(2)(ix), (b)(2)(xi), or (b)(2)(xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

12. *Index not under creditor's control. See* comment 55(b)(2)–2 for guidance on when an index is deemed to be under a creditor's control.

13. *Temporary rates—relationship to §1026.59.* i. *General.* Section 1026.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, §1026.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by §1026.59, a creditor reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by §1026.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. *See* §1026.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

ii. *Example.* A consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with §1026.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under §1026.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with §1026.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

9(d) Finance Charge Imposed at Time of Transaction

1. *Disclosure prior to imposition.* A person imposing a finance charge at the time of honoring a consumer's credit card must disclose the amount of the charge, or an explanation of how the charge will be determined, prior to its imposition. This must be disclosed before the consumer becomes obligated for property or services that may be paid for by use of a credit card. For example, disclosure must be given before the consumer has dinner at a restaurant, stays overnight at a hotel, or makes a deposit guaranteeing the purchase of property or services.

9(e) Disclosures Upon Renewal of Credit or Charge Card

1. *Coverage.* This paragraph applies to credit and charge card accounts of the type subject to §1026.60. (*See* §1026.60(a)(5) and the accompanying commentary for discussion of the types of accounts subject to §1026.60.) The disclosure requirements are triggered when a card issuer imposes any annual or other periodic fee on such an account or if the card issuer has changed or amended any term of a cardholder's account required to be disclosed under §1026.6(b)(1) and (b)(2) that has not previously been disclosed to the consumer, whether or not the card issuer originally was required to provide the application and solicitation disclosures described in §1026.60.

2. *Form.* The disclosures under this paragraph must be clear and conspicuous, but need not appear in a tabular format or in a prominent location. The disclosures need not be in a form the cardholder can retain.

3. *Terms at renewal.* Renewal notices must reflect the terms actually in effect at the time of renewal. For example, a card issuer that offers a preferential annual percentage rate to employees during their employment must send a renewal notice to employees disclosing the lower rate actually charged to employees (although the card issuer also may show the rate charged to the general public).

4. *Variable rate.* If the card issuer cannot determine the rate that will be in effect if the cardholder chooses to renew a variable-rate account, the card issuer may disclose the rate in effect at the time of mailing or delivery of the renewal notice. Alternatively, the card issuer may use the rate as of a specified date within the last 30 days before the disclosure is provided.

5. *Renewals more frequent than annual.* If a renewal fee is billed more often than annually, the renewal notice should be provided each time the fee is billed. In this instance, the fee need not be disclosed as an annualized amount. Alternatively, the card issuer may provide the notice no less than once every 12 months if the notice explains the amount and frequency of the fee that will be billed during the time period covered by the disclosure, and also discloses the fee as an annualized amount. The notice under this alternative also must state the consequences of a cardholder's decision to terminate the account after the renewal-notice period has expired. For example, if a $2 fee is billed monthly but the notice is given annually, the notice must inform the cardholder that the monthly charge is $2, the annualized fee is $24, and $2 will be billed to the account each month for the coming year unless the cardholder notifies the card issuer. If the cardholder is obligated to pay an amount equal to the remaining unpaid

monthly charges if the cardholder terminates the account during the coming year but after the first month, the notice must disclose the fact.

6. *Terminating credit availability.* Card issuers have some flexibility in determining the procedures for how and when an account may be terminated. However, the card issuer must clearly disclose the time by which the cardholder must act to terminate the account to avoid paying a renewal fee, if applicable. State and other applicable law govern whether the card issuer may impose requirements such as specifying that the cardholder's response be in writing or that the outstanding balance be repaid in full upon termination.

7. *Timing of termination by cardholder.* When a card issuer provides notice under §1026.9(e)(1), a cardholder must be given at least 30 days or one billing cycle, whichever is less, from the date the notice is mailed or delivered to make a decision whether to terminate an account.

8. *Timing of notices.* A renewal notice is deemed to be provided when mailed or delivered. Similarly, notice of termination is deemed to be given when mailed or delivered.

9. *Prompt reversal of renewal fee upon termination.* In a situation where a cardholder has provided timely notice of termination and a renewal fee has been billed to a cardholder's account, the card issuer must reverse or otherwise withdraw the fee promptly. Once a cardholder has terminated an account, no additional action by the cardholder may be required.

10. *Disclosure of changes in terms required to be disclosed pursuant to §1026.6(b)(1) and (b)(2).* Clear and conspicuous disclosure of a changed term on a periodic statement provided to a consumer prior to renewal of the consumer's account constitutes prior disclosure of that term for purposes of §1026.9(e)(1). Card issuers should refer to §1026.9(c)(2) for additional timing, content, and formatting requirements that apply to certain changes in terms under that paragraph.

9(e)(2) Notification on Periodic Statements

1. *Combined disclosures.* If a single disclosure is used to comply with both §§1026.9(e) and 1026.7, the periodic statement must comply with the rules in §§1026.60 and 1026.7. For example, a description substantially similar to the heading describing the grace period required by §1026.60(b)(5) must be used and the name of the balance-calculation method must be identified (if listed in §1026.60(g)) to comply with the requirements of §1026.60. A card issuer may include some of the renewal disclosures on a periodic statement and others on a separate document so long as there is some reference indicating that the disclosures relate to one another. All renewal disclosures must be provided to a cardholder at the same time.

2. *Preprinted notices on periodic statements.* A card issuer may preprint the required information on its periodic statements. A card issuer that does so, however, must make clear on the periodic statement when the preprinted renewal disclosures are applicable. For example, the card issuer could include a special notice (not preprinted) at the appropriate time that the renewal fee will be billed in the following billing cycle, or could show the renewal date as a regular (preprinted) entry on all periodic statements.

9(f) Change in Credit Card Account Insurance Provider

1. *Coverage.* This paragraph applies to credit card accounts of the type subject to §1026.60 if credit insurance (typically life, disability, and unemployment insurance) is offered on the outstanding balance of such an account. (Credit card accounts subject to §1026.9(f) are the same as those subject to §1026.9(e); *see* comment 9(e)–1.) Charge card accounts are not covered by this paragraph. In addition, the disclosure requirements of this paragraph apply only where the card issuer initiates the change in insurance provider. For example, if the card issuer's current insurance provider is merged into or acquired by another company, these disclosures would not be required. Disclosures also need not be given in cases where card issuers pay for credit insurance themselves and do not separately charge the cardholder.

2. *No increase in rate or decrease in coverage.* The requirement to provide the disclosure arises when the card issuer changes the provider of insurance, even if there will be no increase in the premium rate charged to the consumer and no decrease in coverage under the insurance policy.

3. *Form of notice.* If a substantial decrease in coverage will result from the change in provider, the card issuer either must explain the decrease or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. (*See* the commentary to AppendixG–13 to part 1026.)

4. *Discontinuation of insurance.* In addition to stating that the cardholder may cancel the insurance, the card issuer may explain the effect the cancellation would have on the consumer's credit card plan.

5. *Mailing by third party.* Although the card issuer is responsible for the disclosures, the insurance provider or another third party may furnish the disclosures on the card issuer's behalf.

9(f)(3) Substantial Decrease in Coverage

1. *Determination.* Whether a substantial decrease in coverage will result from the change in provider is determined by the two-part test in §1026.9(f)(3): First, whether the decrease is in a significant term of coverage;

and second, whether the decrease might reasonably be expected to affect a cardholder's decision to continue the insurance. If both conditions are met, the decrease must be disclosed in the notice.

9(g) Increase in Rates Due to Delinquency or Default or as a Penalty

1. *Relationship between §1026.9(c) and (g) and §1026.55—examples.* Card issuers subject to §1026.55 are prohibited from increasing the annual percentage rate for a category of transactions on any consumer credit card account unless specifically permitted by one of the exceptions in §1026.55(b). See comments 55(a)–1 and 55(b)–3 and the commentary to §1026.55(b)(4) for examples that illustrate the relationship between the notice requirements of §1026.9(c) and (g) and §1026.55.

2. *Affected consumers.* If a single credit account involves multiple consumers that may be affected by the change, the creditor should refer to §1026.5(d) to determine the number of notices that must be given.

3. *Combining a notice described in §1026.9(g)(3) with a notice described in §1026.9(c)(2)(iv).* If a creditor is required to provide notices pursuant to both §1026.9(c)(2)(iv) and (g)(3) to a consumer, the creditor may combine the two notices. This would occur when penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

4. *Content.* Sample G–22 contains an example of how to comply with the requirements in §1026.9(g)(3)(i) when the rate on a consumer's credit card account is being increased to a penalty rate as described in §1026.9(g)(1)(ii), based on a late payment that is not more than 60 days late. Sample G–23 contains an example of how to comply with the requirements in §1026.9(g)(3)(i) when the rate increase is triggered by a delinquency of more than 60 days.

5. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under §1026.9(g).

6. *Terminology.* See §1026.5(a)(2) for terminology requirements applicable to disclosures required under §1026.9(g).

7. *Reasons for increase.* See comment 9(c)(2)(iv)–11 for guidance on disclosure of the reasons for a rate increase for a credit card account under an open-end (not home-secured) consumer credit plan.

9(g)(4) Exception for Decrease in Credit Limit

1. The following illustrates the requirements of §1026.9(g)(4). Assume that a creditor decreased the credit limit applicable to a consumer's account and sent a notice pursuant to §1026.9(g)(4) on January 1, stating among other things that the penalty rate would apply if the consumer's balance exceeded the new credit limit as of February 16. If the consumer's balance exceeded the credit limit on February 16, the creditor could impose the penalty rate on that date. However, a creditor could not apply the penalty rate if the consumer's balance did not exceed the new credit limit on February 16, even if the consumer's balance had exceeded the new credit limit on several dates between January 1 and February 15. If the consumer's balance did not exceed the new credit limit on February 16 but the consumer conducted a transaction on February 17 that caused the balance to exceed the new credit limit, the general rule in §1026.9(g)(1)(ii) would apply and the creditor would be required to give an additional 45 days' notice prior to imposition of the penalty rate (but under these circumstances the consumer would have no ability to cure the over-the-limit balance in order to avoid penalty pricing).

9(h) Consumer Rejection of Certain Significant Changes in Terms

1. *Circumstances in which §1026.9(h) does not apply.* Section 1026.9(h) applies when §1026.9(c)(2)(iv)(B) requires disclosure of the consumer's right to reject a significant change to an account term. Thus, for example, §1026.9(h) does not apply to changes to the terms of home equity plans subject to the requirements of §1026.40 that are accessible by a credit or charge card because §1026.9(c)(2) does not apply to such plans. Similarly, §1026.9(h) does not apply in the following circumstances because §1026.9(c)(2)(iv)(B) does not require disclosure of the right to reject in those circumstances: (i) An increase in the required minimum periodic payment; (ii) a change in an annual percentage rate applicable to a consumer's account (such as changing the margin or index for calculating a variable rate, changing from a variable rate to a non-variable rate, or changing from a non-variable rate to a variable rate); (iii) a change in the balance computation method necessary to comply with §1026.54; and (iv) when the change results from the creditor not receiving the consumer's required minimum periodic payment within 60 days after the due date for that payment.

9(h)(1) Right To Reject

1. *Reasonable requirements for submission of rejections.* A creditor may establish reasonable requirements for the submission of rejections pursuant to §1026.9(h)(1). For example:

i. It would be reasonable for a creditor to require that rejections be made by the primary account holder and that the consumer identify the account number.

ii. It would be reasonable for a creditor to require that rejections be made only using the toll-free telephone number disclosed pursuant to §1026.9(c). It would also be reasonable for a creditor to designate additional channels for the submission of rejections (such as an address for rejections submitted by mail) so long as the creditor does not require that rejections be submitted through such additional channels.

iii. It would be reasonable for a creditor to require that rejections be received before the effective date disclosed pursuant to §1026.9(c) and to treat the account as not subject to §1026.9(h) if a rejection is received on or after that date. It would not, however, be reasonable to require that rejections be submitted earlier than the day before the effective date. If a creditor is unable to process all rejections received before the effective date, the creditor may delay implementation of the change in terms until all rejections have been processed. In the alternative, the creditor could implement the change on the effective date and then, on any account for which a timely rejection was received, reverse the change and remove or credit any interest charges or fees imposed as a result of the change. For example, if the effective date for a change in terms is June 15 and the creditor cannot process all rejections received by telephone on June 14 until June 16, the creditor may delay imposition of the change until June 17. Alternatively, the creditor could implement the change for all affected accounts on June 15 and then, once all rejections have been processed, return any account for which a timely rejection was received to the prior terms and ensure that the account is not assessed any additional interest or fees as a result of the change or that the account is credited for such interest or fees.

2. *Use of account following provision of notice.* A consumer does not waive or forfeit the right to reject a significant change in terms by using the account for transactions prior to the effective date of the change. Similarly, a consumer does not revoke a rejection by using the account for transactions after the rejection is received.

Paragraph 9(h)(2)(ii)

1. *Termination or suspension of credit availability.* Section 1026.9(h)(2)(ii) does not prohibit a creditor from terminating or suspending credit availability as a result of the consumer's rejection of a significant change in terms.

2. *Solely as a result of rejection.* A creditor is prohibited from imposing a fee or charge or treating an account as in default solely as a result of the consumer's rejection of a significant change in terms. For example, if credit availability is terminated or suspended as a result of the consumer's rejection of a significant change in terms, a creditor is prohibited from imposing a periodic fee that was not charged before the consumer rejected the change (such as a closed account fee). *See* also comment 55(d)–1. However, regardless of whether credit availability is terminated or suspended as a result of the consumer's rejection, a creditor is not prohibited from continuing to charge a periodic fee that was charged before the rejection. Similarly, a creditor that charged a fee for late payment before a change was rejected is not prohibited from charging that fee after rejection of the change.

Paragraph 9(h)(2)(iii)

1. *Relevant date for repayment methods.* Once a consumer has rejected a significant change in terms, §1026.9(h)(2)(iii) prohibits the creditor from requiring repayment of the balance on the account using a method that is less beneficial to the consumer than one of the methods listed in §1026.55(c)(2). When applying the methods listed in §1026.55(c)(2) pursuant to §1026.9(h)(2)(iii), a creditor may utilize the date on which the creditor was notified of the rejection or a later date (such as the date on which the change would have gone into effect but for the rejection). For example, assume that on April 16 a creditor provides a notice pursuant to §1026.9(c) informing the consumer that the monthly maintenance fee for the account will increase effective June 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before June 1 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free number and exercises the right to reject. If the creditor chooses to establish a five-year amortization period for the balance on the account consistent with §1026.55(c)(2)(ii), that period may begin no earlier than the date on which the creditor was notified of the rejection (May 5). However, the creditor may also begin the amortization period on the date on which the change would have gone into effect but for the rejection (June 1).

2. *Balance on the account.* i. *In general.* When applying the methods listed in §1026.55(c)(2) pursuant to §1026.9(h)(2)(iii), the provisions in §1026.55(c)(2) and the guidance in the commentary to §1026.55(c)(2) regarding protected balances also apply to a balance on the account subject to §1026.9(h)(2)(iii). If a creditor terminates or suspends credit availability based on a consumer's rejection of a significant change in terms, the balance on the account that is subject to §1026.9(h)(2)(iii) is the balance at the end of the day on which credit availability is terminated or suspended. However, if a creditor does not terminate or suspend credit availability based on the consumer's rejection, the balance on the account subject to §1026.9(h)(2)(iii) is the balance at the end of the day on which the creditor was notified of

the rejection or, at the creditor's option, a later date.

ii. *Example.* Assume that on June 16 a creditor provides a notice pursuant to §1026.9(c) informing the consumer that the annual fee for the account will increase effective August 1. The notice also states that the consumer may reject the increase by calling a specified toll-free telephone number before August 1 but that, if the consumer does so, credit availability for the account will be terminated. On July 20, the account has a purchase balance of $1,000 and the consumer calls the toll-free number and exercises the right to reject. On July 22, a $200 purchase is charged to the account. If the creditor terminates credit availability on July 25 as a result of the rejection, the balance subject to the repayment limitations in §1026.9(h)(2)(iii) is the $1,200 purchase balance at the end of the day on July 25. However, if the creditor does not terminate credit availability as a result of the rejection, the balance subject to the repayment limitations in §1026.9(h)(2)(iii) is the $1,000 purchase balance at the end of the day on the date the creditor was notified of the rejection (July 20), although the creditor may, at its option, treat the $200 purchase as part of the balance subject to §1026.9(h)(2)(iii).

9(h)(3) Exception

1. *Examples.* Section 1026.9(h)(3) provides that §1026.9(h) does not apply when the creditor has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. The following examples illustrate the application of this exception:

i. *Account becomes more than 60 days delinquent before notice provided.* Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On June 20 of year two, the creditor has not received the required minimum periodic payments due on April 15, May 15, and June 15. On June 20, the creditor provides a notice pursuant to §1026.9(c) informing the consumer that a monthly maintenance fee of $10 will be charged beginning on August 4. However, §1026.9(c)(2)(iv)(B) does not require the creditor to notify the consumer of the right to reject because the creditor has not received the April 15 minimum payment within 60 days after the due date. Furthermore, the exception in §1026.9(h)(3) applies and the consumer may not reject the fee.

ii. *Account becomes more than 60 days delinquent after rejection.* Assume that a credit card account is opened on January 1 of year one and that the payment due date for the account is the fifteenth day of the month. On April 20 of year two, the creditor has not received the required minimum periodic payment due on April 15. On April 20, the creditor provides a notice pursuant to §1026.9(c) informing the consumer that an annual fee of $100 will be charged beginning on June 4. The notice further states that the consumer may reject the fee by calling a specified toll-free telephone number before June 4 but that, if the consumer does so, credit availability for the account will be terminated. On May 5, the consumer calls the toll-free telephone number and rejects the fee. Section 1026.9(h)(2)(i) prohibits the creditor from charging the $100 fee to the account. If, however, the creditor does not receive the minimum payments due on April 15 and May 15 by June 15, §1026.9(h)(3) permits the creditor to charge the $100 fee. The creditor must provide a second notice of the fee pursuant to §1026.9(c), but §1026.9(c)(2)(iv)(B) does not require the creditor to disclose the right to reject and §1026.9(h)(3) does not allow the consumer to reject the fee. Similarly, the restrictions in §1026.9(h)(2)(ii) and (iii) no longer apply.

Section 1026.10—Payments

10(a) General Rule

1. *Crediting date.* Section 1026.10(a) does not require the creditor to post the payment to the consumer's account on a particular date; the creditor is only required to credit the payment *as of* the date of receipt.

2. *Date of receipt.* The "date of receipt" is the date that the payment instrument or other means of completing the payment reaches the creditor. For example:

i. Payment by check is received when the creditor gets it, not when the funds are collected.

ii. In a payroll deduction plan in which funds are deposited to an asset account held by the creditor, and from which payments are made periodically to an open-end credit account, payment is received on the date when it is debited to the asset account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date. Section 1026.12(d)(3)(ii) defines "periodically" to mean no more frequently than once per calendar month for payments made periodically from a deposit account, including a prepaid account, held by a card issuer to pay credit card debt in a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61 held by the card issuer. In a payroll deduction plan in which funds are deposited to a prepaid account held by the card issuer, and from which payments are made on a monthly basis to a covered separate credit feature accessible by a hybrid prepaid-credit card that is held by the card issuer, payment is received on the date when it is debited to the prepaid account (rather than on the date of the deposit), provided the payroll deduction method is voluntary and the consumer retains use of the funds until the contractual payment date.

iii. 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 creditor gets the third party payor's check or other transfer medium, such as an electronic fund transfer, as long as the payment meets the creditor's requirements as specified under §1026.10(b).

iv. Payment made via the creditor's Web site is received on the date on which the consumer authorizes the creditor to effect the payment, even if the consumer gives the instruction authorizing that payment in advance of the date on which the creditor is authorized to effect the payment. If the consumer authorizes the creditor to effect the payment immediately, but the consumer's instruction is received after 5 p.m. or any later cut-off time specified by the creditor, the date on which the consumer authorizes the creditor to effect the payment is deemed to be the next business day.

10(b) Specific Requirements for Payments

1. *Payment by electronic fund transfer*. A creditor may be prohibited from specifying payment by preauthorized electronic fund transfer. See section 913 of the Electronic Fund Transfer Act and Regulation E, 12 CFR 1005.10(e).

2. *Payment methods promoted by creditor*. If a creditor promotes a specific payment method, any payments made via that method (prior to any cut-off time specified by the creditor, to the extent permitted by §1026.10(b)(2)) are generally conforming payments for purposes of §1026.10(b). For example:

i. If a creditor promotes electronic payment via its Web site (such as by disclosing on the Web site itself that payments may be made via the Web site), any payments made via the creditor's Web site prior to the creditor's specified cut-off time, if any, would generally be conforming payments for purposes of §1026.10(b).

ii. If a creditor promotes payment by telephone (for example, by including the option to pay by telephone in a menu of options provided to consumers at a toll-free number disclosed on its periodic statement), payments made by telephone would generally be conforming payments for purposes of §1026.10(b).

iii. If a creditor promotes in-person payments, for example by stating in an advertisement that payments may be made in person at its branch locations, such in-person payments made at a branch or office of the creditor generally would be conforming payments for purposes of §1026.10(b).

iv. If a creditor promotes that payments may be made through an unaffiliated third party, such as by disclosing the Web site address of that third party on the periodic statement, payments made via that third party's Web site generally would be conforming payments for purposes of §1026.10(b). In contrast, if a customer service representative of the creditor confirms to a consumer that payments may be made via an unaffiliated third party, but the creditor does not otherwise promote that method of payment, §1026.10(b) permits the creditor to treat payments made via such third party as nonconforming payments in accordance with §1026.10(b)(4).

3. *Acceptance of nonconforming payments*. If the creditor accepts a nonconforming payment (for example, payment mailed to a branch office, when the creditor had specified that payment be sent to a different location), finance charges may accrue for the period between receipt and crediting of payments.

4. *Implied guidelines for payments*. In the absence of specified requirements for making payments (see §1026.10(b)):

i. Payments may be made at any location where the creditor conducts business.

ii. Payments may be made any time during the creditor's normal business hours.

iii. Payment may be by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the creditor and consumer have so agreed.

5. *Payments made at point of sale*. If a card issuer that is a financial institution issues a credit card under an open-end (not home-secured) consumer credit plan that can be used only for transactions with a particular merchant or merchants or a credit card that is cobranded with the name of a particular merchant or merchants, and a consumer is able to make a payment on that credit card account at a retail location maintained by such a merchant, that retail location is not considered to be a branch or office of the card issuer for purposes of §1026.10(b)(3).

6. *In-person payments on credit card accounts*. For purposes of §1026.10(b)(3), payments made in person at a branch or office of a financial institution include payments made with the direct assistance of, or to, a branch or office employee, for example a teller at a bank branch. A payment made at the bank branch without the direct assistance of a branch or office employee, for example a payment placed in a branch or office mail slot, is not a payment made in person for purposes of §1026.10(b)(3).

7. *In-person payments at affiliate of card issuer*. If an affiliate of a card issuer that is a financial institution shares a name with the card issuer, such as ''ABC,'' and accepts in-person payments on the card issuer's credit card accounts, those payments are subject to the requirements of §1026.10(b)(3).

10(d) Crediting of Payments When Creditor Does Not Receive or Accept Payments on Due Date

1. *Example.* A day on which the creditor does not receive or accept payments by mail may occur, for example, if the U.S. Postal Service does not deliver mail on that date.

2. *Treating a payment as late for any purpose.* See comment 5(b)(2)(ii)–2 for guidance on treating a payment as late for any purpose. When an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute treating a payment as late.

10(e) Limitations on Fees Related to Method of Payment

1. *Separate fee to allow consumers to make a payment.* For purposes of §1026.10(e), the term ''separate fee'' means a fee imposed on a consumer for making a payment to the consumer's account. A fee or other charge imposed if payment is made after the due date, such as a late fee or finance charge, is not a separate fee to allow consumers to make a payment for purposes of §1026.10(e).

2. *Expedited.* For purposes of §1026.10(e), the term ''expedited'' means crediting a payment the same day or, if the payment is received after any cut-off time established by the creditor, the next business day.

3. *Service by a customer service representative.* Service by a customer service representative of a creditor means any payment made to the consumer's account with the assistance of a live representative or agent of the creditor, including those made in person, on the telephone, or by electronic means. A customer service representative does not include automated means of making payment that do not involve a live representative or agent of the creditor, such as a voice response unit or interactive voice response system. Service by a customer service representative includes any payment transaction which involves the assistance of a live representative or agent of the creditor, even if an automated system is required for a portion of the transaction.

4. *Creditor.* For purposes of §1026.10(e), the term ''creditor'' includes a third party that collects, receives, or processes payments on behalf of a creditor. For example:

i. Assume that a creditor uses a service provider to receive, collect, or process on the creditor's behalf payments made through the creditor's Web site or made through an automated telephone payment service. In these circumstances, the service provider would be considered a creditor for purposes of paragraph (e).

ii. Assume that a consumer pays a fee to a money transfer or payment service in order to transmit a payment to the creditor on the consumer's behalf. In these circumstances, the money transfer or payment service would not be considered a creditor for purposes of paragraph (e).

iii. Assume that a consumer has a checking account at a depository institution. The consumer makes a payment to the creditor from the checking account using a bill payment service provided by the depository institution. In these circumstances, the depository institution would not be considered a creditor for purposes of paragraph (e).

10(f) Changes by Card Issuer

1. *Address for receiving payment.* For purposes of §1026.10(f), ''address for receiving payment'' means a mailing address for receiving payment, such as a post office box, or the address of a branch or office at which payments on credit card accounts are accepted.

2. *Materiality.* For purposes of §1026.10(f), a ''material change'' means any change in the address for receiving payment or procedures for handling cardholder payments which causes a material delay in the crediting of a payment. ''Material delay'' means any delay in crediting payment to a consumer's account which would result in a late payment and the imposition of a late fee or finance charge. A delay in crediting a payment which does not result in a late fee or finance charge would be immaterial.

3. *Safe harbor.* i. *General.* A card issuer may elect not to impose a late fee or finance charge on a consumer's account for the 60-day period following a change in address for receiving payment or procedures for handling cardholder payments which could reasonably be expected to cause a material delay in crediting of a payment to the consumer's account. For purposes of §1026.10(f), a late fee or finance charge is not imposed if the fee or charge is waived or removed, or an amount equal to the fee or charge is credited to the account.

ii. *Retail location.* For a material change in the address of a retail location or procedures for handling cardholder payments at a retail location, a card issuer may impose a late fee or finance charge on a consumer's account for a late payment during the 60-day period following the date on which the change took effect. However, if a card issuer is notified by a consumer no later than 60 days after the card issuer transmitted the first periodic statement that reflects the late fee or finance charge for a late payment that the late payment was caused by such change, the card issuer must waive or remove any late fee or finance charge, or credit an amount equal to any late fee or finance charge, imposed on the account during the 60-day period following the date on which the change took effect.

4. *Examples.* i. A card issuer changes the mailing address for receiving payments by mail from a five-digit postal zip code to a nine-digit postal zip code. A consumer mails

a payment using the five-digit postal zip code. The change in mailing address is immaterial and it does not cause a delay. Therefore, a card issuer may impose a late fee or finance charge for a late payment on the account.

ii. A card issuer changes the mailing address for receiving payments by mail from one post office box number to another post office box number. For a 60-day period following the change, the card issuer continues to use both post office box numbers for the collection of payments received by mail. The change in mailing address would not cause a material delay in crediting a payment because payments would be received and credited at both addresses. Therefore, a card issuer may impose a late fee or finance charge for a late payment on the account during the 60-day period following the date on which the change took effect.

iii. Same facts as paragraph ii above, except the prior post office box number is no longer valid and mail sent to that address during the 60-day period following the change would be returned to sender. The change in mailing address is material and the change could cause a material delay in the crediting of a payment because a payment sent to the old address could be delayed past the due date. If, as a result, a consumer makes a late payment on the account during the 60-day period following the date on which the change took effect, a card issuer may not impose any late fee or finance charge for the late payment.

iv. A card issuer permanently closes a local branch office at which payments are accepted on credit card accounts. The permanent closing of the local branch office is a material change in address for receiving payment. Relying on the safe harbor, the card issuer elects not to impose a late fee or finance charge for the 60-day period following the local branch closing for late payments on consumer accounts which the issuer reasonably determines are associated with the local branch and which could reasonably be expected to have been caused by the branch closing.

v. A consumer has elected to make payments automatically to a credit card account, such as through a payroll deduction plan or a third party payor's preauthorized payment arrangement. A card issuer changes the procedures for handling such payments and as a result, a payment is delayed and not credited to the consumer's account before the due date. In these circumstances, a card issuer may not impose any late fee or finance charge during the 60-day period following the date on which the change took effect for a late payment on the account.

vi. A card issuer no longer accepts payments in person at a retail location as a conforming method of payment, which is a material change in the procedures for handling cardholder payment. In the 60-day period following the date on which the change took effect, a consumer attempts to make a payment in person at a retail location of a card issuer. As a result, the consumer makes a late payment and the issuer charges a late fee on the consumer's account. The consumer notifies the card issuer of the late fee for the late payment which was caused by the material change. In order to comply with §1026.10(f), the card issuer must waive or remove the late fee or finance charge, or credit the consumer's account in an amount equal to the late fee or finance charge.

5. *Finance charge due to periodic interest rate.* When an account is not eligible for a grace period, imposing a finance charge due to a periodic interest rate does not constitute imposition of a finance charge for a late payment for purposes of §1026.10(f).

Section 1026.11—Treatment of Credit Balances; Account Termination

11(a) Credit Balances

1. *Timing of refund.* The creditor may also fulfill its obligations under §1026.11 by:

i. Refunding any credit balance to the consumer immediately.

ii. Refunding any credit balance prior to receiving a written request (under §1026.11(a)(2)) from the consumer.

iii. Refunding any credit balance upon the consumer's oral or electronic request.

iv. Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

2. *Amount of refund.* The phrases *any part of the remaining credit balance* in §1026.11(a)(2) and *any part of the credit balance remaining in the account* in §1026.11(a)(3) mean the amount of the credit balance at the time the creditor is required to make the refund. The creditor may take into consideration intervening purchases or other debits to the consumer's account (including those that have not yet been reflected on a periodic statement) that decrease or eliminate the credit balance.

Paragraph 11(a)(2)

1. *Written requests—standing orders.* The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

Paragraph 11(a)(3)

1. *Good faith effort to refund.* The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the

consumer's last known address or telephone number, or both.

2. *Good faith effort unsuccessful.* Section 1026.11 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

11(b) Account Termination

Paragraph 11(b)(1)

1. *Expiration date.* The credit agreement determines whether or not an open-end plan has a stated expiration (maturity) date. Creditors that offer accounts with no stated expiration date are prohibited from terminating those accounts solely because a consumer does not incur a finance charge, even if credit cards or other access devices associated with the account expire after a stated period. Creditors may still terminate such accounts for inactivity consistent with §1026.11(b)(2).

11(c) Timely Settlement of Estate Debts

1. *Administrator of an estate.* For purposes of §1026.11(c), the term "administrator" means an administrator, executor, or any personal representative of an estate who is authorized to act on behalf of the estate.

2. *Examples.* The following are examples of reasonable procedures that satisfy this rule:

i. A card issuer may decline future transactions and terminate the account upon receiving reasonable notice of the consumer's death.

ii. A card issuer may credit the account for fees and charges imposed after the date of receiving reasonable notice of the consumer's death.

iii. A card issuer may waive the estate's liability for all charges made to the account after receiving reasonable notice of the consumer's death.

iv. A card issuer may authorize an agent to handle matters in accordance with the requirements of this rule.

v. A card issuer may require administrators of an estate to provide documentation indicating authority to act on behalf of the estate.

vi. A card issuer may establish or designate a department, business unit, or communication channel for administrators, such as a specific mailing address or toll-free number, to handle matters in accordance with the requirements of this rule.

vii. A card issuer may direct administrators, who call a general customer service toll-free number or who send correspondence by mail to an address for general correspondence, to an appropriate customer service representative, department, business unit, or communication channel to handle matters in accordance with the requirements of this rule.

2. *Request by an administrator of an estate.* A card issuer may receive a request for the amount of the balance on a deceased consumer's account in writing or by telephone call from the administrator of an estate. If a request is made in writing, such as by mail, the request is received on the date the card issuer receives the correspondence.

3. *Timely statement of balance.* A card issuer must disclose the balance on a deceased consumer's account, upon request by the administrator of the decedent's estate. A card issuer may provide the amount, if any, by a written statement or by telephone. This does not preclude a card issuer from providing the balance amount to appropriate persons, other than the administrator, such as the spouse or a relative of the decedent, who indicate that they may pay any balance. This provision does not relieve card issuers of the requirements to provide a periodic statement, under §1026.5(b)(2). A periodic statement, under §1026.5(b)(2), may satisfy the requirements of §1026.11(c)(2), if provided within 30 days of receiving a request by an administrator of the estate.

4. *Imposition of fees and interest charges.* Section 1026.11(c)(3) does not prohibit a card issuer from imposing fees and finance charges due to a periodic interest rate based on balances for days that precede the date on which the card issuer receives a request pursuant to §1026.11(c)(2). For example, if the last day of the billing cycle is June 30 and the card issuer receives a request pursuant to §1026.11(c)(2) on June 25, the card issuer may charge interest that accrued prior to June 25.

5. *Example.* A card issuer receives a request from an administrator for the amount of the balance on a deceased consumer's account on March 1. The card issuer discloses to the administrator on March 25 that the balance is $1,000. If the card issuer receives payment in full of the $1,000 on April 24, the card issuer must waive or rebate any additional interest that accrued on the $1,000 balance between March 25 and April 24. If the card issuer receives a payment of $1,000 on April 25, the card issuer is not required to waive or rebate interest charges on the $1,000 balance in respect of the period between March 25 and April 25. If the card issuer receives a partial payment of $500 on April 24, the card issuer is not required to waive or rebate interest charges on the $1,000 balance in respect of the period between March 25 and April 25.

6. *Application to joint accounts.* A card issuer may impose fees and charges on an account of a deceased consumer if a joint accountholder remains on the account. If only an authorized user remains on the account of a deceased consumer, however, then a card issuer may not impose fees and charges.

Section 1026.12—Special Credit Card Provisions

1. *Scope.* Sections 1026.12(a) and (b) deal with the issuance and liability rules for credit cards, whether the card is intended for consumer, business, or any other purposes. Sections 1026.12(a) and (b) are exceptions to the general rule that the regulation applies only to consumer credit. (See §§1026.1 and 1026.3.)

2. *Definition of ''accepted credit card''.* For purposes of this section, ''accepted credit card'' means any credit card that a cardholder has requested or applied for and received, or has signed, used, or authorized another person to use to obtain credit. Any credit card issued as a renewal or substitute in accordance with §1026.12(a) becomes an accepted credit card when received by the cardholder.

12(a) Issuance of Credit Cards

Paragraph 12(a)(1)

1. *Explicit request.* A request or application for a card must be explicit. For example, a request for an overdraft plan tied to a checking account does not constitute an application for a credit card with overdraft checking features.

2. *Addition of credit features.* If the consumer has a non-credit card, including a prepaid card, the addition of a credit feature or plan to the card that would make the card into a credit card under §1026.2(a)(15)(i) constitutes issuance of a credit card. For example, the following constitute issuance of a credit card:

i. Granting overdraft privileges on a checking account when the consumer already has a check guarantee card; or

ii. Allowing a prepaid card to access a covered separate credit feature that would make the card into a hybrid prepaid-credit card as defined in §1026.61 with respect to the covered separate credit feature.

3. *Variance of card from request.* The request or application need not correspond exactly to the card that is issued. For example:

i. The name of the card requested may be different when issued.

ii. The card may have features in addition to those reflected in the request or application.

4. *Permissible form of request.* The request or application may be oral (in response to a telephone solicitation by a card issuer, for example) or written.

5. *Time of issuance.* A credit card may be issued in response to a request made before any cards are ready for issuance (for example, if a new program is established), even if there is some delay in issuance.

6. *Persons to whom cards may be issued.* A card issuer may issue a credit card to the person who requests it, and to anyone else for whom that person requests a card and who will be an authorized user on the requester's account. In other words, cards may be sent to consumer A on A's request, and also (on A's request) to consumers B and C, who will be authorized users on A's account. In these circumstances, the following rules apply:

i. The additional cards may be imprinted in either A's name or in the names of B and C.

ii. No liability for unauthorized use (by persons other than B and C), not even the $50, may be imposed on B or C since they are merely users and not cardholders as that term is defined in §1026.2 and used in §1026.12(b); of course, liability of up to $50 for unauthorized use of B's and C's cards may be imposed on A.

iii. Whether B and C may be held liable for their own use, or on the account generally, is a matter of state or other applicable law.

7. *Issuance of non-credit cards.* i. *Issuance of non-credit cards other than prepaid cards.* A. Under §1026.12(a)(1), a credit card cannot be issued except in response to a request or an application. (See comment 2(a)(15)–2 for examples of cards or devices that are and are not credit cards.) A non-credit card other than a prepaid card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan; a credit feature may be added to a previously issued non-credit card other than a prepaid card only upon the consumer's specific request.

B. *Examples.* A purchase-price discount card may be sent on an unsolicited basis by an issuer that does not propose to connect the card to any credit plan. An issuer demonstrates that it proposes to connect the card to a credit plan by, for example, including promotional materials about credit features or account agreements and disclosures required by §1026.6. The issuer will violate the rule against unsolicited issuance if, for example, at the time the card is sent a credit plan can be accessed by the card or the recipient of the unsolicited card has been preapproved for credit that the recipient can access by contacting the issuer and activating the card.

ii. *Issuance of a prepaid card.* Section 1026.12(a)(1) does not apply to the issuance of a prepaid card where an issuer does not connect the card to any covered separate credit feature that would make the prepaid card into a hybrid prepaid-credit card as defined in §1026.61 at the time the card is issued and only opens a covered separate credit feature, or provides an application or solicitation to open a covered separate credit feature, or allows an existing credit feature to become a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61 in compliance with §1026.61(c). A covered separate credit feature may be added to a previously issued prepaid card only upon the consumer's application or specific request and only in compliance with §1026.61(c). An issuer does not connect a prepaid card to a covered separate credit feature that would make the card into a credit card simply by providing the disclosures required by Regulation E, 12 CFR 1005.18(b)(2)(x), (b)(4)(iv), and (vii), with the prepaid card. See §1026.12(a)(2) and related commentary for when a hybrid prepaid-credit card as defined in §1026.61 may be issued as a replacement or substitution for another hybrid prepaid-credit card. See also Regulation E, 12 CFR 1005.5 and 1005.18(a), and related commentary, governing issuance of access devices under Regulation E.

8. *Unsolicited issuance of PINs.* A card issuer may issue personal identification numbers (PINs) to existing credit cardholders without a specific request from the cardholders, provided the PINs cannot be used alone to obtain credit. For example, the PINs may be necessary if consumers wish to use their existing credit cards at automated teller machines or at merchant locations with point of sale terminals that require PINs.

Paragraph 12(a)(2)

1. *Renewal.* Renewal generally contemplates the regular replacement of existing cards because of, for example, security reasons or new technology or systems. It also includes the re-issuance of cards that have been suspended temporarily, but does not include the opening of a new account after a previous account was closed.

2. *Substitution—examples.* Substitution encompasses the replacement of one card with another because the underlying account relationship has changed in some way—such as when the card issuer has:

i. Changed its name.

ii. Changed the name of the card.

iii. Changed the credit or other features available on the account. For example, the original card could be used to make purchases and obtain cash advances at teller windows. The substitute card might be usable, in addition, for obtaining cash advances through automated teller machines. (If the substitute card constitutes an access device, as defined in Regulation E, then the Regulation E issuance rules would have to be followed.) The substitution of one card with another on an unsolicited basis is not permissible, however, where in conjunction with the substitution an additional credit card account is opened and the consumer is able to make new purchases or advances under both the original and the new account with the new card. For example, if a retail card issuer replaces its credit card with a combined retailer/bank card, each of the creditors maintains a separate account, and both accounts can be accessed for new transactions by use of the new credit card, the card cannot be provided to a consumer without solicitation.

iv. Substituted a card user's name on the substitute card for the cardholder's name appearing on the original card.

v. Changed the merchant base, provided that the new card is honored by at least one of the persons that honored the original card. However, unless the change in the merchant base is the addition of an affiliate of the existing merchant base, the substitution of a new card for another on an unsolicited basis is not permissible where the account is inactive. A credit card cannot be issued in these circumstances without a request or application. For purposes of §1026.12(a), an account is inactive if no credit has been extended and if the account has no outstanding balance for the prior 24 months. (See §1026.11(b)(2).)

3. *Substitution—successor card issuer.* Substitution also occurs when a successor card issuer replaces the original card issuer (for example, when a new card issuer purchases the accounts of the original issuer and issues its own card to replace the original one). A permissible substitution exists even if the original issuer retains the existing receivables and the new card issuer acquires the right only to future receivables, provided use of the original card is cut off when use of the new card becomes possible.

4. *Substitution—non-credit-card plan.* A credit card that replaces a retailer's open-end credit plan not involving a credit card is not considered a substitute for the retailer's plan—even if the consumer used the retailer's plan. A credit card cannot be issued in these circumstances without a request or application.

5. *One-for-one rule.* An accepted card may be replaced by no more than one renewal or substitute card. For example, the card issuer may not replace a credit card permitting purchases and cash advances with two cards, one for the purchases and another for the cash advances.

6. *One-for-one rule—exceptions.* The regulation does not prohibit the card issuer from:

i. Replacing a single card that is both a debit card and a credit card with a credit card and a separate debit card with only debit functions (or debit functions plus an associated overdraft capability), since the latter card could be issued on an unsolicited basis under Regulation E.

ii. Replacing a single card that is both a prepaid card and a credit card with a credit card and a separate prepaid card where the latter card is not a hybrid prepaid-credit card as defined in §1026.61.

iii. Replacing an accepted card with more than one renewal or substitute card, provided that:

A. No replacement card accesses any account not accessed by the accepted card;

B. For terms and conditions required to be disclosed under §1026.6, all replacement cards are issued subject to the same terms and conditions, except that a creditor may vary terms for which no change in terms notice is required under §1026.9(c); and

C. Under the account's terms the consumer's total liability for unauthorized use with respect to the account does not increase.

7. *Methods of terminating replaced card.* The card issuer need not physically retrieve the original card, provided the old card is voided in some way, for example:

i. The issuer includes with the new card a notification that the existing card is no longer valid and should be destroyed immediately.

ii. The original card contained an expiration date.

iii. The card issuer, in order to preclude use of the card, reprograms computers or issues instructions to authorization centers.

8. *Incomplete replacement.* If a consumer has duplicate credit cards on the same account (Card A—one type of bank credit card, for example), the card issuer may not replace the duplicate cards with one Card A and one Card B (Card B—another type of bank credit card) unless the consumer requests Card B.

9. *Multiple entities.* Where multiple entities share responsibilities with respect to a credit card issued by one of them, the entity that issued the card may replace it on an unsolicited basis, if that entity terminates the original card by voiding it in some way, as described in comment 12(a)(2)–7. The other entity or entities may not issue a card on an unsolicited basis in these circumstances.

12(b) Liability of Cardholder for Unauthorized Use

1. *Meaning of cardholder.* For purposes of this provision, cardholder includes any person (including organizations) to whom a credit card is issued for any purpose, including business. When a corporation is the cardholder, required disclosures should be provided to the corporation (as opposed to an employee user).

2. *Imposing liability.* A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.

3. *Reasonable investigation.* If a card issuer seeks to impose liability when a claim of unauthorized use is made by a cardholder, the card issuer must conduct a reasonable investigation of the claim. In conducting its investigation, the card issuer may reasonably request the cardholder's cooperation. The card issuer may not automatically deny a claim based solely on the cardholder's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report; however, if the card issuer otherwise has no knowledge of facts confirming the unauthorized use, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation. The procedures involved in investigating claims may differ, but actions such as the following represent steps that a card issuer may take, as appropriate, in conducting a reasonable investigation:

i. Reviewing the types or amounts of purchases made in relation to the cardholder's previous purchasing pattern.

ii. Reviewing where the purchases were delivered in relation to the cardholder's residence or place of business.

iii. Reviewing where the purchases were made in relation to where the cardholder resides or has normally shopped.

iv. Comparing any signature on credit slips for the purchases to the signature of the cardholder or an authorized user in the card issuer's records, including other credit slips.

v. Requesting documentation to assist in the verification of the claim.

vi. Requiring a written, signed statement from the cardholder or authorized user. For example, the creditor may include a signature line on a billing rights form that the cardholder may send in to provide notice of the claim. However, a creditor may not require the cardholder to provide an affidavit or signed statement under penalty of perjury as part of a reasonable investigation.

vii. Requesting a copy of a police report, if one was filed.

viii. Requesting information regarding the cardholder's knowledge of the person who allegedly used the card or of that person's authority to do so.

4. *Checks that access a credit card account.* The liability provisions for unauthorized use under §1026.12(b)(1) only apply to transactions involving the use of a credit card, and not if an unauthorized transaction is made using a check accessing the credit card account. However, the billing error provisions in §1026.13 apply to both of these types of transactions.

12(b)(1)(ii) Limitation on Amount

1. *Meaning of authority.* Section 1026.12(b)(1)(i) defines unauthorized use in terms of whether the user has actual, implied, or apparent authority. Whether such authority exists must be determined under state or other applicable law.

2. *Liability limits—dollar amounts.* As a general rule, the cardholder's liability for a series of unauthorized uses cannot exceed either $50 or the value obtained through the unauthorized use before the card issuer is notified, whichever is less.

3. *Implied or apparent authority.* If a cardholder furnishes a credit card and grants authority to make credit transactions to a person (such as a family member or coworker)

who exceeds the authority given, the cardholder is liable for the transaction(s) unless the cardholder has notified the creditor that use of the credit card by that person is no longer authorized.

4. *Credit card obtained through robbery or fraud.* An unauthorized use includes, but is not limited to, a transaction initiated by a person who has obtained the credit card from the consumer, or otherwise initiated the transaction, through fraud or robbery.

12(b)(2) Conditions of Liability

1. *Issuer's option not to comply.* A card issuer that chooses not to impose any liability on cardholders for unauthorized use need not comply with the disclosure and identification requirements discussed in §1026.12(b)(2).

Paragraph 12(b)(2)(ii)

1. *Disclosure of liability and means of notifying issuer.* The disclosures referred to in §1026.12(b)(2)(ii) may be given, for example, with the initial disclosures under §1026.6, on the credit card itself, or on periodic statements. They may be given at any time preceding the unauthorized use of the card.

2. *Meaning of "adequate notice."* For purposes of this provision, "adequate notice" means a printed notice to a cardholder that sets forth clearly the pertinent facts so that the cardholder may reasonably be expected to have noticed it and understood its meaning. The notice may be given by any means reasonably assuring receipt by the cardholder.

Paragraph 12(b)(2)(iii)

1. *Means of identifying cardholder or user.* To fulfill the condition set forth in §1026.12(b)(2)(iii), the issuer must provide some method whereby the cardholder or the authorized user can be identified. This could include, for example, a signature, photograph, or fingerprint on the card or other biometric means, or electronic or mechanical confirmation.

2. *Identification by magnetic strip.* Unless a magnetic strip (or similar device not readable without physical aids) must be used in conjunction with a secret code or the like, it would not constitute sufficient means of identification. Sufficient identification also does not exist if a "pool" or group card, issued to a corporation and signed by a corporate agent who will not be a user of the card, is intended to be used by another employee for whom no means of identification is provided.

3. *Transactions not involving card.* The cardholder may not be held liable under §1026.12(b) when the card itself (or some other sufficient means of identification of the cardholder) is not presented. Since the issuer has not provided a means to identify the user under these circumstances, the issuer has not fulfilled one of the conditions for imposing liability. For example, when merchandise is ordered by telephone or the Internet by a person without authority to do so, using a credit card account number by itself or with other information that appears on the card (for example, the card expiration date and a 3- or 4-digit cardholder identification number), no liability may be imposed on the cardholder.

12(b)(3) Notification to Card Issuer

1. *How notice must be provided.* Notice given in a normal business manner—for example, by mail, telephone, or personal visit—is effective even though it is not given to, or does not reach, some particular person within the issuer's organization. Notice also may be effective even though it is not given at the address or phone number disclosed by the card issuer under §1026.12(b)(2)(ii).

2. *Who must provide notice.* Notice of loss, theft, or possible unauthorized use need not be initiated by the cardholder. Notice is sufficient so long as it gives the "pertinent information" which would include the name or card number of the cardholder and an indication that unauthorized use has or may have occurred.

3. *Relationship to §1026.13.* The liability protections afforded to cardholders in §1026.12 do not depend upon the cardholder's following the error resolution procedures in §1026.13. For example, the written notification and time limit requirements of §1026.13 do not affect the §1026.12 protections. (See also comment 12(b)–4.)

12(b)(5) Business Use of Credit Cards

1. *Agreement for higher liability for business use cards.* The card issuer may not rely on §1026.12(b)(5) if the business is clearly not in a position to provide 10 or more cards to employees (for example, if the business has only 3 employees). On the other hand, the issuer need not monitor the personnel practices of the business to make sure that it has at least 10 employees at all times.

2. *Unauthorized use by employee.* The protection afforded to an employee against liability for unauthorized use in excess of the limits set in §1026.12(b) applies only to unauthorized use by someone other than the employee. If the employee uses the card in an unauthorized manner, the regulation sets no restriction on the employee's potential liability for such use.

12(c) Right of Cardholder To Assert Claims or Defenses Against Card Issuer

1. *Relationship to §1026.13.* The §1026.12(c) credit card "holder in due course" provision deals with the consumer's right to assert against the card issuer a claim or defense concerning property or services purchased with a credit card, if the merchant has been

unwilling to resolve the dispute. Even though certain merchandise disputes, such as non-delivery of goods, may also constitute ''billing errors'' under §1026.13, that section operates independently of §1026.12(c). The cardholder whose asserted billing error involves undelivered goods may institute the error resolution procedures of §1026.13; but whether or not the cardholder has done so, the cardholder may assert claims or defenses under §1026.12(c). Conversely, the consumer may pay a disputed balance and thus have no further right to assert claims and defenses, but still may assert a billing error if notice of that billing error is given in the proper time and manner. An assertion that a particular transaction resulted from unauthorized use of the card could also be both a ''defense'' and a billing error.

2. *Claims and defenses assertible.* Section 1026.12(c) merely preserves the consumer's right to assert against the card issuer any claims or defenses that can be asserted against the merchant. It does not determine what claims or defenses are valid as to the merchant; this determination must be made under state or other applicable law.

3. *Transactions excluded.* Section 1026.12(c) does not apply to the use of a check guarantee card or a debit card in connection with an overdraft credit plan, or to a check guarantee card used in connection with cash-advance checks.

4. *Method of calculating the amount of credit outstanding.* The amount of the claim or defense that the cardholder may assert shall not exceed the amount of credit outstanding for the disputed transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of the existence of the claim or defense. However, when a consumer has asserted a claim or defense against a creditor pursuant to §1026.12(c), the creditor must apply any payment or other credit in a manner that avoids or minimizes any reduction in the amount subject to that claim or defense. Accordingly, to determine the amount of credit outstanding for purposes of this section, payments and other credits must be applied first to amounts other than the disputed transaction.

i. For examples of how to comply with §§1026.12 and 1026.53 for credit card accounts under an open-end (not home-secured) consumer credit plan, see comment 53–3.

ii. For other types of credit card accounts, creditors may, at their option, apply payments consistent with §1026.53 and comment 53–3. In the alternative, payments and other credits may be applied to: Late charges in the order of entry to the account; then to finance charges in the order of entry to the account; and then to any debits other than the transaction subject to the claim or defense in the order of entry to the account. In these circumstances, if more than one item is included in a single extension of credit, credits are to be distributed pro rata according to prices and applicable taxes.

5. *Prepaid cards.* i. Section 1026.12(c) applies to property or services purchased with the hybrid prepaid-credit card that accesses a covered separate credit feature as defined in §1026.61. The following examples illustrate when a hybrid prepaid-credit card is used to purchase property or services:

A. A consumer uses a hybrid prepaid-credit card as defined in §1026.61 to make a purchase to obtain goods or services from a merchant and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services where credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card to cover the amount of the purchase.

B. A consumer uses a hybrid prepaid-credit card as defined in §1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from a covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, the consumer is using credit accessed by the hybrid prepaid-credit card to purchase property or services because credit is transferred to the asset feature of the prepaid account to cover the amount of a purchase made with the card. This is true even though the $15 credit transaction is treated as ''nonsale credit'' under §1026.8(b). *See* comments 8(a)–9.ii and 8(b)–1.vi.

ii. For a transaction at point of sale where a hybrid prepaid-credit card is used to obtain goods or services from a merchant and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with credit from the covered separate credit feature, the amount of the purchase transaction that is funded by credit generally would be subject to the requirements of §1026.12(c). The amount of the transaction funded from the prepaid account would not be subject to the requirements of §1026.12(c).

12(c)(1) General Rule

1. *Situations excluded and included.* The consumer may assert claims or defenses only when the goods or services are ''purchased with the credit card.'' This would include when the goods or services are purchased by a consumer using a hybrid prepaid-credit card to access a covered separate credit feature as defined in §1026.61. This could include mail, the Internet or telephone orders, if the purchase is charged to the credit card account. But it would exclude:

i. Use of a credit card to obtain a cash advance, even if the consumer then uses the money to purchase goods or services. Such a transaction would not involve ''property or services purchased with the credit card.''

ii. The purchase of goods or services by use of a check accessing an overdraft account and a credit card used solely for identification of the consumer. (On the other hand, if the credit card is used to make partial payment for the purchase and not merely for identification, the right to assert claims or defenses would apply to credit extended via the credit card, although not to credit extended by the overdraft line other than a covered separate credit feature accessible by a hybrid prepaid-credit card.)

iii. Purchases made by use of a check guarantee card in conjunction with a cash advance check (or by cash advance checks alone). (*See* comment 12(c)–3.) A cash advance check is a check that, when written, does not draw on an asset account; instead, it is charged entirely to an open-end credit account.

iv. Purchases effected by use of either a check guarantee card or a debit card when used to draw on overdraft credit plans. (*See* comment 12(c)–3.) The debit card exemption applies whether the card accesses an asset account via point of sale terminals, automated teller machines, or in any other way, and whether the card qualifies as an ''access device'' under Regulation E or is only a paper based debit card. If a card serves both as an ordinary credit card and also as check guarantee or debit card, a transaction will be subject to this rule on asserting claims and defenses when used as an ordinary credit card, but not when used as a check guarantee or debit card.

12(c)(2) Adverse Credit Reports Prohibited

1. *Scope of prohibition.* Although an amount in dispute may not be reported as delinquent until the matter is resolved:

i. That amount may be reported as disputed.

ii. Nothing in this provision prohibits the card issuer from undertaking its normal collection activities for the delinquent and undisputed portion of the account.

2. *Settlement of dispute.* A card issuer may not consider a dispute settled and report an amount disputed as delinquent or begin collection of the disputed amount until it has completed a reasonable investigation of the cardholder's claim. A reasonable investigation requires an independent assessment of the cardholder's claim based on information obtained from both the cardholder and the merchant, if possible. In conducting an investigation, the card issuer may request the cardholder's reasonable cooperation. The card issuer may not automatically consider a dispute settled if the cardholder fails or refuses to comply with a particular request. However, if the card issuer otherwise has no means of obtaining information necessary to resolve the dispute, the lack of information resulting from the cardholder's failure or refusal to comply with a particular request may lead the card issuer reasonably to terminate the investigation.

12(c)(3) Limitations

Paragraph 12(c)(3)(i)(A)

1. *Resolution with merchant.* The consumer must have tried to resolve the dispute with the merchant. This does not require any special procedures or correspondence between them, and is a matter for factual determination in each case. The consumer is not required to seek satisfaction from the manufacturer of the goods involved. When the merchant is in bankruptcy proceedings, the consumer is not required to file a claim in those proceedings, and may instead file a claim for the property or service purchased with the credit card with the card issuer directly.

Paragraph 12(c)(3)(i)(B)

1. *Geographic limitation.* The question of where a transaction occurs (as in the case of mail, Internet, or telephone orders, for example) is to be determined under state or other applicable law.

12(c)(3)(ii) Exclusion

1. *Merchant honoring card.* The exceptions (stated in §1026.12(c)(3)(ii)) to the amount and geographic limitations in §1026.12(c)(3)(i)(B) do not apply if the merchant merely honors, or indicates through signs or advertising that it honors, a particular credit card.

12(d) Offsets by Card Issuer Prohibited

1. *Meaning of funds on deposit.* For purposes of §1026.12(d), funds of the cardholder held on deposit include funds in a consumer's prepaid account as defined in §1026.61. In addition,

for purposes of §1026.12(d), deposit account includes a prepaid account.

Paragraph 12(d)(1)

1. *Holds on accounts.* ''Freezing'' or placing a hold on funds in the cardholder's deposit account is the functional equivalent of an offset and would contravene the prohibition in §1026.12(d)(1), unless done in the context of one of the exceptions specified in §1026.12(d)(2). For example, if the terms of a security agreement permitted the card issuer to place a hold on the funds, the hold would not violate the offset prohibition. Similarly, if an order of a bankruptcy court required the card issuer to turn over deposit account funds to the trustee in bankruptcy, the issuer would not violate the regulation by placing a hold on the funds in order to comply with the court order.

2. *Funds intended as deposits.* If the consumer tenders funds as a deposit (to a checking account, for example) or if the card issuer receives funds designated for the consumer's prepaid account as defined in §1026.61 with the issuer, such as by means of an ACH deposit or an electronic transmittal of funds the consumer submits as cash at a non-bank location, the card issuer may not apply the funds to repay indebtedness on the consumer's credit card account.

3. *Types of indebtedness; overdraft accounts.* The offset prohibition applies to any indebtedness arising from transactions under a credit card plan, including accrued finance charges and other charges on the account. The prohibition also applies to balances arising from transactions not using the credit card itself but taking place under plans that involve credit cards. For example, if the consumer writes a check that accesses an overdraft line of credit, the resulting indebtedness is subject to the offset prohibition since it is incurred through a credit card plan, even though the consumer did not use an associated check guarantee or debit card.

4. *When prohibition applies in case of termination of account.* The offset prohibition applies even after the card issuer terminates the cardholder's credit card privileges, if the indebtedness was incurred prior to termination. If the indebtedness was incurred after termination, the prohibition does not apply.

Paragraph 12(d)(2)

1. *Security interest—limitations.* In order to qualify for the exception stated in §1026.12(d)(2), a security interest must be affirmatively agreed to by the consumer and must be disclosed in the issuer's account-opening disclosures under §1026.6. The security interest must not be the functional equivalent of a right of offset; as a result, routinely including in agreements contract language indicating that consumers are giving a security interest in any deposit accounts maintained with the issuer does not result in a security interest that falls within the exception in §1026.12(d)(2). For a security interest to qualify for the exception under §1026.12(d)(2) the following conditions must be met:

i. The consumer must be aware that granting a security interest is a condition for the credit card account (or for more favorable account terms) and must specifically intend to grant a security interest in a deposit account.

ii. With respect to a credit card account other than a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61, indicia of the consumer's awareness and intent to grant a security interest in a deposit account include at least one of the following (or a substantially similar procedure that evidences the consumer's awareness and intent):

A. Separate signature or initials on the agreement indicating that a security interest is being given.

B. Placement of the security agreement on a separate page, or otherwise separating the security interest provisions from other contract and disclosure provisions.

C. Reference to a specific amount of deposited funds or to a specific deposit account number.

iii. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61, in order for a consumer to show awareness and intent to grant a security interest in a deposit account, including a prepaid account, all of the following conditions must be met:

A. In addition to being disclosed in the issuer's account-opening disclosures under §1026.6, the security agreement must be provided to the consumer in a document separate from the deposit account agreement and the credit card account agreement;

B. The separate document setting forth the security agreement must be signed by the consumer;

C. The separate document setting forth the security agreement must refer to the deposit account number and to a specific amount of funds in the deposit account in which the card issuer is taking a security interest and these two elements of the document must be separately signed or initialed by the consumer;

D. The separate document setting forth the security agreement must specifically enumerate the conditions under which the card issuer will enforce the security interest and each of those conditions must be separately signed or initialed by the consumer.

iv. The security interest must be obtainable and enforceable by creditors generally. If other creditors could not obtain a security interest in the consumer's deposit accounts to the same extent as the card issuer, the security interest is prohibited by §1026.12(d)(2).

2. *Security interest—after-acquired property*. As used in §1026.12(d)(2), the term ''security interest'' does not exclude (as it does for other Regulation Z purposes) interests in after-acquired property. Thus, a consensual security interest in deposit-account funds, including funds deposited after the granting of the security interest would constitute a permissible exception to the prohibition on offsets.

3. *Court order*. If the card issuer obtains a judgment against the cardholder, and if state and other applicable law and the terms of the judgment do not so prohibit, the card issuer may offset the indebtedness against the cardholder's deposit account.

Paragraph 12(d)(3)

1. *Automatic payment plans—scope of exception*. With regard to automatic debit plans under §1026.12(d)(3), the following rules apply:

i. The cardholder's authorization must be in writing and signed or initialed by the cardholder.

ii. The authorizing language need not appear directly above or next to the cardholder's signature or initials, provided it appears on the same document and that it clearly spells out the terms of the automatic debit plan.

iii. If the cardholder has the option to accept or reject the automatic debit feature (such option may be required under section 913 of the Electronic Fund Transfer Act and Regulation E, 12 CFR 1005.10(e)), the fact that the option exists should be clearly indicated.

2. *Automatic payment plans—additional exceptions*. The following practices are not prohibited by §1026.12(d)(1):

i. Automatically deducting charges for participation in a program of banking services (one aspect of which may be a credit card plan).

ii. Debiting the cardholder's deposit account on the cardholder's specific request rather than on an automatic periodic basis (for example, a cardholder might check a box on the credit card bill stub, requesting the issuer to debit the cardholder's account to pay that bill).

iii. Automatically deducting from the consumer's deposit account any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under §1026.6(b)(3). See §1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan under §1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in §1026.61.

3. *Prepaid accounts*. With respect to covered separate credit features accessible by hybrid prepaid-credit cards as defined in §1026.61, a card issuer is not prohibited under §1026.12(d) from periodically deducting all or part of the cardholder's credit card debt from a deposit account (including the prepaid account) held with the card issuer (subject to the limitations of §1026.13(d)(1)) under a plan that is authorized in writing by the cardholder, so long as the creditor does not deduct all or part of the cardholder's credit card debt from the deposit account more frequently than once per calendar month, pursuant to such a plan. To illustrate, with respect to a covered separate credit feature accessible by a hybrid prepaid-credit card, assume that a periodic statement is sent out each month to a cardholder on the first day of the month and the payment due date for the amount due on that statement is the 25th day of each month. In this case:

i. The card issuer is not prohibited under §1026.12(d) from automatically deducting the amount due on the periodic statement on the 25th of each month, or on an earlier date in each calendar month, from a deposit account held by the card issuer, if the deductions are pursuant to a plan that is authorized in writing by the cardholder (as discussed in comment 12(d)(3)–1) and comply with the limitations in §1026.13(d)(1).

ii. The card issuer is prohibited under §1026.12(d) from automatically deducting all or part of the cardholder's credit card debt from a deposit account (including the prepaid account) held with the card issuer more frequently than once per calendar month, such as on a daily or weekly basis, or whenever deposits are made or expected to be made to the deposit account.

12(e) Prompt Notification of Returns and Crediting of Refunds

Paragraph 12(e)(1)

1. *Normal channels*. The term normal channels refers to any network or interchange system used for the processing of the original charge slips (or equivalent information concerning the transaction).

Paragraph 12(e)(2)

1. *Crediting account*. The card issuer need not actually post the refund to the consumer's account within three business days after receiving the credit statement, provided that it credits the account as of a date within that time period.

Section 1026.13—Billing Error Resolution

1. *Creditor's failure to comply with billing error provisions*. Failure to comply with the error resolution procedures may result in the

forfeiture of disputed amounts as prescribed in section 161(e) of the Act. (Any failure to comply may also be a violation subject to the liability provisions of section 130 of the Act.)

2. *Charges for error resolution*. If a billing error occurred, whether as alleged or in a different amount or manner, the creditor may not impose a charge related to any aspect of the error resolution process (including charges for documentation or investigation) and must credit the consumer's account if such a charge was assessed pending resolution. Since the Act grants the consumer error resolution rights, the creditor should avoid any chilling effect on the good faith assertion of errors that might result if charges are assessed when no billing error has occurred.

13(a) Definition of Billing Error

Paragraph 13(a)(1)

1. *Actual, implied, or apparent authority*. Whether use of a credit card or open-end credit plan is authorized is determined by state or other applicable law. (*See* comment 12(b)(1)(ii)–1.)

Paragraph 13(a)(3)

1. *Coverage*. i. Section 1026.13(a)(3) covers disputes about goods or services that are ''not accepted'' or ''not delivered * * * as agreed''; for example:

A. The appearance on a periodic statement of a purchase, when the consumer refused to take delivery of goods because they did not comply with the contract.

B. Delivery of property or services different from that agreed upon.

C. Delivery of the wrong quantity.

D. Late delivery.

E. Delivery to the wrong location.

ii. Section 1026.13(a)(3) does not apply to a dispute relating to the quality of property or services that the consumer accepts. Whether acceptance occurred is determined by state or other applicable law.

2. *Application to purchases made using a third-party payment intermediary*. Section 1026.13(a)(3) generally applies to disputes about goods and services that are purchased using a third-party payment intermediary, such as a person-to-person Internet payment service, funded through use of a consumer's open-end credit plan when the goods or services are not accepted by the consumer or not delivered to the consumer as agreed. However, the extension of credit must be made at the time the consumer purchases the good or service and match the amount of the transaction to purchase the good or service (including ancillary taxes and fees). Under these circumstances, the property or service for which the extension of credit is made is not the payment service, but rather the good or service that the consumer has purchased using the payment service. Thus, for example, §1026.13(a)(3) would not apply to purchases using a third party payment intermediary that is funded through use of an open-end credit plan if:

i. The extension of credit is made to fund the third-party payment intermediary ''account,'' but the consumer does not contemporaneously use those funds to purchase a good or service at that time.

ii. The extension of credit is made to fund only a portion of the purchase amount, and the consumer uses other sources to fund the remaining amount.

3. *Notice to merchant not required*. A consumer is not required to first notify the merchant or other payee from whom he or she has purchased goods or services and attempt to resolve a dispute regarding the good or service before providing a billing-error notice to the creditor under §1026.13(a)(3) asserting that the goods or services were not accepted or delivered as agreed.

Paragraph 13(a)(5)

1. *Computational errors*. In periodic statements that are combined with other information, the error resolution procedures are triggered only if the consumer asserts a computational billing error in the credit-related portion of the periodic statement. For example, if a bank combines a periodic statement reflecting the consumer's credit card transactions with the consumer's monthly checking statement, a computational error in the checking account portion of the combined statement is not a billing error.

Paragraph 13(a)(6)

1. *Documentation requests*. A request for documentation such as receipts or sales slips, unaccompanied by an allegation of an error under §1026.13(a) or a request for additional clarification under §1026.13(a)(6), does not trigger the error resolution procedures. For example, a request for documentation merely for purposes such as tax preparation or recordkeeping does not trigger the error resolution procedures.

13(b) Billing Error Notice

1. *Withdrawal of billing error notice by consumer*. The creditor need not comply with the requirements of §1026.13(c) through (g) of this section if the consumer concludes that no billing error occurred and voluntarily withdraws the billing error notice. The consumer's withdrawal of a billing error notice may be oral, electronic or written.

2. *Form of written notice*. The creditor may require that the written notice not be made on the payment medium or other material accompanying the periodic statement if the creditor so stipulates in the billing rights statement required by §§1026.6(a)(5) or (b)(5)(iii), and 1026.9(a). In addition, if the

creditor stipulates in the billing rights statement that it accepts billing error notices submitted electronically, and states the means by which a consumer may electronically submit a billing error notice, a notice sent in such manner will be deemed to satisfy the written notice requirement for purposes of §1026.13(b).

Paragraph 13(b)(1)

1. *Failure to send periodic statement—timing.* If the creditor has failed to send a periodic statement, the 60-day period runs from the time the statement should have been sent. Once the statement is provided, the consumer has another 60 days to assert any billing errors reflected on it.

2. *Failure to reflect credit—timing.* If the periodic statement fails to reflect a credit to the account, the 60-day period runs from transmittal of the statement on which the credit should have appeared.

3. *Transmittal.* If a consumer has arranged for periodic statements to be held at the financial institution until called for, the statement is "transmitted" when it is first made available to the consumer.

Paragraph 13(b)(2)

1. *Identity of the consumer.* The billing error notice need not specify both the name and the account number if the information supplied enables the creditor to identify the consumer's name and account.

13(c) Time for Resolution; General Procedures

1. *Temporary or provisional corrections.* A creditor may temporarily correct the consumer's account in response to a billing error notice, but is not excused from complying with the remaining error resolution procedures within the time limits for resolution.

2. *Correction without investigation.* A creditor may correct a billing error in the manner and amount asserted by the consumer without the investigation or the determination normally required. The creditor must comply, however, with all other applicable provisions. If a creditor follows this procedure, no presumption is created that a billing error occurred.

3. *Relationship with §1026.12.* The consumer's rights under the billing error provisions in §1026.13 are independent of the provisions set forth in §1026.12(b) and (c). (*See* comments 12(b)–4, 12(b)(3)–3, and 12(c)–1.)

Paragraph 13(c)(2)

1. *Time for resolution.* The phrase two complete billing cycles means two actual billing cycles occurring after receipt of the billing error notice, not a measure of time equal to two billing cycles. For example, if a creditor on a monthly billing cycle receives a billing error notice mid-cycle, it has the remainder of that cycle plus the next two full billing cycles to resolve the error.

2. *Finality of error resolution procedure.* A creditor must comply with the error resolution procedures and complete its investigation to determine whether an error occurred within two complete billing cycles as set forth in §1026.13(c)(2). Thus, for example, §1026.13(c)(2) prohibits a creditor from reversing amounts previously credited for an alleged billing error even if the creditor obtains evidence after the error resolution time period has passed indicating that the billing error did not occur as asserted by the consumer. Similarly, if a creditor fails to mail or deliver a written explanation setting forth the reason why the billing error did not occur as asserted, or otherwise fails to comply with the error resolution procedures set forth in §1026.13(f), the creditor generally must credit the disputed amount and related finance or other charges, as applicable, to the consumer's account. However, if a consumer receives more than one credit to correct the same billing error, §1026.13 does not prevent a creditor from reversing amounts it has previously credited to correct that error, provided that the total amount of the remaining credits is equal to or more than the amount of the error and that the consumer does not incur any fees or other charges as a result of the timing of the creditor's reversal. For example, assume that a consumer asserts a billing error with respect to a $100 transaction and that the creditor posts a $100 credit to the consumer's account to correct that error during the time period set forth in §1026.13(c)(2). However, following that time period, a merchant or other person honoring the credit card issues a $100 credit to the consumer to correct the same error. In these circumstances, §1026.13(c)(2) does not prohibit the creditor from reversing its $100 credit once the $100 credit from the merchant or other person has posted to the consumer's account.

13(d) Rules Pending Resolution

1. *Disputed amount.* Disputed amount is the dollar amount alleged by the consumer to be in error. When the allegation concerns the description or identification of the transaction (such as the date or the seller's name) rather than a dollar amount, the disputed amount is the amount of the transaction or charge that corresponds to the disputed transaction identification. If the consumer alleges a failure to send a periodic statement under §1026.13(a)(7), the disputed amount is the entire balance owing.

13(d)(1) Consumer's Right To Withhold Disputed Amount; Collection Action Prohibited

1. *Prohibited collection actions.* During the error resolution period, the creditor is prohibited from trying to collect the disputed amount from the consumer. Prohibited collection actions include, for example, instituting court action, taking a lien, or instituting attachment proceedings.

2. *Right to withhold payment.* If the creditor reflects any disputed amount or related finance or other charges on the periodic statement, and is therefore required to make the disclosure under §1026.13(d)(4), the creditor may comply with that disclosure requirement by indicating that payment of any disputed amount is not required pending resolution. Making a disclosure that only refers to the disputed amount would, of course, in no way affect the consumer's right under §1026.13(d)(1) to withhold related finance and other charges. The disclosure under §1026.13(d)(4) need not appear in any specific place on the periodic statement, need not state the specific amount that the consumer may withhold, and may be preprinted on the periodic statement.

3. *Imposition of additional charges on undisputed amounts.* The consumer's withholding of a disputed amount from the total bill cannot subject undisputed balances (including new purchases or cash advances made during the present or subsequent cycles) to the imposition of finance or other charges. For example, if on an account with a grace period (that is, an account in which paying the new balance in full allows the consumer to avoid the imposition of additional finance charges), a consumer disputes a $2 item out of a total bill of $300 and pays $298 within the grace period, the consumer would not lose the grace period as to any undisputed amounts, even if the creditor determines later that no billing error occurred. Furthermore, finance or other charges may not be imposed on any new purchases or advances that, absent the unpaid disputed balance, would not have finance or other charges imposed on them. Finance or other charges that would have been incurred even if the consumer had paid the disputed amount would not be affected.

4. *Automatic payment plans—coverage.* The coverage of this provision is limited to the card issuer's automatic payment plans, whether or not the consumer's asset account is held by the card issuer or by another financial institution. It does not apply to automatic or bill-payment plans offered by financial institutions other than the credit card issuer.

5. *Automatic payment plans—time of notice.* While the card issuer does not have to restore or prevent the debiting of a disputed amount if the billing error notice arrives after the three-business-day cut-off, the card issuer must, however, prevent the automatic debit of any part of the disputed amount that is still outstanding and unresolved at the time of the next scheduled debit date.

13(d)(2) Adverse Credit Reports Prohibited

1. *Report of dispute.* Although the creditor must not issue an adverse credit report because the consumer fails to pay the disputed amount or any related charges, the creditor may report that the amount or the account is in dispute. Also, the creditor may report the account as delinquent if undisputed amounts remain unpaid.

2. *Person.* During the error resolution period, the creditor is prohibited from making an adverse credit report about the disputed amount to any person—including employers, insurance companies, other creditors, and credit bureaus.

3. *Creditor's agent.* Whether an agency relationship exists between a creditor and an issuer of an adverse credit report is determined by state or other applicable law.

13(e) Procedures If Billing Error Occurred as Asserted

1. *Correction of error.* The phrase as applicable means that the necessary corrections vary with the type of billing error that occurred. For example, a misidentified transaction (or a transaction that is identified by one of the alternative methods in §1026.8) is cured by properly identifying the transaction and crediting related finance and any other charges imposed. The creditor is not required to cancel the amount of the underlying obligation incurred by the consumer.

2. *Form of correction notice.* The written correction notice may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the periodic statement is used, the amount of the billing error must be specifically identified. If a separate billing error correction notice is provided, the accompanying or subsequent periodic statement reflecting the corrected amount may simply identify it as credit.

3. *Discovery of information after investigation period. See* comment 13(c)(2)–2.

13(f) Procedures If Different Billing Error or No Billing Error Occurred

1. *Different billing error.* Examples of a different billing error include:

i. Differences in the amount of an error (for example, the customer asserts a $55.00 error but the error was only $53.00).

ii. Differences in other particulars asserted by the consumer (such as when a consumer asserts that a particular transaction never occurred, but the creditor determines that only the seller's name was disclosed incorrectly).

2. *Form of creditor's explanation.* The written explanation (which also may notify the consumer of corrections to the account) may take a variety of forms. It may be sent separately, or it may be included on or with a periodic statement that is mailed within the time for resolution. If the creditor uses the periodic statement for the explanation and correction(s), the corrections must be specifically identified. If a separate explanation, including the correction notice, is provided, the enclosed or subsequent periodic statement reflecting the corrected amount may simply identify it as a credit. The explanation may be combined with the creditor's notice to the consumer of amounts still owing, which is required under §1026.13(g)(1), provided it is sent within the time limit for resolution. (See commentary to §1026.13(e).)

3. *Reasonable investigation.* A creditor must conduct a reasonable investigation before it determines that no billing error occurred or that a different billing error occurred from that asserted. In conducting its investigation of an allegation of a billing error, the creditor may reasonably request the consumer's cooperation. The creditor may not automatically deny a claim based solely on the consumer's failure or refusal to comply with a particular request, including providing an affidavit or filing a police report. However, if the creditor otherwise has no knowledge of facts confirming the billing error, the lack of information resulting from the consumer's failure or refusal to comply with a particular request may lead the creditor reasonably to terminate the investigation. The procedures involved in investigating alleged billing errors may differ depending on the billing error type.

i. *Unauthorized transaction.* In conducting an investigation of a notice of billing error alleging an unauthorized transaction under §1026.13(a)(1), actions such as the following represent steps that a creditor may take, as appropriate, in conducting a reasonable investigation:

A. Reviewing the types or amounts of purchases made in relation to the consumer's previous purchasing pattern.

B. Reviewing where the purchases were delivered in relation to the consumer's residence or place of business.

C. Reviewing where the purchases were made in relation to where the consumer resides or has normally shopped.

D. Comparing any signature on credit slips for the purchases to the signature of the consumer (or an authorized user in the case of a credit card account) in the creditor's records, including other credit slips.

E. Requesting documentation to assist in the verification of the claim.

F. Requiring a written, signed statement from the consumer (or authorized user, in the case of a credit card account). For example, the creditor may include a signature line on a billing rights form that the consumer may send in to provide notice of the claim. However, a creditor may not require the consumer to provide an affidavit or signed statement under penalty of perjury as a part of a reasonable investigation.

G. Requesting a copy of a police report, if one was filed.

H. Requesting information regarding the consumer's knowledge of the person who allegedly obtained an extension of credit on the account or of that person's authority to do so.

ii. *Nondelivery of property or services.* In conducting an investigation of a billing error notice alleging the nondelivery of property or services under §1026.13(a)(3), the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the property or services were actually delivered, mailed, or sent as agreed.

iii. *Incorrect information.* In conducting an investigation of a billing error notice alleging that information appearing on a periodic statement is incorrect because a person honoring the consumer's credit card or otherwise accepting an access device for an open-end plan has made an incorrect report to the creditor, the creditor shall not deny the assertion unless it conducts a reasonable investigation and determines that the information was correct.

13(g) Creditor's Rights and Duties After Resolution

Paragraph 13(g)(1)

1. *Amounts owed by consumer.* Amounts the consumer still owes may include both minimum periodic payments and related finance and other charges that accrued during the resolution period. As explained in the commentary to §1026.13(d)(1), even if the creditor later determines that no billing error occurred, the creditor may not include finance or other charges that are imposed on undisputed balances solely as a result of a consumer's withholding payment of a disputed amount.

2. *Time of notice.* The creditor need not send the notice of amount owed within the time period for resolution, although it is under a duty to send the notice promptly after resolution of the alleged error. If the creditor combines the notice of the amount owed with the explanation required under §1026.13(f)(1), the combined notice must be provided within the time limit for resolution.

Paragraph 13(g)(2)

1. *Grace period if no error occurred.* If the creditor determines, after a reasonable investigation, that a billing error did not occur as asserted, and the consumer was entitled

to a grace period at the time the consumer provided the billing error notice, the consumer must be given a period of time equal to the grace period disclosed under §1026.6(a)(1) or (b)(2) and §1026.7(a)(8) or (b)(8) to pay any disputed amounts due without incurring additional finance or other charges. However, the creditor need not allow a grace period disclosed under the above-mentioned sections to pay the amount due under §1026.13(g)(1) if no error occurred and the consumer was not entitled to a grace period at the time the consumer asserted the error. For example, assume that a creditor provides a consumer a grace period of 20 days to pay a new balance to avoid finance charges, and that the consumer did not carry an outstanding balance from the prior month. If the consumer subsequently asserts a billing error for the current statement period within the 20-day grace period, and the creditor determines that no billing error in fact occurred, the consumer must be given at least 20 days (*i.e.*, the full disclosed grace period) to pay the amount due without incurring additional finance charges. Conversely, if the consumer was not entitled to a grace period at the time the consumer asserted the billing error, for example, if the consumer did not pay the previous monthly balance of undisputed charges in full, the creditor may assess finance charges on the disputed balance for the entire period the item was in dispute.

Paragraph 13(g)(3)

1. *Time for payment.* The consumer has a minimum of 10 days to pay (measured from the time the consumer could reasonably be expected to have received notice of the amount owed) before the creditor may issue an adverse credit report; if an initially disclosed grace period allows the consumer a longer time in which to pay, the consumer has the benefit of that longer period.

Paragraph 13(g)(4)

1. *Credit reporting.* Under §1026.13(g)(4)(i) and (iii) the creditor's additional credit reporting responsibilities must be accomplished promptly. The creditor need not establish costly procedures to fulfill this requirement. For example, a creditor that reports to a credit bureau on scheduled updates need not transmit corrective information by an unscheduled computer or magnetic tape; it may provide the credit bureau with the correct information by letter or other commercially reasonable means when using the scheduled update would not be "prompt." The creditor is not responsible for ensuring that the credit bureau corrects its information immediately.

2. *Adverse report to credit bureau.* If a creditor made an adverse report to a credit bureau that disseminated the information to other creditors, the creditor fulfills its §1026.13(g)(4)(ii) obligations by providing the consumer with the name and address of the credit bureau.

13(i) Relation to Electronic Fund Transfer Act and Regulation E

1. *Coverage.* Credit extended directly from a non-overdraft credit line is governed solely by Regulation Z, even though a combined credit card/access device is used to obtain the extension.

2. *Incidental credit under an agreement with respect to an account other than a prepaid account.* Except with respect to a prepaid account as defined in §1026.61, for credit extended incident to an electronic fund transfer under an agreement between the consumer and the financial institution, §1026.13(i)(1) provides that certain error resolution procedures in both this part and Regulation E apply. Except with respect to a prepaid account, incidental credit that is not extended under an agreement between the consumer and the financial institution is governed solely by the error resolution procedures in Regulation E. For example, credit inadvertently extended incident to an electronic fund transfer using a debit card, such as under an overdraft service not subject to Regulation Z, is governed solely by the Regulation E error resolution procedures, if the bank and the consumer do not have an agreement to extend credit when the consumer's account is overdrawn.

3. *Application to debit/credit transactions—examples.* If a consumer uses a debit card to withdraw money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under 12 CFR 1005.11(c)(2)(i), for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under §1005.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of §1026.13(d) and (g) apply only to the credit portion of the transaction.

4. *Credit under a covered separate credit feature accessible by a hybrid prepaid-credit card.* For transactions involving a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61, whether Regulation E (12 CFR part 1005) or Regulation Z applies depends on the nature of the transaction. For example:

i. If the transaction solely involves an extension of credit under a covered separate credit feature and does not access funds from the asset feature of the prepaid account, the error resolution requirements of Regulation Z apply. To illustrate, assume that there is $0 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulation Z apply to the transaction. This is true regardless of whether the $25 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether the $25 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account to cover the amount of the transaction.

ii. If the transaction accesses funds from the asset feature of a prepaid account only (with no credit extended under the credit feature), the provisions of Regulation E apply.

iii. If the transaction accesses funds from the asset feature of a prepaid account but also involves an extension of credit under the covered separate credit feature, a creditor must comply with the requirements of Regulation E, 12 CFR 1005.11, and 1005.18(e) as applicable, governing error resolution rather than those of §1026.13(a), (b), (c), (e), (f), and (h). To illustrate, assume that there is $10 in the asset feature of the prepaid account, and the consumer makes a $25 transaction with the card. The error resolution requirements of Regulations E and Z apply as described above to the transaction. This is true regardless of whether $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature without a transfer to the asset feature of the prepaid account to cover the amount of the transaction, or whether $15 of credit is transferred from the covered separate credit feature to the asset feature of the prepaid account and a $25 transaction is debited from the asset feature to cover the amount of the transaction. When this paragraph applies:

A. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E (12 CFR part 1005) provisions (such as timing and notice) for the entire transaction.

B. The creditor need not provisionally credit the consumer's account, under Regulation E, 12 CFR 1005.11(c)(2)(i), for any portion of the unpaid extension of credit.

C. The creditor must credit the consumer's account under §1005.11(c) with any finance or other charges incurred as a result of the alleged error.

D. The provisions of §1026.13(d) and (g) apply only to the credit portion of the transaction.

5. *Prepaid cards that are not hybrid prepaid-credit cards.* Regulation E, 12 CFR 1005.12(a)(1)(iv)(C) and (D), and (a)(2)(iii) provide guidance on whether error resolution procedures in Regulations E or Z apply to transactions involving credit features that are accessed by prepaid cards that are not hybrid prepaid-credit cards as defined in §1026.61. Regulation E 12 CFR 1005.12(a)(1)(iv)(C) provides that with respect to transactions that involve credit extended through a negative balance to the asset feature of a prepaid account that meets the conditions set forth in §1026.61(a)(4), these transactions are governed solely by error resolution procedures in Regulation E, and Regulation Z does not apply. Regulation E 12 CFR 1005.12(a)(1)(iv)(D) and (a)(2)(iii), taken together, provide that with respect to transactions involving a prepaid account and a non-covered separate credit feature as defined in §1026.61, a financial institution must comply with Regulation E's error resolution procedures with respect to transactions that access the prepaid account as applicable, and the creditor must comply with Regulation Z's error resolution procedures with respect to transactions that access the non-covered separate credit feature, as applicable.

Section 1026.14—Determination of Annual Percentage Rate

14(a) General Rule

1. *Tolerance.* The tolerance of 1/8th of 1 percentage point above or below the annual percentage rate applies to any required disclosure of the annual percentage rate. The disclosure of the annual percentage rate is required in §§1026.60, 1026.40, 1026.6, 1026.7, 1026.9, 1026.15, 1026.16, 1026.26, 1026.55, and 1026.56.

2. *Rounding.* The regulation does not require that the annual percentage rate be calculated to any particular number of decimal places; rounding is permissible within the 1/8th of 1 percent tolerance. For example, an exact annual percentage rate of 14.33333% may be stated as 14.33% or as 14.3%, or even as 14¼%; but it could not be stated as 14.2% or 14%, since each varies by more than the permitted tolerance.

3. *Periodic rates.* No explicit tolerance exists for any periodic rate as such; a disclosed periodic rate may vary from precise accuracy (for example, due to rounding) only to the extent that its annualized equivalent is within the tolerance permitted by §1026.14(a). Further, a periodic rate need not be calculated to any particular number of decimal places.

4. *Finance charges.* The regulation does not prohibit creditors from assessing finance charges on balances that include prior, unpaid finance charges; state or other applicable law may do so, however.

5. *Good faith reliance on faulty calculation tools.* The regulation relieves 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 safe harbor from liability is available 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.

6. *Effect of leap year.* Any variance in the annual percentage rate that occurs solely by reason of the addition of February 29 in a leap year may be disregarded, and such a rate may be disclosed without regard to such variance.

14(b) Annual Percentage Rate—In General

1. *Corresponding annual percentage rate computation.* For purposes of §§1026.60, 1026.40, 1026.6, 1026.7(a)(4) or (b)(4), 1026.9, 1026.15, 1026.16, 1026.26, 1026.55, and 1026.56, the annual percentage rate is determined by multiplying the periodic rate by the number of periods in the year. This computation reflects the fact that, in such disclosures, the rate (known as the corresponding annual percentage rate) is prospective and does not involve any particular finance charge or periodic balance.

14(c) Optional Effective Annual Percentage Rate for Periodic Statements for Creditors Offering Open-End Credit Plans Secured by a Consumer's Dwelling

1. *General rule.* The periodic statement may reflect (under §1026.7(a)(7)) the annualized equivalent of the rate actually applied during a particular cycle; this rate may differ from the corresponding annual percentage rate because of the inclusion of, for example, fixed, minimum, or transaction charges. Sections 1026.14(c)(1) through (c)(4) state the computation rules for the effective rate.

2. *Charges related to opening, renewing, or continuing an account.* Sections 1026.14(c)(2) and (c)(3) exclude from the calculation of the effective annual percentage rate finance charges that are imposed during the billing cycle such as a loan fee, points, or similar charge that relates to opening, renewing, or continuing an account. The charges involved here do not relate to a specific transaction or to specific activity on the account, but relate solely to the opening, renewing, or continuing of the account. For example, an annual fee to renew an open-end credit account that is a percentage of the credit limit on the account, or that is charged only to consumers that have not used their credit card for a certain dollar amount in transactions during the preceding year, would not be included in the calculation of the annual percentage rate, even though the fee may not be excluded from the finance charge under §1026.4(c)(4). (See comment 4(c)(4)–2.) This rule applies even if the loan fee, points, or similar charges are billed on a subsequent periodic statement or withheld from the proceeds of the first advance on the account.

3. *Classification of charges.* If the finance charge includes a charge not due to the application of a periodic rate, the creditor must use the annual percentage rate computation method that corresponds to the type of charge imposed. If the charge is tied to a specific transaction (for example, 3 percent of the amount of each transaction), then the method in §1026.14(c)(3) must be used. If a fixed or minimum charge is applied, that is, one not tied to any specific transaction, then the formula in §1026.14(c)(2) is appropriate.

4. *Small finance charges.* Section 1026.14(c)(4) gives the creditor an alternative to §1026.14(c)(2) and (c)(3) if small finance charges (50 cents or less) are involved; that is, if the finance charge includes minimum or fixed fees not due to the application of a periodic rate and the total finance charge for the cycle does not exceed 50 cents. For example, while a monthly activity fee of 50 cents on a balance of $20 would produce an annual percentage rate of 30 percent under the rule in §1026.14(c)(2), the creditor may disclose an annual percentage rate of 18 percent if the periodic rate generally applicable to all balances is 1 and ½ percent per month.

5. *Prior-cycle adjustments.* i. The annual percentage rate reflects the finance charges imposed during the billing cycle. However, finance charges imposed during the billing cycle may relate to activity in a prior cycle. Examples of circumstances when this may occur are:

A. A cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges, and it is impracticable to post the transaction until the following cycle.

B. An adjustment to the finance charge is made following the resolution of a billing error dispute.

C. A consumer fails to pay the purchase balance under a deferred payment feature by the payment due date, and finance charges are imposed from the date of purchase.

ii. Finance charges relating to activity in prior cycles should be reflected on the periodic statement as follows:

A. If a finance charge imposed in the current billing cycle is attributable to periodic rates applicable to prior billing cycles (such as when a deferred payment balance was not paid in full by the payment due date and finance charges from the date of purchase are now being debited to the account, or when a cash advance occurs on the last day of a billing cycle on an account that uses the transaction date to figure finance charges and it is impracticable to post the transaction until the following cycle), and the creditor uses the quotient method to calculate the annual percentage rate, the numerator would include the amount of any transaction charges plus any other finance charges posted during the billing cycle. At the creditor's option, balances relating to the finance charge adjustment may be included in the denominator if permitted by the legal obligation, if it was impracticable to post the transaction in the previous cycle because of timing, or if the adjustment is covered by comment 14(c)–5.ii.B.

B. If a finance charge that is posted to the account relates to activity for which a finance charge was debited or credited to the account in a previous billing cycle (for example, if the finance charge relates to an adjustment such as the resolution of a billing error dispute, or an unintentional posting error, or a payment by check that was later returned unpaid for insufficient funds or other reasons), the creditor shall at its option:

1. Calculate the annual percentage rate in accordance with ii.A of this paragraph, or

2. Disclose the finance charge adjustment on the periodic statement and calculate the annual percentage rate for the current billing cycle without including the finance charge adjustment in the numerator and balances associated with the finance charge adjustment in the denominator.

14(c)(1) Solely Periodic Rates Imposed

1. *Periodic rates.* Section 1026.14(c)(1) applies if the only finance charge imposed is due to the application of a periodic rate to a balance. The creditor may compute the annual percentage rate either:

i. By multiplying each periodic rate by the number of periods in the year; or

ii. By the ''quotient'' method. This method refers to a composite annual percentage rate when different periodic rates apply to different balances. For example, a particular plan may involve a periodic rate of ½ percent on balances up to $500, and 1 percent on balances over $500. If, in a given cycle, the consumer has a balance of $800, the finance charge would consist of $7.50 (500 × .015) plus $3.00 (300 × .01), for a total finance charge of $10.50. The annual percentage rate for this period may be disclosed either as 18% on $500 and 12 percent on $300, or as 15.75 percent on a balance of $800 (the quotient of $10.50 divided by $800, multiplied by 12).

14(c)(2) Minimum or Fixed Charge, But Not Transaction Charge, Imposed

1. *Certain charges not based on periodic rates.* Section 1026.14(c)(2) specifies use of the quotient method to determine the annual percentage rate if the finance charge imposed includes a certain charge not due to the application of a periodic rate (other than a charge relating to a specific transaction). For example, if the creditor imposes a minimum $1 finance charge on all balances below $50, and the consumer's balance was $40 in a particular cycle, the creditor would disclose an annual percentage rate of 30 percent (1/40 × 12).

2. *No balance.* If there is no balance to which the finance charge is applicable, an annual percentage rate cannot be determined under § 1026.14(c)(2). This could occur not only when minimum charges are imposed on an account with no balance, but also when a periodic rate is applied to advances from the date of the transaction. For example, if on May 19 the consumer pays the new balance in full from a statement dated May 1, and has no further transactions reflected on the June 1 statement, that statement would reflect a finance charge with no account balance.

14(c)(3) Transaction Charge Imposed

1. *Transaction charges.* i. Section 1026.14(c)(3) transaction charges include, for example:

A. A loan fee of $10 imposed on a particular advance.

B. A charge of 3 percent of the amount of each transaction.

ii. The reference to avoiding duplication in the computation requires that the amounts of transactions on which transaction charges were imposed not be included both in the amount of total balances and in the ''other amounts on which a finance charge was imposed'' figure. In a multifeatured plan, creditors may consider each bona fide feature separately in the calculation of the denominator. A creditor has considerable flexibility in defining features for open-end plans, as long as the creditor has a reasonable basis for the distinctions. For further explanation and examples of how to determine the components of this formula, see appendix F to part 1026.

2. *Daily rate with specific transaction charge.* Section 1026.14(c)(3) sets forth an acceptable method for calculating the annual percentage rate if the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate. This section includes the requirement that the creditor follow the rules in appendix F to part 1026 in calculating the annual percentage rate, especially the provision in the introductory section of appendix F which addresses the daily rate/transaction charge situation by providing that the ''average of daily balances'' shall be used instead of the ''sum of the balances.''

14(d) Calculations Where Daily Periodic Rate Applied

1. *Quotient method.* Section 1026.14(d) addresses use of a daily periodic rate(s) to determine some or all of the finance charge and use of the quotient method to determine the annual percentage rate. Since the quotient formula in §1026.14(c)(1)(ii) and (c)(2) cannot be used when a daily rate is being applied to a series of daily balances, §1026.14(d) provides two alternative ways to calculate the annual percentage rate—either of which satisfies the provisions of §1026.7(a)(7).

2. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)–2 for guidance on an appropriate calculation method.

Section 1026.15—Right of Rescission

1. *Transactions not covered.* Credit extensions that are not subject to the regulation are not covered by §1026.15 even if the customer's principal dwelling is the collateral securing the credit. For this purpose, *credit extensions* also would include the occurrences listed in comment 15(a)(1)–1. For example, the right of rescission does not apply to the opening of a business-purpose credit line, even though the loan is secured by the customer's principal dwelling.

15(a) Consumer's Right To Rescind

Paragraph 15(a)(1)

1. *Occurrences subject to right.* Under an open-end credit plan secured by the consumer's principal dwelling, the right of rescission generally arises with each of the following occurrences:

i. Opening the account.

ii. Each credit extension.

iii. Increasing the credit limit.

iv. Adding to an existing account a security interest in the consumer's principal dwelling.

v. Increasing the dollar amount of the security interest taken in the dwelling to secure the plan. For example, a consumer may open an account with a $10,000 credit limit, $5,000 of which is initially secured by the consumer's principal dwelling. The consumer has the right to rescind at that time and (except as noted in §1026.15(a)(1)(ii)) with each extension on the account. Later, if the creditor decides that it wants the credit line fully secured, and increases the amount of its interest in the consumer's dwelling, the consumer has the right to rescind the increase.

2. *Exceptions.* Although the consumer generally has the right to rescind with each transaction on the account, Section 125(e) of the Act provides an exception: the creditor need not provide the right to rescind at the time of each credit extension made under an open-end credit plan secured by the consumer's principal dwelling to the extent that the credit extended is in accordance with a previously established credit limit for the plan. This limited rescission option is available whether or not the plan existed prior to the effective date of the Act.

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

A. A security interest that is acquired by a contractor who is also extending the credit in the transaction.

B. A mechanic's or materialman's lien that is retained by a subcontractor or supplier of a contractor-creditor, even when the latter has waived its own security interest in the consumer's home.

ii. 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. A mechanic's or materialman's lien is obtained by a contractor who is not a party to the credit transaction but merely is paid with the proceeds of the consumer's cash advance.

B. All security interests that may arise in connection with the credit transaction are validly waived.

C. 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.

iii. 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 under §1026.6(c), it may still give rise to the right of rescission.

4. *Consumer.* To be a consumer within the meaning of §1026.2, 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 enters into a secured plan, the other spouse is a consumer if the ownership interest of that spouse is subject to the security interest.

5. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 15(a)(1)–6.) 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 open-end credit line. 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, an advance on an open-end line to finance B and secured by B is a residential mortgage transaction. Dwelling, as defined in §1026.2, includes structures that are classified as personalty 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.

6. *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, a credit plan or extension that is subject to Regulation Z and is secured by the equity in the consumer's current principal dwelling is subject to the right of rescission regardless of the purpose of that loan (for example, an advance to be used as a bridge 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 loan to finance B and secured by A is subject to the right of rescission. Moreover, a loan secured by both A and B is, likewise, rescindable.

Paragraph 15(a)(2)

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under §1026.15(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under §1026.15(d)(2) 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 notice provided to the consumer under §1026.15(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivery of the notification to the person or address to which the consumer has been directed to send payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.

Paragraph 15(a)(3)

1. *Rescission period.* i. The period within which the consumer may exercise the right to rescind runs for 3 business days from the last of 3 events:

A. The occurrence that gives rise to the right of rescission.

B. Delivery of *all* material disclosures that are relevant to the plan.

C. Delivery to the consumer of the required rescission notice.

ii. For example, an account is opened 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—that is, Tuesday June 5. In another example, if the disclosures are given and the account is opened 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.

2. *Material disclosures.* Section 1026.15(a)(3) sets forth the material disclosures that must be provided before the rescission period can begin to run. The creditor must provide sufficient information to satisfy the requirements of §1026.6 for these disclosures. A creditor may satisfy this requirement by giving an initial disclosure statement that complies with the regulation. Failure to give the other required initial disclosures (such as the billing rights statement) or the information required under §1026.40 does not prevent the running of the rescission period, although that failure may result in civil liability or administrative sanctions. The payment terms set forth in §1026.15(a)(3) apply to any repayment phase set forth in the agreement. Thus, the payment terms described in §1026.6(e)(2) for any repayment phase as well as for the draw period are ''material disclosures.''

3. *Material disclosures—variable rate program.* For a variable rate program, the material disclosures also include the disclosures listed in §1026.6(a)(1)(ii): the circumstances under which the rate may increase; the limitations on the increase; and the effect of an increase. The disclosures listed in §1026.6(a)(1)(ii) for any repayment phase also are material disclosures for variable-rate programs.

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

A. The expiration of three years after the occurrence giving rise to the right of rescission.

B. Transfer of all the consumer's interest in the property.

C. 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.

ii. 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 §1026.15. 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.

Paragraph 15(a)(4)

1. *Joint owners.* When more than one consumer has the right to rescind a transaction, any one of them may exercise that right and cancel the transaction on behalf of all. For example, if both a 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.

15(b) Notice of Right To Rescind

1. *Who receives notice.* Each consumer entitled to rescind must be given two copies of the rescission notice and 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 (one copy to each if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act) and one copy of the disclosures.

2. *Format.* The rescission notice may be physically separated from the material disclosures or combined with the material disclosures, so long as the information required to be included on the notice is set forth in a clear and conspicuous manner. See the model notices in appendix G.

3. *Content.* The notice must include all of the information outlined in §1026.15(b)(1) through (5). The requirement in §1026.15(b) that the transaction or occurrence be identified may be met by providing the date of the transaction or occurrence. The notice may include additional information related to the required information, such as:

i. A description of the property subject to the security interest.

ii. A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.

iii. The name and address of an agent of the creditor to receive notice of rescission.

4. *Time of providing notice.* The notice required by §1026.15(b) need not be given before the occurrence giving rise to the right of rescission. The creditor may deliver the notice after the occurrence, 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 credit limit was raised on May 10, the 3-business-day rescission period will run from May 15.

15(c) Delay of Creditor's Performance

1. *General rule.* i. 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:

A. Disburse advances to the consumer.

B. Begin performing services for the consumer.

C. Deliver materials to the consumer.

ii. A creditor may, however, continue to allow transactions under an existing open-end credit plan during a rescission period that results solely from the addition of a security interest in the consumer's principal dwelling. (See comment 15(c)–3 for other actions that may be taken during the delay period.)

2. *Escrow.* The creditor may disburse advances 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.

3. *Actions during the delay period.* Section 1026.15(c) 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:

i. Prepare the cash advance check.

ii. Perfect the security interest.

iii. Accrue finance charges during the delay period.

4. *Performance by third party.* The creditor is relieved from liability for failure to delay performance if a third party with no knowledge that the rescission right has been activated provides materials or services, as long as any debt incurred for materials or services obtained by the consumer during the rescission period is not secured by the security interest in the consumer's dwelling. For example, if a consumer uses a bank credit card to purchase materials from a merchant in an amount below the floor limit, the merchant

might not contact the card issuer for authorization and therefore would not know that materials should not be provided.

5. *Delay beyond rescission period.* i. 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:

A. Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.

B. Obtaining a written statement from the consumer that the right has not been exercised.

ii. 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.

15(d) Effects of Rescission

Paragraph 15(d)(1)

1. *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. Under §1026.15(d)(2), however, the creditor must take any action necessary to reflect the fact that the security interest no longer exists.

2. *Extent of termination.* The creditor's security interest is void to the extent that it is related to the occurrence giving rise to the right of rescission. For example, upon rescission:

i. If the consumer's right to rescind is activated by the opening of a plan, any security interest in the principal dwelling is void.

ii. If the right arises due to an increase in the credit limit, the security interest is void as to the amount of credit extensions over the prior limit, but the security interest in amounts up to the original credit limit is unaffected.

iii. If the right arises with each individual credit extension, then the interest is void as to that extension, and other extensions are unaffected.

Paragraph 15(d)(2)

1. *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 occurrence subject to the right of rescission. 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 by the consumer 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. For example:

i. If the occurrence is the opening of the plan, the creditor must return any membership or application fee paid.

ii. If the occurrence is the increase in a credit limit or the addition of a security interest, the creditor must return any fee imposed for a new credit report or filing fees.

iii. If the occurrence is a credit extension, the creditors must return fees such as application, title, and appraisal or survey fees, as well as any finance charges related to the credit extension.

2. *Amounts not refundable to consumer.* Creditors need not return any money given by the consumer to a third party outside of the occurrence, such as costs incurred for a building permit or for a zoning variance. Similarly, the term *any amount* does not apply to money or property given by the creditor to the consumer; those amounts must be tendered by the consumer to the creditor under §1026.15(d)(3).

3. *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 occurrence rescinded by the consumer, 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.

Paragraph 15(d)(3)

1. *Property exchange.* Once the creditor has fulfilled its obligation under §1026.15(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 fixtures or furniture 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. For purpose of property exchange, the following additional rules apply:

i. A cash advance is considered money for purposes of this section even if the creditor knows what the consumer intends to purchase with the money.

ii. In a 3-party open-end credit plan (that is, if the creditor and seller are not the same or related persons), extensions by the creditor that are used by the consumer for purchases from third-party sellers are considered to be the same as cash advances for purposes of tendering value to the creditor, even though the transaction is a purchase for other purposes under the regulation. For example, if a consumer exercises the unexpired right to rescind after using a 3-party credit card for one year, the consumer would tender the amount of the purchase price for the items charged to the account, rather than tendering the items themselves to the creditor.

2. *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.

Paragraph 15(d)(4)

1. *Modifications.* The procedures outlined in §1026.15(d)(2) and (3) 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. The sequence of procedures under §1026.15(d)(2) and (3), or a court's modification of those procedures under §1026.15(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

15(e) Consumer's Waiver of Right To Rescind

1. *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.

2. *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.

15(f) Exempt Transactions

1. *Residential mortgage transaction.* Although residential mortgage transactions would seldom be made on bona fide open-end credit plans (under which repeated transactions must be reasonably contemplated), an advance on an open-end plan could be for a downpayment for the purchase of a dwelling that would then secure the remainder of the line. In such a case, only the particular advance for the downpayment would be exempt from the rescission right.

2. *State creditors.* Cities and other political subdivisions of states acting as creditors are not exempt from §1026.15.

3. *Spreader clause.* 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" (also known as a "dragnet" or cross-collateralization clause), subsequent occurrences such as the opening of a plan or individual credit extensions are subject to the right of rescission to the same degree as if the security interest were taken directly to secure the open-end plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

Section 1026.16—Advertising

1. *Clear and conspicuous standard—general.* Section 1026.16 is subject to the general "clear and conspicuous" standard for subpart B (*see* §1026.5(a)(1)) but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the disclosure of a promotional rate or payment under §1026.16(d)(6), a promotional rate or promotional fee under §1026.16(g), or a deferred interest or similar offer under §1026.16(h). Other than the disclosure of certain terms described in §§1026.16(d)(6), (g), or (h), the credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement.

2. *Clear and conspicuous standard—promotional rates or payments; deferred interest or similar offers.* i. For purposes of §1026.16(d)(6), a clear and conspicuous disclosure means that the required information in §1026.16(d)(6)(ii)(A)-(C) is disclosed with equal prominence and in close proximity to the promotional rate or payment to which it applies. If the information in §1026.16(d)(6)(ii)(A)–(C) is the same type size and is located immediately next to or directly above or below the promotional rate or payment to which it applies, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. Notwithstanding the above, for electronic advertisements that disclose promotional rates or payments, compliance with the requirements of §1026.16(c) is deemed to satisfy the clear and conspicuous standard.

ii. For purposes of §1026.16(g)(4) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in §1026.16(g)(4)(i) and, as applicable, (g)(4)(ii) and (g)(4)(iii) must be equally prominent to the promotional rate or promotional fee to which it applies. If the information in §1026.16(g)(4)(i) and, as applicable, (g)(4)(ii) and (g)(4)(iii) is the same type size as the promotional rate or promotional fee to which it applies, the disclosures would be deemed to be equally prominent. For purposes of §1026.16(h)(3) as it applies to written or electronic advertisements only, a clear and conspicuous disclosure means the required information in §1026.16(h)(3) must be equally prominent to each statement of ''no interest,'' ''no payments,'' ''deferred interest,'' ''same as cash,'' or similar term regarding interest or payments during the deferred interest period. If the information required to be disclosed under §1026.16(h)(3) is the same type size as the statement of ''no interest,'' ''no payments,'' ''deferred interest,'' ''same as cash,'' or similar term regarding interest or payments during the deferred interest period, the disclosure would be deemed to be equally prominent.

3. *Clear and conspicuous standard—Internet advertisements for home-equity plans.* For purposes of this section, a clear and conspicuous disclosure for visual text advertisements on the Internet for home-equity plans subject to the requirements of §1026.40 means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices and comply with all other requirements for clear and conspicuous disclosures under §1026.16(d). (See also comment 16(c)(1)–2.)

4. *Clear and conspicuous standard—televised advertisements for home-equity plans.* For purposes of this section, including alternative disclosures as provided for by §1026.16(e), a clear and conspicuous disclosure in the context of visual text advertisements on television for home-equity plans subject to the requirements of §1026.40 means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows for a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures under §1026.16(d). For example, very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see and read the information required to be disclosed.

5. *Clear and conspicuous standard—oral advertisements for home-equity plans.* For purposes of this section, including alternative disclosures as provided for by §1026.16(e), a clear and conspicuous disclosure in the context of an oral advertisement for home-equity plans subject to the requirements of §1026.40, whether by radio, television, the Internet, or other medium, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.

6. *Expressing the annual percentage rate in abbreviated form.* Whenever the annual percentage rate is used in an advertisement for open-end credit, it may be expressed using a readily understandable abbreviation such as APR.

16(a) Actually Available Terms

1. *General rule.* To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. Section 1026.16(a) is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

2. *Specific credit terms. Specific credit terms* is not limited to the disclosures required by the regulation but would include any specific components of a credit plan, such as the minimum periodic payment amount or seller's points in a plan secured by real estate.

16(b) Advertisement of Terms That Require Additional Disclosures

Paragraph 16(b)(1)

1. *Triggering terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states *no interest* or *no annual membership fee* in an advertisement, additional information must be provided. Other examples of terms that trigger additional disclosures are:

i. *Small monthly service charge on the remaining balance,* which describes how the amount of a finance charge will be determined.

ii. *12 percent Annual Percentage Rate* or *A $15 annual membership fee buys you $2,000 in credit,* which describe required disclosures under §1026.6.

2. *Implicit terms.* Section 1026.16(b) applies even if the triggering term is not stated explicitly, but may be readily determined from the advertisement.

3. *Membership fees.* A membership fee is not a triggering term nor need it be disclosed under §1026.16(b)(1)(iii) if it is required for participation in the plan whether or not an open-end credit feature is attached. (See comment 6(a)(2)–1 and §1026.6(b)(3)(iii)(B).)

4. *Deferred billing and deferred payment programs.* Statements such as ''Charge it—you won't be billed until May'' or ''You may skip your January payment'' are not in themselves triggering terms, since the timing for initial billing or for monthly payments are not terms required to be disclosed under §1026.6. However, a statement such as ''No interest charges until May'' or any other statement regarding when interest or finance charges begin to accrue is a triggering term, whether appearing alone or in conjunction with a description of a deferred billing or deferred payment program such as the examples above.

5. *Variable-rate plans.* In disclosing the annual percentage rate in an advertisement for a variable-rate plan, as required by §1026.16(b)(1)(ii), the creditor may use an insert showing the current rate; or may give the rate as of a specified recent date. The additional requirement in §1026.16(b)(1)(ii) to disclose the variable-rate feature may be satisfied by disclosing that the annual percentage rate may vary or a similar statement, but the advertisement need not include the information required by §1026.6(a)(1)(ii) or (b)(4)(ii).

6. *Membership fees for open-end (not home-secured) plans.* For purposes of §1026.16(b)(1)(iii), membership fees that may be imposed on open-end (not home-secured) plans shall have the same meaning as in §1026.60(b)(2).

Paragraph 16(b)(2)

1. *Assumptions.* In stating the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amounts advertised, as required under §1026.16(b)(2), the following additional assumptions may be made:

i. Payments are made timely so as not to be considered late by the creditor;

ii. Payments are made each period, and no debt cancellation or suspension agreement, or skip payment feature applies to the account;

iii. No interest rate changes will affect the account;

iv. No other balances are currently carried or will be carried on the account;

v. No taxes or ancillary charges are or will be added to the obligation;

vi. Goods or services are delivered on a single date; and

vii. The consumer is not currently and will not become delinquent on the account.

2. *Positive periodic payment amounts.* Only positive periodic payment amounts trigger the additional disclosures under §1026.16(b)(2). Therefore, if the periodic payment amount advertised is not a positive amount (e.g., ''No payments''), the advertisement need not state the total of payments and the time period to repay the obligation.

16(c) Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

1. *Definition.* The multiple-page advertisements to which §1026.16(c) refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of §1026.16(c).

Paragraph 16(c)(1)

1. *General.* Section 1026.16(c)(1) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or an electronic advertisement (such as an advertisement appearing on an Internet Web site). The rule applies only if the advertisement contains one or more of the triggering terms from §1026.16(b).

2. *Electronic advertisement.* If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under §1026.16(c)(1), any statement of terms set forth in §1026.6 appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

Paragraph 16(c)(2)

1. *Table or schedule if credit terms depend on outstanding balance.* If the credit terms of a plan vary depending on the amount of the balance outstanding, rather than the amount of any property purchased, a table or schedule complies with §1026.16(c)(2) if it includes the required disclosures for representative balances. For example, a creditor would disclose that a periodic rate of 1.5% is applied to balances of $500 or less, and a 1% rate is applied to balances greater than $500.

16(d) Additional Requirements for Home-Equity Plans

1. *Trigger terms.* Negative as well as affirmative references trigger the requirement for additional information. For example, if a creditor states *no annual fee, no points,* or *we waive closing costs* in an advertisement, additional information must be provided. (*See* comment 16(d)–4 regarding the use of a phrase such as *no closing costs.*) Inclusion of a statement such as *low fees,* however, would not trigger the need to state additional information. References to payment terms include references to the draw period or any repayment period, to the length of the plan, to how the minimum payments are determined and to the timing of such payments.

2. *Fees to open the plan.* Section 1026.16(d)(1)(i) requires a disclosure of any fees imposed by the creditor or a third party to open the plan. In providing the fee information required under this paragraph, the corresponding rules for disclosure of this information apply. For example, fees to open the plan may be stated as a range. Similarly, if property insurance is required to open the plan, a creditor either may estimate the cost of the insurance or provide a statement that such insurance is required. (*See* the commentary to §1026.40(d)(7) and (d)(8).)

3. *Statements of tax deductibility.* An advertisement that refers to deductibility for tax purposes is not misleading if it includes a statement such as "consult a tax advisor regarding the deductibility of interest." An advertisement distributed in paper form or through the Internet (rather than by radio or television) that states that the advertised extension of credit may exceed the fair market value of the consumer's dwelling is not misleading if it clearly and conspicuously states the required information in §§1026.16(d)(4)(i) and (d)(4)(ii).

4. *Misleading terms prohibited.* Under §1026.16(d)(5), advertisements may not refer to home-equity plans as *free money* or use other misleading terms. For example, an advertisement could not state "no closing costs" or "we waive closing costs" if consumers may be required to pay any closing costs, such as recordation fees. In the case of property insurance, however, a creditor may state, for example, "no closing costs" even if property insurance may be required, as long as the creditor also provides a statement that such insurance may be required. (*See* the commentary to this section regarding fees to open a plan.)

5. *Promotional rates and payments in advertisements for home-equity plans.* Section 1026.16(d)(6) requires additional disclosures for promotional rates or payments.

i. *Variable-rate plans.* In advertisements for variable-rate plans, if the advertised annual percentage rate is based on (or the advertised payment is derived from) the index and margin that will be used to make rate (or payment) adjustments over the term of the loan, then there is no promotional rate or promotional payment. If, however, the advertised annual percentage rate is not based on (or the advertised payment is not derived from) the index and margin that will be used to make rate (or payment) adjustments, and a reasonably current application of the index and margin would result in a higher annual percentage rate (or, given an assumed balance, a higher payment) then there is a promotional rate or promotional payment.

ii. *Equal prominence, close proximity.* Information required to be disclosed in §1026.16(d)(6)(ii) that is immediately next to or directly above or below the promotional rate or payment (but not in a footnote) is deemed to be closely proximate to the listing. Information required to be disclosed in §1026.16(d)(6)(ii) that is in the same type size as the promotional rate or payment is deemed to be equally prominent.

iii. *Amounts and time periods of payments.* Section 1026.16(d)(6)(ii)(C) requires disclosure of the amount and time periods of any payments that will apply under the plan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for a home-equity plan offers a $100,000 five-year line of credit and assumes that the entire line is drawn resulting in a minimum payment of $800 per month for the first six months, increasing to $1,000 per month after month six, followed by a $50,000 balloon payment after five years, the advertisement must disclose the amount and time period of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to the promotional payment. However, if the final payment could not be more than twice the amount of other minimum payments, the final payment need not be disclosed.

iv. *Plans other than variable-rate plans.* For a plan other than a variable-rate plan, if an advertised payment is calculated in the same way as other payments based on an assumed balance, the fact that the minimum payment could increase solely if the consumer made an additional draw does not make the payment a promotional payment. For example, if a payment of $500 results from an assumed $10,000 draw, and the payment would increase to $1,000 if the consumer made an additional $10,000 draw, the payment is not a promotional payment.

v. *Conversion option.* Some home-equity plans permit the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period. The fixed-rate conversion option does not, by itself, make the rate or payment that would apply if the consumer exercised the fixed-rate conversion option a promotional rate or payment.

vi. *Preferred-rate provisions.* Some home-equity plans contain a preferred-rate provision, where the rate will increase upon the occurrence of some event, such as the consumer-employee leaving the creditor's employ, the consumer closing an existing deposit account with the creditor, or the consumer revoking an election to make automated payments. A preferred-rate provision does not, by itself, make the rate or payment under the preferred-rate provision a promotional rate or payment.

6. *Reasonably current index and margin.* For the purposes of this section, an index and margin is considered reasonably current if:

i. For direct mail advertisements, it was in effect within 60 days before mailing;

ii. For advertisements in electronic form it was in effect within 30 days before the advertisement is sent to a consumer's email address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or

iii. For printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.

7. *Relation to other sections.* Advertisements for home-equity plans must comply with all provisions in §1026.16, not solely the rules in §1026.16(d). If an advertisement contains information (such as the payment terms) that triggers the duty under §1026.16(d) to state the annual percentage rate, the additional disclosures in §1026.16(b) must be provided in the advertisement. While §1026.16(d) does not require a statement of fees to use or maintain the plan (such as membership fees and transaction charges), such fees must be disclosed under §1026.16(b)(1)(i) and (b)(1)(iii).

8. *Inapplicability of closed-end rules.* Advertisements for home-equity plans are governed solely by the requirements in §1026.16, except §1026.16(g), and not by the closed-end advertising rules in §1026.24. Thus, if a creditor states payment information about the repayment phase, this will trigger the duty to provide additional information under §1026.16, but not under §1026.24.

9. *Balloon payment. See* comment 40(d)(5)(ii)–3 for information not required to be stated in advertisements, and on situations in which the balloon payment requirement does not apply.

16(e) Alternative Disclosures—Television or Radio Advertisements

1. *Multi-purpose telephone number.* When an advertised telephone number provides a recording, disclosures must be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several options—such as providing directions to the advertiser's place of business—the option allowing the consumer to request disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

2. *Statement accompanying toll free number.* Language must accompany a telephone number indicating that disclosures are available by calling the telephone number, such as ''call 1-(800) 000–0000 for details about credit costs and terms.''

16(g) Promotional Rates and Fees

1. *Rate in effect at the end of the promotional period.* If the annual percentage rate that will be in effect at the end of the promotional period (*i.e.,* the post-promotional rate) is a variable rate, the post-promotional rate for purposes of §1026.16(g)(2)(i) is the rate that would have applied at the time the promotional rate was advertised if the promotional rate was not offered, consistent with the accuracy requirements in §1026.60(c)(2) and (e)(4), as applicable.

2. *Immediate proximity.* For written or electronic advertisements, including the term ''introductory'' or ''intro'' in the same phrase as the listing of the introductory rate or introductory fee is deemed to be in immediate proximity of the listing.

3. *Prominent location closely proximate.* For written or electronic advertisements, information required to be disclosed in §1026.16(g)(4)(i) and, as applicable, (g)(4)(ii) and (g)(4)(iii) that is in the same paragraph as the first listing of the promotional rate or promotional fee is deemed to be in a prominent location closely proximate to the listing. Information disclosed in a footnote will not be considered in a prominent location closely proximate to the listing.

4. *First listing.* For purposes of §1026.16(g)(4) as it applies to written or electronic advertisements, the first listing of the promotional rate or promotional fee is the most prominent listing of the rate or fee on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If the promotional rate or promotional fee does not appear on the front side of the first page of the principal promotional document, then the first listing of the promotional rate or promotional fee is the most prominent listing of the rate or fee on the subsequent pages of the principal promotional document. If the promotional rate or promotional fee is not listed on the principal promotional document or there is no principal promotional document, the first listing is the most prominent listing of the rate or fee on the front side of the first page of each document listing the promotional rate or promotional fee. If the promotional rate or promotional fee does not appear on the front side of the first page of a document, then the first listing of the promotional rate or promotional fee is the most prominent listing of the rate or fee on the subsequent pages of the document. If the listing of the promotional rate or promotional fee with the largest type size on the front side of the first page (or subsequent pages if the promotional rate or promotional fee is not listed on the front side of the first page) of the principal promotional document (or each document listing the promotional rate or promotional fee if the promotional rate or promotional fee is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent

with comment 16(c)–1, a catalog or multiple-page advertisement is considered one document for purposes of §1026.16(g)(4).

5. *Post-promotional rate depends on consumer's creditworthiness.* For purposes of disclosing the rate that may apply after the end of the promotional rate period, at the advertiser's option, the advertisement may disclose the rates that may apply as either specific rates, or a range of rates. For example, if there are three rates that may apply (9.99%, 12.99% or 17.99%), an issuer may disclose these three rates as specific rates (9.99%, 12.99% or 17.99%) or as a range of rates (9.99%-17.99%).

16(h) Deferred Interest or Similar Offers

1. *Deferred interest or similar offers clarified.* Deferred interest or similar offers do not include offers that allow a consumer to skip payments during a specified period of time, and under which the consumer is not obligated under any circumstances for any interest or other finance charges that could be attributable to that period. Deferred interest or similar offers also do not include 0% annual percentage rate offers where a consumer is not obligated under any circumstances for interest attributable to the time period the 0% annual percentage rate was in effect, though such offers may be considered promotional rates under §1026.16(g)(2)(i). Deferred interest or similar offers also do not include skip payment programs that have no required minimum payment for one or more billing cycles but where interest continues to accrue and is imposed during that period.

2. *Deferred interest period clarified.* Although the terms of an advertised deferred interest or similar offer may provide that a creditor may charge the accrued interest if the balance is not paid in full by a certain date, creditors sometimes have an informal policy or practice that delays charging the accrued interest for payment received a brief period of time after the date upon which a creditor has the contractual right to charge the accrued interest. The advertisement need not include the end of an informal "courtesy period" in disclosing the deferred interest period under §1026.16(h)(3).

3. *Immediate proximity.* For written or electronic advertisements, including the deferred interest period in the same phrase as the statement of "no interest," "no payments," "deferred interest," or "same as cash" or similar term regarding interest or payments during the deferred interest period is deemed to be in immediate proximity of the statement.

4. *Prominent location closely proximate.* For written or electronic advertisements, information required to be disclosed in §1026.16(h)(4)(i) and (ii) that is in the same paragraph as the first statement of "no interest," "no payments," "deferred interest," or "same as cash" or similar term regarding interest or payments during the deferred interest period is deemed to be in a prominent location closely proximate to the statement. Information disclosed in a footnote is not considered in a prominent location closely proximate to the statement.

5. *First listing.* For purposes of §1026.16(h)(4) as it applies to written or electronic advertisements, the first statement of "no interest," "no payments," "deferred interest," "same as cash," or similar term regarding interest or payments during the deferred interest period is the most prominent listing of one of these statements on the front side of the first page of the principal promotional document. The principal promotional document is the document designed to be seen first by the consumer in a mailing, such as a cover letter or solicitation letter. If one of the statements does not appear on the front side of the first page of the principal promotional document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the principal promotional document. If one of the statements is not listed on the principal promotional document or there is no principal promotional document, the first listing of one of these statements is the most prominent listing of the statement on the front side of the first page of each document containing one of these statements. If one of the statements does not appear on the front side of the first page of a document, then the first listing of one of these statements is the most prominent listing of a statement on the subsequent pages of the document. If the listing of one of these statements with the largest type size on the front side of the first page (or subsequent pages if one of these statements is not listed on the front side of the first page) of the principal promotional document (or each document listing one of these statements if a statement is not listed on the principal promotional document or there is no principal promotional document) is used as the most prominent listing, it will be deemed to be the first listing. Consistent with comment 16(c)–1, a catalog or multiple-page advertisement is considered one document for purposes of §1026.16(h)(4).

6. *Additional information.* Consistent with comment 5(a)–2, the information required under §1026.16(h)(4) need not be segregated from other information regarding the deferred interest or similar offer. Advertisements may also be required to provide additional information pursuant to §1026.16(b) though such information need not be integrated with the information required under §1026.16(h)(4).

7. *Examples.* Examples of disclosures that could be used to comply with the requirements of §1026.16(h)(3) include: "no interest

if paid in full within 6 months'' and ''no interest if paid in full by December 31, 2010.''

SUBPART C—CLOSED-END CREDIT

Section 1026.17—General Disclosure Requirements

1. *Rules for certain mortgage disclosures.* Section 1026.17(a) and (b) does not apply to the disclosures required by §1026.19(e), (f), and (g), and §1026.20(e). For the disclosures required by §1026.19(e), (f), and (g), rules regarding the disclosures' form are found in §§1026.19(g), 1026.37(o), and 1026.38(t) and rules regarding timing are found in §1026.19(e), (f), and (g). For the disclosures required by §1026.20(e), rules regarding the disclosures' form are found in §1026.20(e)(4) and rules regarding timing are found in §1026.20(e)(5).

17(a) Form of Disclosures

Paragraph 17(a)(1)

1. *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.

2. *Segregation of disclosures.* i. The disclosures may be grouped together and segregated from other information in a variety of ways. For example, the disclosures may appear on a separate sheet of paper or may be set off from other information on the contract or other documents:

A. By outlining them in a box.

B. By bold print dividing lines.

C. By a different color background.

D. By a different type style.

ii. The general segregation requirement described in this subparagraph does not apply to the disclosures required under §1026.19(b) although the disclosures must be clear and conspicuous.

3. *Location.* The regulation imposes no specific location requirements on the segregated disclosures. For example:

i. They may appear on a disclosure statement separate from all other material.

ii. They may be placed on the same document with the credit contract or other information, so long as they are segregated from that information.

iii. They may be shown on the front or back of a document.

iv. They need not begin at the top of a page.

v. They may be continued from one page to another.

4. *Content of segregated disclosures.* Section 1026.17(a)(1) contains exceptions to the requirement that the disclosures under §1026.18 be segregated from material that is not directly related to those disclosures. Section 1026.17(a)(1) lists the items that may be added to the segregated disclosures, even though not directly related to those disclosures. The section also lists the items required under §1026.18 that may be deleted from the segregated disclosures and appear elsewhere. Any one or more of these additions or deletions may be combined and appear either together with or separate from the segregated disclosures. The itemization of the amount financed under §1026.18(c), however, must be separate from the other segregated disclosures under §1026.18, except for private education loan disclosures made in compliance with §1026.47. If a creditor chooses to include the security interest charges required to be itemized under §1026.4(e) and §1026.18(o) in the amount financed itemization, it need not list these charges elsewhere.

5. *Directly related.* The segregated disclosures may, at the creditor's option, include any information that is directly related to those disclosures. The following is directly related information:

i. A description of a grace period after which a late payment charge will be imposed. For example, the disclosure given under §1026.18(l) may state that a late charge will apply to ''any payment received more than 15 days after the due date.''

ii. A statement that the transaction is not secured. For example, the creditor may add a category labeled ''unsecured'' or ''not secured'' to the security interest disclosures given under §1026.18(m).

iii. The basis for any estimates used in making disclosures. For example, if the maturity date of a loan depends solely on the occurrence of a future event, the creditor may indicate that the disclosures assume that event will occur at a certain time.

iv. The conditions under which a demand feature may be exercised. For example, in a loan subject to demand after five years, the disclosures may state that the loan will become payable on demand in five years.

v. An explanation of the use of pronouns or other references to the parties to the transaction. For example, the disclosures may state, '''You' refers to the customer and 'we' refers to the creditor.''

vi. Instructions to the creditor or its employees on the use of a multiple-purpose form. For example, the disclosures may state, ''Check box if applicable.''

vii. A statement that the borrower may pay a minimum finance charge upon prepayment in a simple-interest transaction. For example, when state law prohibits penalties, but would allow a minimum finance charge in the event of prepayment, the creditor may make the §1026.18(k)(1) disclosure by stating, ''You may be charged a minimum finance charge.''

viii. A brief reference to negative amortization in variable-rate transactions. For example, in the variable-rate disclosure, the creditor may include a short statement such as ''Unpaid interest will be added to principal.'' (See the commentary to §1026.18(f)(1)(iii).)

ix. A brief caption identifying the disclosures. For example, the disclosures may bear a general title such as ''Federal Truth in Lending Disclosures'' or a descriptive title such as ''Real Estate Loan Disclosures.''

x. A statement that a due-on-sale clause or other conditions on assumption are contained in the loan document. For example, the disclosure given under §1026.18(q) may state, ''Someone buying your home may, subject to conditions in the due-on-sale clause contained in the loan document, assume the remainder of the mortgage on the original terms.''

xi. If a state or Federal law prohibits prepayment penalties and excludes the charging of interest after prepayment from coverage as a penalty, a statement that the borrower may have to pay interest for some period after prepayment in full. The disclosure given under §1026.18(k) may state, for example, ''If you prepay your loan on other than the regular installment date, you may be assessed interest charges until the end of the month.''

xii. More than one hypothetical example under §1026.18(f)(1)(iv) in transactions with more than one variable-rate feature. For example, in a variable-rate transaction with an option permitting consumers to convert to a fixed-rate transaction, the disclosures may include an example illustrating the effects on the payment terms of an increase resulting from conversion in addition to the example illustrating an increase resulting from changes in the index.

xiii. The disclosures set forth under §1026.18(f)(1) for variable-rate transactions subject to §1026.18(f)(2).

xiv. A statement whether or not a subsequent purchaser of the property securing an obligation may be permitted to assume the remaining obligation on its original terms.

xv. A late-payment fee disclosure under §1026.18(l) on a single payment loan.

xvi. The notice set forth in §1026.19(a)(4), in a closed-end transaction not subject to §1026.19(a)(1)(i). In a mortgage transaction subject to §1026.19(a)(1)(i), the creditor must disclose the notice contained in §1026.19(a)(4) grouped together with the disclosures made under §1026.18. *See* comment 19(a)(4)–1.

6. *Multiple-purpose forms.* The creditor may design a disclosure statement that can be used for more than one type of transaction, so long as the required disclosures for individual transactions are clear and conspicuous. (See the commentary to Appendices G and H for a discussion of the treatment of disclosures that do not apply to specific transactions.) Any disclosure listed in §1026.18 (except the itemization of the amount financed under §1026.18(c) for transactions other than private education loans) may be included on a standard disclosure statement even though not all of the creditor's transactions include those features. For example, the statement may include:

i. The variable rate disclosure under §1026.18(f).

ii. The demand feature disclosure under §1026.18(i).

iii. A reference to the possibility of a security interest arising from a spreader clause, under §1026.18(m).

iv. The assumption policy disclosure under §1026.18(q).

v. The required deposit disclosure under §1026.18(r).

7. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR Part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Creditors should not include in the segregated Truth in Lending disclosures additional information. Thus, disclosures should show the large final payment in the payment schedule or interest rate and payment summary table under §1026.18(g) or (s), as applicable, and should not, for example, reflect the other options available to the consumer at maturity.

Paragraph 17(a)(2)

1. *When disclosures must be more conspicuous.* The following rules apply to the requirement that the terms ''annual percentage rate'' (except for private education loan disclosures made in compliance with §1026.47) and ''finance charge'' be shown more conspicuously:

i. The terms must be more conspicuous only in relation to the other required disclosures under §1026.18. For example, when the disclosures are included on the contract document, those two terms need not be more conspicuous as compared to the heading on the contract document or information required by state law.

ii. The terms need not be more conspicuous except as part of the finance charge and annual percentage rate disclosures under §1026.18(d) and (e), although they may, at the creditor's option, be highlighted wherever used in the required disclosures. For example, the terms may, but need not, be highlighted when used in disclosing a prepayment penalty under §1026.18(k) or a required deposit under §1026.18(r).

iii. The creditor's identity under §1026.18(a) may, but need not, be more prominently displayed than the finance charge and annual percentage rate.

iv. The terms need not be more conspicuous than figures (including, for example, numbers, percentages, and dollar signs).

2. *Making disclosures more conspicuous.* The terms ''finance charge'' and (except for private education loan disclosures made in compliance with §1026.47) ''annual percentage rate'' may be made more conspicuous in any way that highlights them in relation to the other required disclosures. For example, they may be:

i. Capitalized when other disclosures are printed in capital and lower case.

ii. Printed in larger type, bold print or different type face.

iii. Printed in a contrasting color.

iv. Underlined.

v. Set off with asterisks.

17(b) Time of Disclosures

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

2. *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.)

3. *Disclosures provided on credit contracts.* Creditors must give the required disclosures to the consumer in writing, in a form that the consumer may keep, before consummation of the transaction. *See* §1026.17(a)(1) and (b). Sometimes the disclosures are placed on the same document with the credit contract. Creditors are not required to give the consumer two separate copies of the document before consummation, one for the consumer to keep and a second copy for the consumer to execute. The disclosure requirement is satisfied if the creditor gives a copy of the document containing the unexecuted credit contract and disclosures to the consumer to read and sign; and the consumer receives a copy to keep at the time the consumer becomes obligated. It is not sufficient for the creditor merely to show the consumer the document containing the disclosures before the consumer signs and becomes obligated. The consumer must be free to take possession of and review the document in its entirety before signing.

i. *Example.* To illustrate, a creditor gives a consumer a multiple-copy form containing a credit agreement and TILA disclosures. The consumer reviews and signs the form and returns it to the creditor, who separates the copies and gives one copy to the consumer to keep. The creditor has satisfied the disclosure requirement.

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

1. *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.

2. *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:

i. If the creditor offers a preferential rate, such as an employee preferred rate, the disclosures should reflect the terms of the legal obligation. (See the commentary to §1026.19(b) for an example of a preferred-rate transaction that is a variable-rate transaction.)

ii. 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.

iii. 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.

3. *Third-party buydowns*. In certain transactions, a seller or other third party may pay an amount, either to the creditor or to the consumer, in order to reduce the consumer's payments for all or a portion of the credit term. For example, a consumer and a bank agree to a mortgage with an interest rate of 15% and level payments over 25 years. By a separate agreement, the seller of the property agrees to subsidize the consumer's payments for the first two years of the mortgage, giving the consumer an effective rate of 12% for that period.

i. If the third-party buydown is reflected in the credit contract between the consumer and the bank, the finance charge and all other disclosures affected by it must take the buydown into account as an amendment to the contract's interest rate provision. For example, the annual percentage rate must be a composite rate that takes account of both the lower initial rate and the higher subsequent rate, and the disclosures required under §§1026.18(g), 1026.18(s), 1026.37(c), and 1026.38(c), as applicable, must reflect the two payment levels, except as otherwise provided in those paragraphs. However, the amount paid by the seller would not be specifically reflected in the disclosure of the finance charge and other disclosures affected by it given by the bank, since that amount constitutes seller's points and thus is not part of the finance charge. The seller-paid amount is disclosed, however, as a credit from the seller in the summaries of transactions disclosed pursuant to §1026.38(j) and (k).

ii. If the third-party buydown is not reflected in the credit contract between the consumer and the bank and the consumer is legally bound to the 15% rate from the outset, the disclosure of the finance charge and other disclosures affected by it given by the bank must not reflect the seller buydown in any way. For example, the annual percentage rate and disclosures required under §§1026.18(g), 1026.18(s), 1026.37(c), and 1026.38(c), as applicable, would not take into account the reduction in the interest rate and payment level for the first two years resulting from the buydown. The seller-paid amount is, however, disclosed as a credit from the seller in the summaries of transactions disclosed pursuant to §1026.38(j) and (k).

4. *Consumer buydowns*. In certain transactions, the consumer may pay an amount to the creditor to reduce the payments on the transaction. Consumer buydowns must be reflected as an amendment to the contract's interest rate provision in the disclosure of the finance charge and other disclosures affected by it given for that transaction. To illustrate, in a mortgage transaction, the creditor and consumer agree to a note specifying a 14 percent interest rate. However, in a separate document, the consumer agrees to pay an amount to the creditor at consummation in return for lower payments for a portion of the mortgage term. The amount paid by the consumer may be deposited in an escrow account or may be retained by the creditor. Depending upon the buydown plan, the consumer's prepayment of the obligation may or may not result in a portion of the amount being credited or refunded to the consumer. In the disclosure of the finance charge and other disclosures affected by it given for the mortgage, the creditor must reflect the terms of the buydown agreement.

i. For example:

A. The amount paid by the consumer is a prepaid finance charge (even if deposited in an escrow account).

B. A composite annual percentage rate must be calculated, taking into account both interest rates, as well as the effect of the prepaid finance charge.

C. The disclosures under §§1026.18(g) and (s), 1026.37(c), and 1026.38(c), as applicable, must reflect the multiple rate and payment levels resulting from the buydown, except as otherwise provided in those sections. Further, for example, the disclosures must reflect that the transaction is a step rate product under §§1026.37(a)(10)(B) and 1026.38(a)(5)(iii).

ii. The rules regarding consumer buydowns do not apply to transactions known as "lender buydowns." In lender buydowns, a creditor pays an amount (either into an account or to the party to whom the obligation is sold) to reduce the consumer's payments or interest rate for all or a portion of the credit term. Typically, these transactions are structured as a buydown of the interest rate during an initial period of the transaction with a higher than usual rate for the remainder of the term. The disclosure of the finance charge and other disclosures affected by it for lender buydowns should be based on the terms of the legal obligation between the consumer and the creditor. See comment 17(c)(1)–3 for the analogous rules concerning third-party buydowns.

5. *Split buydowns.* In certain transactions, a third party (such as a seller) and a consumer both pay an amount to the creditor to reduce the interest rate. The creditor must include the portion paid by the consumer in the finance charge and disclose the corresponding multiple payment levels, except as otherwise provided in §§1026.18(s), 1026.37(c), and 1026.38(c), and composite annual percentage rate. The portion paid by the third party and the corresponding reduction in interest rate, however, should not be reflected in the disclosure of the finance charge and other disclosures affected by it unless the lower rate is reflected in the credit contract. See the discussion on third-party and consumer buydown transactions elsewhere in the commentary to §1026.17(c).

6. *Wrap-around financing.* Wrap-around transactions, usually loans, involve the creditor's wrapping the outstanding balance on an existing loan and advancing additional funds to the consumer. The pre-existing loan, which is wrapped, may be to the same consumer or to a different consumer. In either case, the consumer makes a single payment to the new creditor, who makes the payments on the pre-existing loan to the original creditor. Wrap-around loans or sales are considered new single-advance transactions, with an amount financed equaling the sum of the new funds advanced by the wrap creditor and the remaining principal owed to the original creditor on the pre-existing loan. In disclosing the itemization of the amount financed, the creditor may use a label such as "the amount that will be paid to creditor X" to describe the remaining principal balance on the pre-existing loan. This approach to Truth in Lending calculations has no effect on calculations required by other statutes, such as state usury laws.

7. *Wrap-around financing with balloon payments.* For wrap-around transactions involving a large final payment of the new funds before the maturity of the pre-existing loan, the amount financed is the sum of the new funds and the remaining principal on the pre-existing loan. The disclosures should be based on the shorter term of the wrap loan, with a large final payment of both the new funds and the total remaining principal on the pre-existing loan (although only the wrap loan will actually be paid off at that time).

8. *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).

9. *Use of estimates in variable-rate transactions.* The variable-rate feature does not, by itself, make the disclosures estimates.

10. *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.

i. 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.

ii. 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.

iii. 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.

iv. Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of ¼ of 1 percent applies, in accordance with §1026.22(a)(3).

v. Examples of discounted variable-rate transactions include:

A. 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.

B. 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.

C. Same loan as above, except with a 7½ 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.

vi. A loan in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation is not a discounted variable-rate loan. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

11. *Examples of variable-rate transactions.* Variable-rate transactions include:

i. 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 by §1026.20(a). 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. (This discussion does not apply to construction loans subject to §1026.17(c)(6).)

ii. ''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 §1026.2, other types of shared-equity arrangements are not considered ''credit'' and are not subject to Regulation Z.)

iii. 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.

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

v. ''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.

12. *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:

i. The finance charge includes the amount of negative amortization based on the assumption that the rate in effect at consummation remains unchanged.

ii. The amount financed does not include the amount of negative amortization.

iii. As in any variable-rate transaction, the annual percentage rate is based on the terms in effect at consummation.

iv. 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.

13. *Growth-equity mortgages*. i. Also referred to as payment-escalated mortgages, these mortgage plans involve scheduled payment increases to prematurely amortize the loan. The initial payment amount is determined as for a long-term loan with a fixed interest rate. Payment increases are scheduled periodically, based on changes in an index. The larger payments result in accelerated amortization of the loan. In disclosing these mortgage plans, creditors may either:

A. Estimate the amount of payment increases, based on the best information reasonably available; or

B. Disclose by analogy to the variable-rate disclosures in 1026.18(f)(1).

ii. This discussion does not apply to growth-equity mortgages in which the amount of payment increases can be accurately determined at the time of disclosure. For these mortgages, as for graduated-payment mortgages, disclosures should reflect the scheduled increases in payments.

14. *Reverse mortgages*. Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, typically involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the loan (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these transactions, creditors must apply the following rules, as applicable:

i. If the reverse mortgage has a specified period for disbursements but repayment is due only upon the occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as ''The disclosures assume that you will repay the loan at the time our payments to you end. As provided in your agreement, your repayment may be required at a different time.''

ii. If the reverse mortgage has neither a specified period for disbursements nor a specified repayment date and these terms will be determined solely by reference to future events including the consumer's death, the creditor may assume that the disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

iii. In making the disclosures, the creditor must assume that all disbursements and accrued interest will be paid by the consumer. For example, if the note has a nonrecourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be disbursed will be repaid. In this case, however, the creditor may include a statement such as ''The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement.''

iv. Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. Such loans are considered variable-rate mortgages, as described in comment 17(c)(1)–11, and the appreciation feature must be disclosed in accordance with §1026.18(f)(1). If the reverse mortgage has a variable interest rate, is written for a term greater than one year, and is secured by the consumer's principal dwelling, the shared appreciation feature must be described under §1026.19(b)(2)(vii).

15. *Morris Plan transactions.* When a deposit account is created for the sole purpose of accumulating payments and then is applied to satisfy entirely the consumer's obligation in the transaction, each deposit made into the account is considered the same as a payment on a loan for purposes of making disclosures.

16. *Number of transactions.* Creditors have flexibility in handling credit extensions that may be viewed as multiple transactions. For example:

i. 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 1 or 2 credit sale transactions.

ii. 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.

iii. The separate financing of a downpayment in a credit sale transaction may, but need not, be disclosed as 2 transactions (a credit sale and a separate transaction for the financing of the downpayment).

17. *Special rules for tax refund anticipation loans.* Tax refund loans, also known as refund anticipation loans (RALs), are transactions in which a creditor will lend up to the amount of a consumer's expected tax refund. RAL agreements typically require repayment upon demand, but also may provide that repayment is required when the refund is made. The agreements also typically provide that if the amount of the refund is less than the payment due, the consumer must pay the difference. Repayment often is made by a preauthorized offset to a consumer's account held with the creditor when the refund has been deposited by electronic transfer. Creditors may charge fees for RALs in addition to fees for filing the consumer's tax return electronically. In RAL transactions subject to the regulation the following special rules apply:

i. If, under the terms of the legal obligation, repayment of the loan is required when the refund is received by the consumer (such as by deposit into the consumer's account), the disclosures should be based on the creditor's estimate of the time the refund will be delivered even if the loan also contains a demand clause. The practice of a creditor to demand repayment upon delivery of refunds does not determine whether the legal obligation requires that repayment be made at that time; this determination must be made according to applicable state or other law. (See comment 17(c)(5)–1 for the rules regarding disclosures if the loan is payable solely on demand or is payable either on demand or on an alternate maturity date.)

ii. If the consumer is required to repay more than the amount borrowed, the difference is a finance charge unless excluded under §1026.4. In addition, to the extent that any fees charged in connection with the loan (such as for filing the tax return electronically) exceed those fees for a comparable cash transaction (that is, filing the tax return electronically without a loan), the difference must be included in the finance charge.

18. *Pawn Transactions.* When, in connection with an extension of credit, a consumer pledges or sells an item to a pawnbroker creditor in return for a sum of money and retains the right to redeem the item for a greater sum (the redemption price) within a

specified period of time, disclosures are required. In addition to other disclosure requirements that may be applicable under §1026.18, for purposes of pawn transactions:

i. The amount financed is the initial sum paid to the consumer. The pawnbroker creditor need not provide a separate itemization of the amount financed if that entire amount is paid directly to the consumer and the disclosed description of the amount financed is ''the amount of cash given directly to you'' or a similar phrase.

ii. The finance charge is the difference between the initial sum paid to the consumer and the redemption price plus any other finance charges paid in connection with the transaction. (See §1026.4.)

iii. The term of the transaction, for calculating the annual percentage rate, is the period of time agreed to by the pawnbroker creditor and the consumer. The term of the transaction does not include a grace period (including any statutory grace period) after the agreed redemption date.

19. *Rebates and loan premiums.* In a loan transaction, the creditor may offer a premium in the form of cash or merchandise to prospective borrowers. Similarly, in a credit sale transaction, a seller's or manufacturer's rebate may be offered to prospective purchasers of the creditor's goods or services. Such premiums and rebates must be reflected in accordance with the terms of the legal obligation between the consumer and the creditor. Thus, if the creditor is legally obligated to provide the premium or rebate to the consumer as part of the credit transaction, the disclosures should reflect its value in the manner and at the time the creditor is obligated to provide it.

Paragraph 17(c)(2)(i)

1. *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.

2. *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.

3. *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.

Paragraph 17(c)(2)(ii)

1. *Per-diem interest.* Section 1026.17(c)(2)(ii) 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.

Paragraph 17(c)(3)

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

i. 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.

ii. 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.

2. *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.

Paragraph 17(c)(4)

1. *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:

i. 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.

ii. 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.

2. *Measuring odd periods.* i. 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:

A. 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.

B. The term is the period from the date on which the finance charge begins to be earned to the date of the final payment.

C. The regular period is the most common interval between payments in the transaction.

ii. 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.

3. *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.

4. *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.

Paragraph 17(c)(5)

1. *Demand disclosures.* Disclosures for demand obligations are based on an assumed 1-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.

2. *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).

3. *Demand after stated period.* Most demand transactions contain a demand feature that may be exercised at any point during the term, but certain transactions convert to demand status only after a fixed period. The disclosures for a transaction that converts to demand status after a fixed period should be based upon the legally agreed-upon maturity date. Thus, for example, if a mortgage containing a call option that the creditor may exercise during the first 30 days of the eighth year after loan origination is written as a 20-year obligation, the disclosures should be based on the 20-year term, with the demand feature disclosed under §1026.18(i) or §1026.38(l)(2), as applicable.

4. *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.

Paragraph 17(c)(6)

1. *Series of advances.* Section 1026.17(c)(6)(i) 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 1 transaction and the timing and amounts of advances are unknown, creditors must make disclosures based on estimates, as provided in §1026.17(c)(2). If the advances are disclosed separately, disclosures must be provided before each advance occurs, with the disclosures for the first advance provided by consummation.

2. *Construction loans.* Section 1026.17(c)(6)(ii) provides a flexible rule for disclosure of construction loans that may be permanently financed. These transactions have 2 distinct phases, similar to 2 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. Section 1026.17(c)(6)(ii) 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 2 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 2 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.)

3. *Multiple-advance construction loans.* Section 1026.17(c)(6)(i) and (ii) 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 1 or more than 1 transaction and also disclose the permanent financing as a separate transaction.

4. *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.

5. *Allocation of costs.* When a creditor uses the special rule in §1026.17(c)(6) to disclose credit extensions as multiple transactions, fees and charges must be allocated for purposes of calculating disclosures. In the case of a construction-permanent loan that a creditor chooses to disclose as multiple transactions, the creditor must allocate to the construction transaction finance charges under §1026.4 and points and fees under §1026.32(b)(1) that would not be imposed but for the construction financing. For example, inspection and handling fees for the staged disbursement of construction loan proceeds must be included in the disclosures for the construction phase and may not be included in the disclosures for the permanent phase. If a creditor charges separate amounts for finance charges under §1026.4 and points and fees under §1026.32(b)(1) for the construction phase and the permanent phase, such amounts must be allocated to the phase for which they are charged. If a creditor charges an origination fee for construction financing only but charges a greater origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent phase. All other finance charges under §1026.4 and points and fees under §1026.32(b)(1) must be allocated to the permanent financing. Fees and charges that are not used to compute the finance charge under §1026.4 or points and fees under §1026.32(b)(1) may be allocated between the transactions in any manner the creditor chooses. For example, a reasonable appraisal fee paid to an independent, third-party appraiser may be allocated in any manner the creditor chooses because it would be excluded from the finance charge pursuant to §1026.4(c)(7) and excluded from points and fees pursuant to §1026.32(b)(1)(iii).

17(d) Multiple Creditors; Multiple Consumers

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

i. The creditors must choose which of them will make the disclosures.

ii. A single, complete set of disclosures must be provided, rather than partial disclosures from several creditors.

iii. 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.

2. *Multiple consumers.* 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. *See* §§1026.2(a)(11), 1026.17(b), 1026.19(a), 1026.19(f), and 1026.23(b).

17(e) Effect of Subsequent Events

1. *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.

17(f) Early Disclosures

1. *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:

i. *Transactions not secured by real property or a cooperative unit.* A. For transactions not secured by real property or a cooperative unit, if disclosures are made in a regular transaction on July 1, the transaction is consummated on July 15, and the actual annual percentage rate varies by more than ⅛ 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 or a cooperative unit, if early disclosures are marked as estimates and the disclosed annual percentage rate is within ⅛ of 1 percentage point of the rate at consummation, the creditor need not redisclose the changed terms (including the annual percentage rate).

C. If disclosures for transactions not secured by real property or a cooperative unit are made on July 1, the transaction is consummated on July 15, and the finance charge increased by $35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. *See* §1026.18(d)(2).

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

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

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

3. *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. *See* the commentary to §1026.19(a)(2).

4. *Special rules.* In 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 §1026.20.

Paragraph 17(f)(2)

1. *Irregular transactions.* For purposes of this paragraph, a transaction is deemed to be ''irregular'' according to the definition in §1026.22(a)(3).

17(g) Mail or Telephone Orders—Delay in Disclosures

1. *Conditions for use.* Except for extensions of credit subject to §1026.19(a) or (e) and (f), when the creditor receives a mail or telephone request for credit, the creditor may delay making the disclosures until the first payment is due if the following conditions are met:

i. The credit request is initiated without face-to-face or direct telephone solicitation. (Creditors may, however, use the special rule when credit requests are solicited by mail.)

ii. The creditor has supplied the specified credit information about its credit terms either to the individual consumer or to the public generally. That information may be distributed through advertisements, catalogs, brochures, special mailers, or similar means.

2. *Insurance.* The location requirements for the insurance disclosures under §1026.18(n) permit them to appear apart from the other disclosures. Therefore, a creditor may mail an insurance authorization to the consumer and then prepare the other disclosures to reflect whether or not the authorization is completed by the consumer. Creditors may also disclose the insurance cost on a unit-cost basis, if the transaction meets the requirements of §1026.17(g).

17(h) Series of Sales—Delay in Disclosures

1. *Applicability.* Except for extensions of credit covered by §1026.19(a) or (e) and (f), the creditor may delay the disclosures for individual credit sales in a series of such sales until the first payment is due on the current sale, assuming the two conditions in §1026.17(h) are met. If those conditions are not met, the general timing rules in §1026.17(b) apply.

2. *Basis of disclosures.* Creditors structuring disclosures for a series of sales under §1026.17(h) may compute the total sale price as either:

i. The cash price for the sale plus that portion of the finance charge and other charges applicable to that sale; or

ii. The cash price for the sale, other charges applicable to the sale, and the total finance charge and outstanding principal.

17(i) Interim Student Credit Extensions

1. *Definition.* Student credit plans involve extensions of credit for education purposes where the repayment amount and schedule are not known at the time credit is advanced. These plans include loans made under any student credit plan, whether government or private, where the repayment period does not begin immediately. (Certain student credit plans that meet this definition are exempt from Regulation Z. See §1026.3(f).)

2. *Relation to other sections.* For disclosures made before the mandatory compliance date of the disclosures required under §§1026.46, 47, and 48, paragraph 17(i) permitted creditors to omit from the disclosures the terms set forth in that paragraph at the time the credit was actually extended. However, creditors were required to make complete disclosures at the time the creditor and consumer agreed upon the repayment schedule for the total obligation. At that time, a new set of disclosures of all applicable items under §1026.18 was required. Most student credit plans are subject to the requirements in §§1026.46, 47, and 48. Consequently, for applications for student credit plans received on or after the mandatory compliance date of §§1026.46, 47, and 48, the creditor may not omit from the disclosures the terms set forth in paragraph 17(i). Instead, the creditor must comply with §§1026.46, 47, and 48, if applicable, or with §§1026.17 and 1026.18.

3. *Basis of disclosures.* The disclosures given at the time of execution of the interim note should reflect two annual percentage rates, one for the interim period and one for the repayment period. The use of §1026.17(i) in making disclosures does not, by itself, make those disclosures estimates. Any portion of the finance charge, such as statutory interest, that is attributable to the interim period and is paid by the student (either as a prepaid finance charge, periodically during the interim period, in one payment at the end of the interim period, or capitalized at the beginning of the repayment period) must be reflected in the interim annual percentage rate. Interest subsidies, such as payments made by either a state or the Federal Government on an interim loan, must be excluded in computing the annual percentage rate on the interim obligation, when the consumer has no contingent liability for payment of those amounts. Any finance charges that are paid separately by the student at the outset or withheld from the proceeds of the loan are prepaid finance charges. An example of this type of charge is the loan guarantee fee. The sum of the prepaid finance charges is deducted from the loan proceeds to determine the amount financed and included in the calculation of the finance charge.

4. *Consolidation.* Consolidation of the interim student credit extensions through a renewal note with a set repayment schedule is treated as a new transaction with disclosures made as they would be for a refinancing. Any unearned portion of the finance charge must be reflected in the new finance charge and annual percentage rate, and is not added to the new amount financed. In itemizing the amount financed under §1026.18(c), the creditor may combine the principal balances remaining on the interim extensions at the time of consolidation and categorize them as the amount paid on the consumer's account.

5. *Approved student credit forms.* See the commentary to appendix H regarding disclosure forms approved for use in certain student credit programs for which applications were received prior to the mandatory compliance date of §§1026.46, 1026.47, and 1026.48.

Section 1026.18—Content of Disclosures

1. *As applicable.* i. The disclosures required by this section need be made only as applicable. Any disclosure not relevant to a particular transaction may be eliminated entirely. For example:

A. In a loan transaction, the creditor may delete disclosure of the total sale price.

B. In a credit sale requiring disclosure of the total sale price under §1026.18(j), the creditor may delete any reference to a downpayment where no downpayment is involved.

ii. Where the amounts of several numerical disclosures are the same, the ''as applicable'' language also permits creditors to combine the terms, so long as it is done in a clear and conspicuous manner. For example:

A. In a transaction in which the amount financed equals the total of payments, the creditor may disclose ''amount financed/total of payments,'' together with descriptive language, followed by a single amount.

B. However, if the terms are separated on the disclosure statement and separate space is provided for each amount, both disclosures must be completed, even though the same amount is entered in each space.

2. *Format.* See the commentary to §1026.17 and appendix H for a discussion of the format to be used in making these disclosures, as well as acceptable modifications.

3. *Scope of coverage.* i. Section 1026.18 applies to closed-end consumer credit transactions, other than transactions that are subject to §1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end consumer credit transactions that are secured

by real property or a cooperative unit, other than reverse mortgages subject to §1026.33. Accordingly, the disclosures required by §1026.18 apply only to closed-end consumer credit transactions that are:

A. Unsecured;

B. Secured by personal property that is not a dwelling;

C. Secured by personal property (other than a cooperative unit) that is a dwelling and are not also secured by real property; or

D. Reverse mortgages subject to §1026.33.

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

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

18(a) Creditor

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

18(b) Amount Financed

1. *Disclosure required*. The net amount of credit extended must be disclosed using the term *amount financed* and a descriptive explanation similar to the phrase in the regulation.

Paragraph 18(b)(1)

1. *Downpayments*. A downpayment is defined in §1026.2(a)(18) to include, at the creditor's option, certain deferred downpayments or pick-up payments. A deferred downpayment that meets the criteria set forth in the definition may be treated as part of the downpayment, at the creditor's option.

i. Deferred downpayments that are not treated as part of the downpayment (either because they do not meet the definition or because the creditor simply chooses not to treat them as downpayments) are included in the amount financed.

ii. Deferred downpayments that are treated as part of the downpayment are not part of the amount financed under §1026.18(b)(1).

Paragraph 18(b)(2)

1. *Adding other amounts*. Fees or other charges that are not part of the finance charge and that are financed rather than paid separately at consummation of the transaction are included in the amount financed. Typical examples are real estate settlement charges and premiums for voluntary credit life and disability insurance excluded from the finance charge under §1026.4. This paragraph does not include any amounts already accounted for under §1026.18(b)(1), such as taxes, tag and title fees, or the costs of accessories or service policies that the creditor includes in the cash price.

Paragraph 18(b)(3)

1. *Prepaid finance charges*. i. Prepaid finance charges that are paid separately in cash or by check should be deducted under §1026.18(b)(3) in calculating the amount financed. To illustrate:

A. A consumer applies for a loan of $2,500 with a $40 loan fee. The face amount of the note is $2,500 and the consumer pays the loan fee separately by cash or check at closing. The principal loan amount for purposes of §1026.18(b)(1) is $2,500 and $40 should be deducted under §1026.18(b(3), thereby yielding an amount financed of $2,460.

ii. In some instances, as when loan fees are financed by the creditor, finance charges are incorporated in the face amount of the note. Creditors have the option, when the charges are not add-on or discount charges, of determining a principal loan amount under §1026.18(b)(1) that either includes or does not include the amount of the finance charges. (Thus the principal loan amount may, but need not, be determined to equal the face amount of the note.) When the finance charges are included in the principal loan amount, they should be deducted as prepaid finance charges under §1026.18(b)(3). When the finance charges are not included in the principal loan amount, they should not be deducted under §1026.18(b)(3). The following examples illustrate the application of §1026.18(b) to this type of transaction. Each example assumes a loan request of $2,500 with a loan fee of $40; the creditor assesses the loan fee by increasing the face amount of the note to $2,540.

A. If the creditor determines the principal loan amount under §1026.18(b)(1) to be $2,540, it has included the loan fee in the principal loan amount and should deduct $40 as a prepaid finance charge under §1026.18(b)(3), thereby obtaining an amount financed of $2,500.

B. If the creditor determines the principal loan amount under §1026.18(b)(1) to be $2,500, it has not included the loan fee in the principal loan amount and should not deduct any amount under §1026.18(b)(3), thereby obtaining an amount financed of $2,500.

iii. The same rules apply when the creditor does not increase the face amount of the note by the amount of the charge but collects the charge by withholding it from the amount advanced to the consumer. To illustrate, the following examples assume a loan request of $2,500 with a loan fee of $40; the creditor prepares a note for $2,500 and advances $2,460 to the consumer.

A. If the creditor determines the principal loan amount under §1026.18(b)(1) to be $2,500, it has included the loan fee in the principal loan amount and should deduct $40 as a prepaid finance charge under §1026.18(b)(3), thereby obtaining an amount financed of $2,460.

B. If the creditor determines the principal loan amount under §1026.18(b)(1) to be $2,460, it has not included the loan fee in the principal loan amount and should not deduct any amount under §1026.18(b)(3), thereby obtaining an amount financed of $2,460.

iv. Thus in the examples where the creditor derives the net amount of credit by determining a principal loan amount that does not include the amount of the finance charge, no subtraction is appropriate. Creditors should note, however, that although the charges are not subtracted as *prepaid* finance charges in those examples, they are nonetheless finance charges and must be treated as such.

2. *Add-on or discount charges.* All finance charges must be deducted from the amount of credit in calculating the amount financed. If the principal loan amount reflects finance charges that meet the definition of a prepaid finance charge in §1026.2, those charges are included in the §1026.18(b)(1) amount and deducted under §1026.18(b)(3). However, if the principal loan amount includes finance charges that do not meet the definition of a prepaid finance charge, the §1026.18(b)(1) amount must exclude those finance charges. The following examples illustrate the application of §1026.18(b) to these types of transactions. Each example assumes a loan request of $1000 for 1 year, subject to a 6 percent precomputed interest rate, with a $10 loan fee paid separately at consummation.

i. The creditor assesses add-on interest of $60 which is added to the $1000 in loan proceeds for an obligation with a face amount of $1060. The principal for purposes of §1026.18(b)(1) is $1000, no amounts are added under §1026.18(b)(2), and the $10 loan fee is a prepaid finance charge to be deducted under §1026.18(b)(3). The amount financed is $990.

ii. The creditor assesses discount interest of $60 and distributes $940 to the consumer, who is liable for an obligation with a face amount of $1000. The principal under §1026.18(b)(1) is $940, which results in an amount financed of $930, after deduction of the $10 prepaid finance charge under §1026.18(b)(3).

iii. The creditor assesses $60 in discount interest by increasing the face amount of the obligation to $1060, with the consumer receiving $1000. The principal under §1026.18(b)(1) is thus $1000 and the amount financed $990, after deducting the $10 prepaid finance charge under §1026.18(b)(3).

18(c) Itemization of Amount Financed

1. *Disclosure required.* i. The creditor has 2 alternatives in complying with §1026.18(c):

A. The creditor may inform the consumer, on the segregated disclosures, that a written itemization of the amount financed will be provided on request, furnishing the itemization only if the customer in fact requests it.

B. The creditor may provide an itemization as a matter of course, without notifying the consumer of the right to receive it or waiting for a request.

ii. Whether given as a matter of course or only on request, the itemization must be provided at the same time as the other disclosures required by §1026.18, although separate from those disclosures.

2. *Additional information.* Section 1026.18(c) establishes only a minimum standard for the material to be included in the itemization of the amount financed. Creditors have considerable flexibility in revising or supplementing the information listed in §1026.18(c) and shown in model form H–3, although no changes are required. The creditor may, for example, do one or more of the following:

i. Include amounts that reflect payments not part of the amount financed. For example, escrow items and certain insurance premiums may be included, as discussed in the commentary to §1026.18(g).

ii. Organize the categories in any order. For example, the creditor may rearrange the terms in a mathematical progression that depicts the arithmetic relationship of the terms.

iii. Add categories. For example, in a credit sale, the creditor may include the cash price and the downpayment. If the credit sale involves a trade-in of the consumer's car and an existing lien on that car exceeds the value of the trade-in amount, the creditor may disclose the consumer's trade-in value, the creditor's payoff of the existing lien, and the resulting additional amount financed.

iv. Further itemize each category. For example, the amount paid directly to the consumer may be subdivided into the amount given by check and the amount credited to the consumer's savings account.

v. Label categories with different language from that shown in §1026.18(c). For example, an amount paid on the consumer's account may be revised to specifically identify the account as "your auto loan with us."

vi. Delete, leave blank, mark "N/A," or otherwise note inapplicable categories in the itemization. For example, in a credit sale with no prepaid finance charges or amounts paid to others, the amount financed may consist of only the cash price less downpayment. In this case, the itemization may be composed of only a single category and all other categories may be eliminated.

3. *Amounts appropriate to more than one category.* When an amount may appropriately be placed in any of several categories and the creditor does not wish to revise the categories shown in §1026.18(c), the creditor has considerable flexibility in determining where to show the amount. For example, in a credit sale, the portion of the purchase price being financed by the creditor may be viewed as either an amount paid to the consumer or an amount paid on the consumer's account.

4. *RESPA transactions.* The Real Estate Settlement Procedures Act (RESPA) requires creditors to provide a good faith estimate of closing costs and a settlement statement listing the amounts paid by the consumer. Reverse mortgages subject to RESPA and §1026.18 are exempt from the requirements of §1026.18(c) if the creditor complies with RESPA's requirements for a good faith estimate and settlement statement. The itemization of the amount financed need not be given, even though the content and timing of the good faith estimate and settlement statement under RESPA differ from the requirements of §§1026.18(c) and 1026.19(a)(2). If a creditor chooses to substitute RESPA's settlement statement for the itemization when redisclosure is required under §1026.19(a)(2), the statement must be delivered to the consumer at or prior to consummation. The disclosures required by §§1026.18(c) and 1026.19(a)(2) may appear on the same page or on the same document as the good faith estimate or the settlement statement, so long as the requirements of §1026.17(a) are met.

Paragraph 18(c)(1)(i)

1. *Amounts paid to consumer.* This encompasses funds given to the consumer in the form of cash or a check, including joint proceeds checks, as well as funds placed in an asset account. It may include money in an interest-bearing account even if that amount is considered a required deposit under §1026.18(r). For example, in a transaction with total loan proceeds of $500, the consumer receives a check for $300 and $200 is required by the creditor to be put into an interest-bearing account. Whether or not the $200 is a required deposit, it is part of the amount financed. At the creditor's option, it may be broken out and labeled in the itemization of the amount financed.

Paragraph 18(c)(1)(ii)

1. *Amounts credited to consumer's account.* The term *consumer's account* refers to an account in the nature of a debt with that creditor. It may include, for example, an unpaid balance on a prior loan, a credit sale balance or other amounts owing to that creditor. It does not include asset accounts of the consumer such as savings or checking accounts.

Paragraph 18(c)(1)(iii)

1. *Amounts paid to others.* This includes, for example, tag and title fees; amounts paid to insurance companies for insurance premiums; security interest fees, and amounts paid to credit bureaus, appraisers or public officials. When several types of insurance premiums are financed, they may, at the creditor's option, be combined and listed in one sum, labeled "insurance" or similar term. This includes, but is not limited to, different types of insurance premiums paid to one company and different types of insurance premiums paid to different companies. Except for insurance companies and other categories noted in §1026.18(c)(1)(iii), third parties must be identified by name.

2. *Charges added to amounts paid to others.* A sum is sometimes added to the amount of a fee charged to a consumer for a service provided by a third party (such as for an extended warranty or a service contract) that is payable in the same amount in comparable cash and credit transactions. In the credit transaction, the amount is retained by the creditor. Given the flexibility permitted in meeting the requirements of the amount financed itemization (see the commentary to §1026.18(c)), the creditor in such cases may reflect that the creditor has retained a portion of the amount paid to others. For example, the creditor could add to the category "amount paid to others" language such as "(we may be retaining a portion of this amount)."

Paragraph 18(c)(1)(iv)

1. *Prepaid finance charge.* Prepaid finance charges that are deducted under §1026.18(b)(3) must be disclosed under this section. The prepaid finance charges must be shown as a total amount but may, at the creditor's option, also be further itemized and described. All amounts must be reflected in this total, even if portions of the prepaid finance charge are also reflected elsewhere. For example, if at consummation the creditor collects interim interest of $30 and a credit report fee of $10, a total prepaid finance charge of $40 must be shown. At the creditor's option, the credit report fee paid to a third party may also be shown elsewhere as an amount included in §1026.18(c)(1)(iii). The creditor may also further describe the 2 components of the prepaid finance charge, although no

itemization of this element is required by §1026.18(c)(1)(iv).

2. *Prepaid mortgage insurance premiums.* Regulation X under RESPA, 12 CFR 1024.8, requires creditors to give consumers a settlement statement disclosing the costs associated with reverse mortgage loan transactions. Included on the settlement statement are mortgage insurance premiums collected at settlement, which are prepaid finance charges. In calculating the total amount of prepaid finance charges, creditors should use the amount for mortgage insurance listed on the line for mortgage insurance on the settlement statement (line 1003 on HUD–1 or HUD 1–A), without adjustment, even if the actual amount collected at settlement may vary because of RESPA's escrow accounting rules. Figures for mortgage insurance disclosed in conformance with RESPA shall be deemed to be accurate for purposes of Regulation Z.

18(d) Finance Charge

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

18(d)(2) Other Credit

1. *Tolerance.* When a finance charge error results in a misstatement of the amount financed, or some other dollar amount for which the regulation provides no specific tolerance, the misstated disclosure does not violate the Act or the regulation if the finance charge error is within the permissible tolerance under this paragraph.

18(e) Annual Percentage Rate

1. *Disclosure required.* The creditor must disclose the cost of the credit as an annual rate, using the term *annual percentage rate,* plus a brief descriptive phrase comparable to that used in §1026.18(e). For variable rate transactions, the descriptor may be further modified with a phrase such as *which is subject to change.* Under §1026.17(a), the terms *annual percentage rate* and *finance charge* must be more conspicuous than the other required disclosures.

2. *Exception.* Section 1026.18(e) provides an exception for certain transactions in which no annual percentage rate disclosure is required.

18(f) Variable Rate

1. *Coverage.* The requirements of §1026.18(f) apply to all transactions in which the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. It includes not only increases in the interest rate but also increases in other components, such as the rate of required credit life insurance. The provisions, however, do not apply to increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral. Section 1026.18(f)(1) applies to variable-rate transactions that are not secured by the consumer's principal dwelling and to those that are secured by the principal dwelling but have a term of one year or less. Section 1026.18(f)(2) applies to variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Moreover, transactions subject to §1026.18(f)(2) are subject to the special early disclosure requirements of §1026.19(b). (However, "shared-equity" or "shared-appreciation" mortgages are subject to the disclosure requirements of §1026.18(f)(1) and not to the requirements of §§1026.18(f)(2) and 1026.19(b) regardless of the general coverage of those sections.) Creditors are permitted under §1026.18(f)(1) to substitute in any variable-rate transaction the disclosures required under §1026.19(b) for those disclosures ordinarily required under §1026.18(f)(1). Creditors who provide variable-rate disclosures under §1026.19(b) must comply with all of the requirements of that section, including the timing of disclosures, and must also provide the disclosures required under §1026.18(f)(2). Creditors substituting §1026.19(b) disclosures for §1026.18(f)(1) disclosures may, but need not, also provide disclosures pursuant to §1026.20(c). (Substitution of disclosures under §1026.18(f)(1) in transactions subject to §1026.19(b) is not permitted.)

Paragraph 18(f)(1)

1. *Terms used in disclosure.* In describing the variable rate feature, the creditor need not use any prescribed terminology. For example, limitations and hypothetical examples may be described in terms of interest rates rather than annual percentage rates. The model forms in appendix H provide examples of ways in which the variable rate disclosures may be made.

2. *Conversion feature.* In variable-rate transactions with an option permitting consumers to convert to a fixed-rate transaction, the conversion option is a variable-rate feature that must be disclosed. In making disclosures under §1026.18(f)(1), creditors should disclose the fact that the rate may increase upon conversion; identify the index or formula used to set the fixed rate; and state any limitations on and effects of an increase

resulting from conversion that differ from other variable-rate features. Because §1026.18(f)(1)(iv) requires only one hypothetical example (such as an example of the effect on payments resulting from changes in the index), a second hypothetical example need not be given.

Paragraph 18(f)(1)(i)

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

i. When no specific index is used, any identifiable factors used to determine whether to increase the rate must be disclosed.

ii. When the increase in the rate is purely discretionary, the fact that any increase is within the creditor's discretion must be disclosed.

iii. When the index is internally defined (for example, by that creditor's prime rate), the creditor may comply with this requirement by either a brief description of that index or a statement that any increase is in the discretion of the creditor. An externally defined index, however, must be identified.

Paragraph 18(f)(1)(ii)

1. *Limitations.* This includes any maximum imposed on the amount of an increase in the rate at any time, as well as any maximum on the total increase over the life of the transaction. Except for private education loans disclosures, when there are no limitations, the creditor may, but need not, disclose that fact, and limitations do not include legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. (See §1026.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.) For disclosures with respect to private education loan disclosures, see comment 47(b)(1)–2.

Paragraph 18(f)(1)(iii)

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

Paragraph 18(f)(1)(iv)

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

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

i. Demand obligations with no alternate maturity date.

ii. Private education loans as defined in §1026.46(b)(5).

iii. Multiple-advance construction loans disclosed pursuant to appendix D, Part I.

Paragraph 18(f)(2)

1. *Disclosure required.* In variable-rate transactions that have a term greater than one year and are secured by the consumer's principal dwelling, the creditor must give special early disclosures under §1026.19(b) in addition to the later disclosures required under §1026.18(f)(2). The disclosures under §1026.18(f)(2) must state that the transaction has a variable-rate feature and that variable-rate disclosures have been provided earlier. (See the commentary to §1026.17(a)(1) regarding the disclosure of certain directly related information in addition to the variable-rate disclosures required under §1026.18(f)(2).)

18(g) Payment Schedule

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

2. *Deferred downpayments.* As discussed in the commentary to §1026.2(a)(18), deferred downpayments or pick-up payments that meet the conditions set forth in the definition of downpayment may be treated as part of the downpayment. Even if treated as a downpayment, that amount may nevertheless be disclosed as part of the payment schedule, at the creditor's option.

3. *Total number of payments.* In disclosing the number of payments for transactions

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

4. *Timing of payments.* i. *General rule.* Section 1026.18(g) requires creditors to disclose the timing of payments. To meet this requirement, creditors may list all of the payment due dates. They also have the option of specifying the ''period of payments'' scheduled to repay the obligation. As a general rule, creditors that choose this option must disclose the payment intervals or frequency, such as ''monthly'' or ''bi-weekly,'' and the calendar date that the beginning payment is due. For example, a creditor may disclose that payments are due ''monthly beginning on July 1, 1998.'' This information, when combined with the number of payments, is necessary to define the repayment period and enable a consumer to determine all of the payment due dates.

ii. *Exception.* In a limited number of circumstances, the beginning-payment date is unknown and difficult to determine at the time disclosures are made. For example, a consumer may become obligated on a credit contract that contemplates the delayed disbursement of funds based on a contingent event, such as the completion of repairs. Disclosures may also accompany loan checks that are sent by mail, in which case the initial disbursement and repayment dates are solely within the consumer's control. In such cases, if the beginning-payment date is unknown the creditor may use an estimated date and label the disclosure as an estimate pursuant to § 1026.17(c). Alternatively, the disclosure may refer to the occurrence of a particular event, for example, by disclosing that the beginning payment is due ''30 days after the first loan disbursement.'' This information also may be included with an estimated date to explain the basis for the creditor's estimate. *See* comment 17(a)(1)–5.iii.

5. [Reserved]

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

Paragraph 18(g)(1)

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

Paragraph 18(g)(2)

1. *Abbreviated disclosure.* The creditor may disclose an abbreviated payment schedule when the amount of each regularly scheduled payment (other than the first or last payment) includes an equal amount to be applied on principal and a finance charge computed by application of a rate to the decreasing unpaid balance. In addition, in transactions where payments vary because interest and principal are paid at different intervals, the two series of payments may be disclosed separately and the abbreviated payment schedule may be used for the interest payments. For example, in transactions with fixed quarterly principal payments and monthly interest payments based on the outstanding principal balance, the amount of the interest payments will change quarterly as principal declines. In such cases the creditor may treat the interest and principal payments as two separate series of payments, separately disclosing the number, amount, and due dates of principal payments, and, using the abbreviated payment schedule, the number, amount, and due dates of interest payments. This option may be used when interest and principal are scheduled to be paid on the same date of the month as well as on different dates of the month. The creditor using this alternative must disclose the dollar amount of the highest and lowest payments and make reference to the variation in payments.

2. *Combined payment schedule disclosures.* Creditors may combine the option in § 1026.18(g)(2) with the general payment schedule requirements in transactions where only a portion of the payment schedule

meets the conditions of §1026.18(g)(2). For example, in a transaction where payments rise sharply for five years and then decline over the next 25 years, the first five years would be disclosed under the general rule in §1026.18(g) and the next 25 years according to the abbreviated schedule in §1026.18(g)(2).

3. *Effect on other disclosures.* Section 1026.18(g)(2) applies only to the payment schedule disclosure. The actual amounts of payments must be taken into account in calculating and disclosing the finance charge and the annual percentage rate.

Paragraph 18(h) Total of Payments

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

2. *Calculation of total of payments.* The total of payments is the sum of the payments disclosed under §1026.18(g). For example, if the creditor disclosed a deferred portion of the downpayment as part of the payment schedule, that payment must be reflected in the total disclosed under this paragraph. To calculate the total of payments amount for transactions subject to §1026.18(s), creditors should use the rules in §1026.18(g) and associated commentary and, for adjustable-rate transactions, comments 17(c)(1)–8 and –10.

3. *Exception.* Section 1026.18(h) permits creditors to omit disclosure of the total of payments in single-payment transactions. This exception does not apply to a transaction calling for a single payment of principal combined with periodic payments of interest.

4. *Demand obligations.* In demand obligations with no alternate maturity date, the creditor may omit disclosure of payment amounts under §1026.18(g)(1). In those transactions, the creditor need not disclose the total of payments.

Paragraph 18(i) Demand Feature

1. *Disclosure requirements.* The disclosure requirements of this provision apply not only to transactions payable on demand from the outset, but also to transactions that are not payable on demand at the time of consummation but convert to a demand status after a stated period. In demand obligations in which the disclosures are based on an assumed maturity of 1 year under §1026.17(c)(5), that fact must also be stated. appendix H contains model clauses that may be used in making this disclosure.

2. *Covered demand features.* The type of demand feature triggering the disclosures required by §1026.18(i) includes only those demand features contemplated by the parties as part of the legal obligation. For example, this provision does not apply to transactions that covert to a demand status as a result of the consumer's default. A due-on-sale clause is not considered a demand feature. A creditor may, but need not, treat its contractual right to demand payment of a loan made to its executive officers as a demand feature to the extent that the contractual right is required by Regulation O of the Board of Governors of the Federal Reserve System (12 CFR 215.5) or other Federal law.

3. *Relationship to payment schedule disclosures.* As provided in §1026.18(g)(1), in demand obligations with no alternate maturity date, the creditor need only disclose the due dates or payment periods of any scheduled interest payments for the first year. If the demand obligation states an alternate maturity, however, the disclosed payment schedule must reflect that stated term; the special rule in §1026.18(g)(1) is not available.

Paragraph 18(j) Total Sale Price

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

2. *Calculation of total sale price.* The figure to be disclosed is the sum of the cash price, other charges added under §1026.18(b)(2), and the finance charge disclosed under §1026.18(d).

3. *Effect of existing liens.* When a credit sale transaction involves property that is being used as a trade-in (an automobile, for example) and that has a lien exceeding the value of the trade-in, the total sale price is affected by the amount of any cash provided. (See comment 2(a)(18)–3.) To illustrate, assume a consumer finances the purchase of an automobile with a cash price of $20,000. Another vehicle used as a trade-in has a value of $8,000 but has an existing lien of $10,000, leaving a $2,000 deficit that the consumer must finance.

i. If the consumer pays $1,500 in cash, the creditor may apply the cash first to the lien, leaving a $500 deficit, and reflect a downpayment of $0. The total sale price would include the $20,000 cash price, an additional $500 financed under §1026.18(b)(2), and the amount of the finance charge. Alternatively, the creditor may reflect a downpayment of $1,500 and finance the $2,000 deficit. In that case, the total sale price would include the sum of the $20,000 cash price, the $2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

ii. If the consumer pays $3,000 in cash, the creditor may apply the cash first to extinguish the lien and reflect the remainder as a downpayment of $1,000. The total sale price would reflect the $20,000 cash price and the amount of the finance charge. (The cash payment extinguishes the trade-in deficit and no charges are added under §1026.18(b)(2).) Alternatively, the creditor may elect to reflect a downpayment of $3,000 and finance the $2,000 deficit. In that case, the total sale price would include the sum of the $20,000 cash price, the $2,000 lien payoff amount as an additional amount financed, and the amount of the finance charge.

18(k) Prepayment

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

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

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

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

2. *Rebate-penalty disclosure.* A single transaction may involve both a precomputed finance charge and a finance charge computed by application of a rate to the unpaid balance (for example, mortgages with mortgage-guarantee insurance). In these cases, disclosures about both prepayment rebates and prepayment penalties are required. Sample form H–15 in appendix H to this part illustrates a mortgage transaction in which both rebate and penalty disclosures are necessary.

3. *Prepaid finance charge.* The existence of a prepaid finance charge in a transaction does not, by itself, require a disclosure under §1026.18(k). A prepaid finance charge is not considered a prepayment penalty under §1026.18(k)(1), nor does it require a disclosure under §1026.18(k)(2). At its option, however, a creditor may consider a prepaid finance charge to be under §1026.18(k)(2). If a disclosure is made under §1026.18(k)(2) with respect to a prepaid finance charge or other finance charge, the creditor may further identify that finance charge. For example, the disclosure may state that the borrower ''will not be entitled to a refund of the prepaid finance charge'' or some other term that describes the finance charge.

Paragraph 18(k)(1)

1. *Examples of prepayment penalties.* For purposes of §1026.18(k)(1), the following are examples of prepayment penalties:

i. A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such ''balance,'' even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract. ''Interest accrual amortization'' refers to the method by which the amount of interest due for each period (*e.g.*, month) in a transaction's term is determined. For example, ''monthly interest accrual amortization'' treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the loan contract will require payment of $3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is $2,000, then assessment of a charge of $3,000 constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

ii. A fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan. However, the term prepayment penalty does not include a waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation. For example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup the $3,000 in waived charges if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 charge is not a prepayment penalty. In contrast, for example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup $4,500 in part to recoup waived charges, if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 that the creditor may impose to cover the waived bona fide third-party charges is not a prepayment penalty, but the additional $1,500 charge is a prepayment penalty and must be disclosed pursuant to §1026.37(k)(1).

iii. A minimum finance charge in a simple interest transaction.

2. *Fees that are not prepayment penalties.* For purposes of §1026.18(k)(1), fees which are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full, if such fees are imposed whether or not the loan is prepaid. Examples include a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.

ii. Loan guarantee fees.

Paragraph 18(k)(2)

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

A. Precomputed finance charges such as add-on charges. This includes computing a refund of an unearned finance charge, such as precomputed interest, by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.

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

ii. No description of the method of computing earned or unearned finance charges is required or permitted as part of the segregated disclosures under §1026.18(k)(2).

18(l) Late Payment

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

i. The right of acceleration.

ii. Fees imposed for actual collection costs, such as repossession charges or attorney's fees.

iii. Deferral and extension charges.

iv. The continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate is a late payment charge to the extent of the increase.

2. *Content of disclosure.* Many state laws authorize the calculation of late charges on the basis of either a percentage or a specified dollar amount, and permit imposition of the lesser or greater of the 2 charges. The disclosure made under §1026.18(l) may reflect this alternative. For example, stating that the charge in the event of a late payment is 5% of the late amount, not to exceed $5.00, is sufficient. Many creditors also permit a grace period during which no late charge will be assessed; this fact may be disclosed as directly related information. (See the commentary to §1026.17(a).)

18(m) Security Interest

1. *Purchase money transactions.* When the collateral is the item purchased as part of, or with the proceeds of, the credit transaction, §1026.18(m) requires only a general identification such as "the property purchased in this transaction." However, the creditor may identify the property by item or type instead of identifying it more generally with a phrase such as "the property purchased in this transaction." For example, a creditor may identify collateral as "a motor vehicle," or as "the property purchased in this transaction." Any transaction in which the credit is being used to purchase the collateral is considered a purchase money transaction and the abbreviated identification may be used, whether the obligation is treated as a loan or a credit sale.

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

3. *Mixed collateral.* In some transactions in which the credit is used to purchase the collateral, the creditor may also take other property of the consumer as security. In those cases, a combined disclosure must be provided, consisting of an identification of the purchase money collateral consistent with comment 18(m)–1 and a specific identification of the other collateral consistent with comment 18(m)–2.

4. *After-acquired property.* An after-acquired property clause is not a security interest to be disclosed under §1026.18(m).

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

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

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

18(n) Insurance and Debt Cancellation

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

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

18(o) Certain Security Interest Charges

1. *Format.* No special format is required for these disclosures; under §1026.4(e), taxes and fees paid to government officials with respect to a security interest may be aggregated, or may be broken down by individual charge. For example, the disclosure could be labeled ‘‘filing fees and taxes’’ and all funds disbursed for such purposes may be aggregated in a single disclosure. This disclosure may appear, at the creditor's option, apart from the other required disclosures. The inclusion of this information on a statement required under the Real Estate Settlement Procedures Act is sufficient disclosure for purposes of Truth in Lending.

Paragraph 18(p) Contract Reference

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

18(q) Assumption Policy

1. *Policy statement.* In many mortgages, the creditor cannot determine, at the time disclosure must be made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors such as the creditworthiness of the subsequent borrower, the potential for impairment of the lender's security, and execution of an assumption agreement by the subsequent borrower. In cases where uncertainty exists as to the future assumability of a mortgage, the disclosure under §1026.18(q) should reflect that fact. In making disclosures in such cases, the creditor may use phrases such as ‘‘subject to conditions,’’ ‘‘under certain circumstances,’’ or ‘‘depending on future conditions.’’ The creditor may provide a brief reference to more specific criteria such as a due-on-sale clause, although a complete explanation of all conditions is not appropriate. For example, the disclosure may state, ‘‘Someone buying your home may be allowed to assume the mortgage on its original terms, subject to certain conditions, such as payment of an assumption fee.’’ See comment 17(a)(1)–5 for an example for a reference to a due-on-sale clause.

2. *Original terms.* The phrase *original terms* for purposes of §1026.18(q) does not preclude the imposition of an assumption fee, but a modification of the basic credit agreement, such as a change in the contract interest rate, represents different terms.

18(r) Required Deposit

1. *Disclosure required.* The creditor must inform the consumer of the existence of a required deposit. (Appendix H provides a model clause that may be used in making that disclosure.) Section 1026.18(r) describes 3 types of deposits that need not be considered required deposits. Use of the phrase ‘‘need not’’ permits creditors to include the disclosure even in cases where there is doubt as to

whether the deposit constitutes a required deposit.

2. *Pledged account mortgages.* In these transactions, a consumer pledges as collateral funds that the consumer deposits in an account held by the creditor. The creditor withdraws sums from that account to supplement the consumer's periodic payments. Creditors may treat these pledged accounts as required deposits or they may treat them as consumer buydowns in accordance with the commentary to §1026.17(c)(1).

3. *Escrow accounts.* The escrow exception in §1026.18(r) applies, for example, to accounts for such items as maintenance fees, repairs, or improvements, whether in a realty or a nonrealty transaction. (See the commentary to §1026.17(c)(1) regarding the use of escrow accounts in consumer buydown transactions.)

4. *Interest-bearing accounts.* When a deposit earns at least 5 percent interest per year, no disclosure is required under §1026.18(r). This exception applies whether the deposit is held by the creditor or by a third party.

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

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

i. Requirement that a borrower be a customer or a member even if that involves a fee or a minimum balance.

ii. Required property insurance escrow on a mobile home transaction.

iii. Refund of interest when the obligation is paid in full.

iv. Deposits that are immediately available to the consumer.

v. Funds deposited with the creditor to be disbursed (for example, for construction) before the loan proceeds are advanced.

vi. [Reserved]

vii. Escrow of loan proceeds to be released when the repairs are completed.

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

1. *In general.* Section 1026.18(s) prescribes format and content for disclosure of interest rates and monthly (or other periodic) payments for reverse mortgages and certain transactions secured by dwellings that are personal property but not cooperative units. The information in §1026.18(s)(2) through (4) is required to be in the form of a table, except as otherwise provided, with headings and format substantially similar to model clause H–4(E), H–4(F), H–4(G), or H–4(H) in appendix H to this part. A disclosure that does not include the shading shown in a model clause but otherwise follows the model clause's headings and format is substantially similar to that model clause. Where §1026.18(s)(2) through (4) or the applicable model clause requires that a column or row of the table be labeled using the word ''monthly'' but the periodic payments are not due monthly, the creditor should use the appropriate term, such as ''bi-weekly'' or ''quarterly.'' In all cases, the table should have no more than five vertical columns corresponding to applicable interest rates at various times during the loan's term; corresponding payments would be shown in horizontal rows. Certain loan types and terms are defined for purposes of §1026.18(s) in §1026.18(s)(7).

2. *Amortizing loans.* Loans described as amortizing in §§1026.18(s)(2)(i) and 1026.18(s)(3) include interest-only loans if they do not also permit negative amortization. (For rules relating to loans with balloon payments, see §1026.18(s)(5)). If an amortizing loan is an adjustable-rate mortgage with an introductory rate (less than the fully-indexed rate), creditors must provide a special explanation of introductory rates. *See* §1026.18(s)(2)(iii).

3. *Negative amortization.* For negative amortization loans, creditors must follow the rules in §§1026.18(s)(2)(ii) and 1026.18(s)(4) in disclosing interest rates and monthly payments. Loans with negative amortization also require special explanatory disclosures about rates and payments. *See* §1026.18(s)(6). Loans with negative amortization include ''payment option'' loans, in which the consumer is permitted to make minimum payments that will cover only some of the interest accruing each month. *See also* comment 17(c)(1)–12, regarding graduated-payment adjustable-rate mortgages.

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

18(s)(2) Interest Rates

18(s)(2)(i) Amortizing Loans

Paragraph 18(s)(2)(i)(A)

1. *Fixed rate loans—payment increases.* Although the interest rate will not change after consummation for a fixed-rate loan, some fixed-rate loans may have periodic payments that increase after consummation.

For example, the terms of the legal obligation may permit the consumer to make interest-only payments for a specified period such as the first five years after consummation. In such cases, the creditor must include the increased payment under §1026.18(s)(3)(ii)(B) in the payment row, and must show the interest rate in the column for that payment, even though the rate has not changed since consummation. See also comment 17(c)(1)–13, regarding growth equity mortgages.

Paragraph 18(s)(2)(i)(B)

1. *Adjustable-rate mortgages and step-rate mortgages.* Creditors must disclose more than one interest rate for adjustable-rate mortgages and step-rate mortgages, in accordance with §1026.18(s)(2)(i)(B). Creditors must assume that an adjustable-rate mortgage's interest rate will increase after consummation as rapidly as possible, taking into account the terms of the legal obligation.

2. *Maximum interest rate during first five years—adjustable-rate mortgages and step-rate mortgages.* The creditor must disclose the maximum rate that could apply during the first five years after consummation. If there are no interest rate caps other than the maximum rate required under §1026.30, then the creditor should disclose only the rate at consummation and the maximum rate. Such a table would have only two columns.

i. For an adjustable-rate mortgage, the creditor must take into account any interest rate caps when disclosing the maximum interest rate during the first five years. The creditor must also disclose the earliest date on which that adjustment may occur.

ii. If the transaction is a step-rate mortgage, the creditor should disclose the rate that will apply after consummation. For example, the legal obligation may provide that the rate is 6 percent for the first two years following consummation, and then increases to 7 percent for at least the next three years. The creditor should disclose the maximum rate during the first five years as 7 percent and the date on which the rate is scheduled to increase to 7 percent.

3. *Maximum interest rate at any time.* The creditor must disclose the maximum rate that could apply at any time during the term of the loan and the earliest date on which the maximum rate could apply.

i. For an adjustable-rate mortgage, the creditor must take into account any interest rate caps in disclosing the maximum interest rate. For example, if the legal obligation provides that at each annual adjustment the rate may increase by no more than 2 percentage points, the creditor must take this limit into account in determining the earliest date on which the maximum possible rate may be reached.

ii. For a step-rate mortgage, the creditor should disclose the highest rate that could apply under the terms of the legal obligation and the date on which that rate will first apply.

Paragraph 18(s)(2)(i)(C)

1. *Payment increases.* For some loans, the payment may increase following consummation for reasons unrelated to an interest rate adjustment. For example, an adjustable-rate mortgage may have an introductory fixed rate for the first five years following consummation and permit the borrower to make interest-only payments for the first three years. The disclosure requirement of §1026.18(s)(2)(i)(C) applies to all amortizing loans, including interest-only loans, if the consumer's payment can increase in the manner described in §1026.18(s)(3)(i)(B), even if it is not the type of loan covered by §1026.18(s)(3)(i). Thus, §1026.18(s)(2)(i)(C) requires that the creditor disclose the interest rate that corresponds to the first payment that includes principal as well as interest, even though the interest rate will not adjust at that time. In such cases, if the loan is an interest-only loan, the creditor also must disclose the corresponding periodic payment pursuant to §1026.18(s)(3)(ii). The table would show, from left to right: The interest rate and payment at consummation with the payment itemized to show that the payment is being applied to interest only; the interest rate and payment when the interest-only option ends; the maximum interest rate and payment during the first five years; and the maximum possible interest rate and payment. The disclosure requirements of §1026.18(s)(2)(i)(C) do not apply to minor payment variations resulting solely from the fact that months have different numbers of days.

18(s)(2)(ii) Negative Amortization Loans

1. *Rate at consummation.* In all cases the interest rate in effect at consummation must be disclosed, even if it will apply only for a short period such as one month.

2. *Rates for adjustable-rate mortgages.* The creditor must assume that interest rates rise as quickly as possible after consummation, in accordance with any interest rate caps under the legal obligation. For adjustable-rate mortgages with no rate caps except a lifetime maximum, creditors must assume that interest rate reaches the maximum at the first adjustment. For example, assume that the legal obligation provides for an interest rate at consummation of 1.5 percent. One month after consummation, the interest rate adjusts and will adjust monthly thereafter, according to changes in the index. The consumer may make payments that cover only part of the interest accrued each month, until the date the principal balance reaches 115 percent of its original balance, or

until the end of the fifth year after consummation, whichever comes first. The maximum possible rate is 10.5 percent. No other limits on interest rates apply. The minimum required payment adjusts each year, and may increase by no more than 7.5 percent over the previous year's payment. The creditor should disclose the following rates and the dates when they are scheduled to occur: A rate of 1.5 percent for the first month following consummation and the minimum payment; a rate of 10.5 percent, and the corresponding minimum payment taking into account the 7.5 percent limit on payment increases, at the beginning of the second year; and a rate of 10.5 percent and the corresponding minimum payment taking into account the 7.5 percent payment increase limit, at the beginning of the third year. The creditor also must disclose the rate of 10.5 percent, the fully amortizing payment, and the date on which the consumer must first make such a payment under the terms of the legal obligation.

18(s)(2)(iii) Introductory Rate Disclosure for Amortizing Adjustable-Rate Mortgage

1. *Introductory rate.* In some adjustable-rate mortgages, creditors may set an initial interest rate that is lower than the fully indexed rate at consummation. For amortizing loans with an introductory rate, creditors must disclose the information required in §1026.18(s)(2)(iii) directly below the table.

Paragraph 18(s)(2)(iii)(B)

1. *Place in sequence.* ''Designation of the place in sequence'' refers to identifying the month or year, as applicable, of the change in the rate resulting from the expiration of an introductory rate by its place in the sequence of months or years, as applicable, of the transaction's term. For example, if a transaction has a discounted rate for the first three years, §1026.18(s)(2)(iii)(B) requires a statement such as, ''In the fourth year, even if market rates do not change, this rate will increase to ___%.''

Paragraph 18(s)(2)(iii)(C)

1. *Fully indexed rate.* The fully indexed rate is defined in §1026.18(s)(7) as the index plus the margin at consummation. For purposes of §1026.18(s)(2)(iii)(C), ''at consummation'' refers to disclosures delivered at consummation, or three business days before consummation pursuant to §1026.19(a)(2)(ii); for early disclosures delivered within three business days after receipt of a consumer's application pursuant to §1026.19(a)(1), the fully indexed rate disclosed under §1026.18(s)(2)(iii)(C) may be based on the index in effect at the time the disclosures are provided. The index in effect at consummation (or at the time of early disclosures) 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 days before consummation (or any earlier date of disclosure) in calculating the fully indexed rate to be disclosed.

18(s)(3) Payments for Amortizing Loans

1. *Payments corresponding to interest rates.* Creditors must disclose the periodic payment that corresponds to each interest rate disclosed under §1026.18(s)(2)(i)(A)–(C). The corresponding periodic payment is the regular payment for each such interest rate, without regard to any final payment that differs from others because of the rounding of periodic payments to account for payment amounts including fractions of cents. Balloon payments, however, must be disclosed as provided in §1026.18(s)(5).

2. *Principal and interest payment amounts; examples.* i. For fixed-rate interest-only transactions, §1026.18(s)(3)(ii)(B) requires scheduled increases in the regular periodic payment amounts to be disclosed along with the date of the increase. For example, in a fixed-rate interest-only loan, a scheduled increase in the payment amount from an interest-only payment to a fully amortizing payment must be disclosed. Similarly, in a fixed-rate balloon loan, the balloon payment must be disclosed in accordance with §1026.18(s)(5).

ii. For adjustable-rate mortgage transactions, §1026.18(s)(3)(i)(A) requires that for each interest rate required to be disclosed under §1026.18(s)(2)(i) (the interest rate at consummation, the maximum rate during the first five years, and the maximum possible rate) a corresponding payment amount must be disclosed.

iii. The format of the payment disclosure varies depending on whether all regular periodic payment amounts will include principal and interest, and whether there will be an escrow account for taxes and insurance.

Paragraph 18(s)(3)(i)(C)

1. *Taxes and insurance.* An estimated payment amount for taxes and insurance must be disclosed if the creditor will establish an escrow account for such amounts. If the escrow account will include amounts for items other than taxes and insurance, such as homeowners association dues, the creditor may but is not required to include such items in the estimate. When such estimated escrow payments must be disclosed in multiple columns of the table, such as for adjustable- and step-rate transactions, each column should use the same estimate for taxes and insurance except that the estimate should reflect changes in periodic mortgage

insurance premiums or any functionally equivalent fee that are known to the creditor at the time the disclosure is made. The estimated amounts of mortgage insurance premiums or any functionally equivalent fee should be based on the declining principal balance that will occur as a result of changes to the interest rate that are assumed for purposes of disclosing those rates under §1026.18(s)(2) and accompanying commentary. The payment amount must include estimated amounts for 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. Premiums for credit insurance, debt suspension and debt cancellation agreements, however, should not be included. Except for periodic mortgage insurance premiums or any functionally equivalent fee included in the escrow payment under §1026.18(s)(3)(i)(C), amounts included in the escrow payment disclosure such as property taxes and homeowner's insurance generally are not finance charges under §1026.4 and, therefore, do not affect other disclosures, including the finance charge and annual percentage rate.

2. *Mortgage insurance or any functional equivalent.* For purposes of §1026.18(s), ''mortgage insurance or any functional equivalent'' means the amounts identified in §1026.4(b)(5). ''Mortgage guarantees'' (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee) provide coverage similar to mortgage insurance, even if not technically considered insurance under State or other applicable law. For purposes of §1026.18(s), ''mortgage insurance or any functional equivalent'' includes any mortgage guarantee. Payment amounts under §1026.18(s)(3)(i) should reflect the consumer's mortgage insurance payments or any functionally equivalent fee until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. The payment amount must reflect the terms of the legal obligation, as determined by applicable State or other law. For example, assume that under applicable law, mortgage insurance must terminate after the 130th scheduled monthly payment, and the creditor collects at closing and places in escrow two months of premiums. If, under the legal obligation, the creditor will include mortgage insurance premiums in 130 payments and refund the escrowed payments when the insurance is terminated, payment amounts disclosed through the 130th payment should reflect premium payments. If, under the legal obligation, the creditor will apply the amount escrowed to the two final insurance payments, payments disclosed through the 128th payment should reflect premium payments. The escrow amount reflected on the disclosure should include mortgage insurance premiums even if they are not escrowed and even if there is no escrow account established for the transaction.

Paragraph 18(s)(3)(i)(D)

1. *Total monthly payment.* For amortizing loans, each column should add up to a total estimated payment. The total estimated payment amount should be labeled. If periodic payments are not due monthly, the creditor should use the appropriate term such as ''quarterly'' or ''annually.''

18(s)(3)(ii) Interest-Only Payments

1. *Interest-only loans that are also negative amortization loans.* The rules in §1026.18(s)(3)(ii) for disclosing payments on interest-only loans apply only if the loan is not also a negative amortization loan. If the loan is a negative amortization loan, even if it also has an interest-only feature, payments are disclosed under the rules in §1026.18(s)(4).

Paragraph 18(s)(3)(ii)(C)

1. *Escrows.* See the commentary under §1026.18(s)(3)(i)(C) for guidance on escrows for purposes of §1026.18(s)(3)(ii)(C).

18(s)(4) Payments for Negative Amortization Loans

1. *Table.* Section 1026.18(s)(1) provides that tables shall include only the information required in §1026.18(s)(2)–(4). Thus, a table for a negative amortization loan must contain no more than two horizontal rows of payments and no more than five vertical columns of interest rates.

2. *Payment amounts.* The payment amounts disclosed under §1026.18(s)(4) are the minimum or fully amortizing periodic payments, as applicable, corresponding to the interest rates disclosed under §1026.18(s)(2)(ii). The corresponding periodic payment is the regular payment for each such interest rate, without regard to any final payment that differs from the rest because of the rounding of periodic payments to account for payment amounts including fractions of cents.

Paragraph 18(s)(4)(i)

1. *Minimum required payments.* In one row of the table, the creditor must disclose the minimum required payment in each column of the table, corresponding to each interest rate or adjustment required in §1026.18(s)(2)(ii). The payments in this row must be calculated based on an assumption that the consumer makes the minimum required payment for as long as possible under the terms of the legal obligation. This row

should be identified as the minimum payment option, and the statement required by §1026.18(s)(4)(i)(C) should be included in the heading for the row.

Paragraph 18(s)(4)(iii)

1. *Fully amortizing payments.* In one row of the table, the creditor must disclose the fully amortizing payment in each column of the table, corresponding to each interest rate required in §1026.18(s)(2)(ii). The creditor must assume, for purposes of calculating the amounts in this row that the consumer makes only fully amortizing payments starting with the first scheduled payment.

18(s)(5) Balloon Payments

1. *General.* A balloon payment is one that is more than two times the regular periodic payment. In a reverse mortgage transaction, the single payment is not considered a balloon payment. A balloon payment must be disclosed outside and below the table, unless the balloon payment coincides with an interest rate adjustment or a scheduled payment increase. In those cases, the balloon payment must be disclosed in the table.

18(s)(6) Special Disclosures for Loans With Negative Amortization

1. *Escrows.* See the commentary under §1026.18(s)(3)(i)(C) for guidance on escrows for purposes of §1026.18(s)(6). Under that guidance, because mortgage insurance payments and functionally equivalent fees decline over a loan's term, the payment amounts shown in the table should reflect the mortgage insurance payment and functionally equivalent fees that will be applicable at the time each disclosed periodic payment will be in effect. Accordingly, the disclosed mortgage insurance payment or functionally equivalent fee will be zero if it corresponds to a periodic payment that will occur after the creditor will be legally required to terminate mortgage insurance or any functional equivalent. On the other hand, because only one escrow amount is disclosed under §1026.18(s)(6) for negative amortization loans and escrows that are not itemized in the payment amounts, the single escrow amount disclosed should reflect the mortgage insurance amount or any functionally equivalent fee that will be collected at the outset of the loan's term, even though that amount will decline in the future and ultimately will be discontinued pursuant to the terms of the mortgage insurance policy.

18(s)(7) Definitions

1. *Negative amortization loans.* Under §1026.18(s)(7)(v), a negative amortization loan is one that requires only a minimum periodic payment that covers only a portion of the accrued interest, resulting in negative amortization. For such a loan, §1026.18(s)(4)(iii) requires creditors to disclose the fully amortizing periodic payment for each interest rate disclosed under §1026.18(s)(2)(ii), in addition to the minimum periodic payment, regardless of whether the legal obligation explicitly recites that the consumer may make the fully amortizing payment. Some loan types that result in negative amortization do not meet the definition of negative amortization loan for purposes of §1026.18(s). These include, for example, loans requiring level, amortizing payments but having a payment schedule containing gaps during which interest accrues and is added to the principal balance before regular, amortizing payments begin (or resume). For example, ''seasonal income'' loans may provide for amortizing payments during nine months of the year and no payments for the other three months; the required minimum payments (when made) are amortizing payments, thus such loans are not negative amortization loans under §1026.18(s)(7)(v). An adjustable-rate loan that has fixed periodic payments that do not adjust when the interest rate adjusts also would not be disclosed as a negative amortization loan under §1026.18(s). For example, assume the initial rate is 4%, for which the fully amortizing payment is $1500. Under the terms of the legal obligation, the consumer will make $1500 monthly payments even if the interest rate increases, and the additional interest is capitalized. The possibility (but not certainty) of negative amortization occurring after consummation does not make this transaction a negative amortization loan for purposes of §1026.18(s). Loans that do not meet the definition of negative amortization loan, even if they may have negative amortization, are amortizing loans and are disclosed under §§1026.18(s)(2)(i) and 1026.18(s)(3).

Section 1026.19—Certain Mortgage and Variable-Rate Transactions

19(a)(1)(i) Time of Disclosures

1. *Coverage.* Section 1026.19(a) requires early disclosure of credit terms in reverse mortgage transactions subject to §1026.33 that are secured by a consumer's dwelling that are also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X. To be covered by §1026.19(a), a transaction must be a Federally related mortgage loan under RESPA. ''Federally related mortgage loan'' is defined under RESPA (12 U.S.C. 2602) and Regulation X (12 CFR 1024.2(b)), and is subject to any interpretations by the Bureau.

2. *Timing and use of estimates.* The disclosures required by §1026.19(a)(1)(i) must be delivered or mailed not later than three business days after the creditor receives the consumer's written application. The general definition of ''business day'' in §1026.2(a)(6)—a day on which the creditor's offices are open

to the public for substantially all of its business functions—is used for purposes of §1026.19(a)(1)(i). *See* comment 2(a)(6)–1. This general definition is consistent with the definition of ''business day'' in Regulation X—a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. *See* 12 CFR 1024.2. Accordingly, the three-business-day period in §1026.19(a)(1)(i) for making early disclosures coincides with the time period within which creditors subject to RESPA must provide good faith estimates of settlement costs. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under §1026.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as ''all numerical disclosures except the late-payment disclosure are estimates'') instead of separately labeling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to §1026.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to §1026.17(a)(1).

3. *Written application.* Creditors may rely on RESPA and Regulation X (including any interpretations issued by the Bureau) in deciding whether a ''written application'' has been received. In general, Regulation X defines ''application'' to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a federally related mortgage loan. *See* 12 CFR 1024.2(b). An application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. (*See* comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

4. *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, as, for example, when a consumer applies for a type or amount of credit that the creditor does not offer, or the consumer's application cannot be approved for some other reason. In that case, or if the consumer withdraws the application within the three-business-day period, the creditor need not make the disclosures under this section. If the creditor fails to provide early disclosures and the transaction is later consummated on the original terms, the creditor will be in violation of this provision. If, however, the consumer amends the application because of the creditor's unwillingness to approve it on its original terms, no violation occurs for not providing disclosures based on the original terms. But the amended application is a new application subject to §1026.19(a)(1)(i).

5. *Itemization of amount financed.* In many mortgage transactions, the itemization of the amount financed required by §1026.18(c) will contain items, such as origination fees or points, that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Creditors furnishing the RESPA good faith estimates need not give consumers any itemization of the amount financed.

19(a)(1)(ii) Imposition of Fees

1. *Timing of fees.* The consumer must receive the disclosures required by this section before paying or incurring any fee imposed by a creditor or other person in connection with the consumer's application for a mortgage transaction that is subject to §1026.19(a)(1)(i), except as provided in §1026.19(a)(1)(iii). If the creditor delivers the disclosures to the consumer in person, a fee may be imposed anytime after delivery. If the creditor places the disclosures in the mail, the creditor may impose a fee after the consumer receives the disclosures or, in all cases, after midnight on the third business day following mailing of the disclosures. For purposes of §1026.19(a)(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. For example, assuming that there are no intervening legal public holidays, a creditor that receives the consumer's written application on Monday and mails the early mortgage loan disclosure on Tuesday may impose a fee on the consumer after midnight on Friday.

2. *Fees restricted.* A creditor or other person may not impose any fee, such as for an appraisal, underwriting, or broker services, until the consumer has received the disclosures required by §1026.19(a)(1)(i). 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 history, such as for a credit report(s).

3. *Collection of fees.* A creditor complies with §1026.19(a)(1)(ii) if:

i. The creditor receives a consumer's written application directly from the consumer and does not collect any fee, other than a fee for obtaining a consumer's credit history, until the consumer receives the early mortgage loan disclosure.

ii. A third party submits a consumer's written application to a creditor and both the creditor and third party do not collect any fee, other than a fee for obtaining a consumer's credit history, until the consumer receives the early mortgage loan disclosure from the creditor.

iii. A third party submits a consumer's written application to a second creditor following a prior creditor's denial of an application made by the same consumer (or following the consumer's withdrawal), and, if a fee already has been assessed, the new creditor or third party does not collect or impose any additional fee until the consumer receives an early mortgage loan disclosure from the new creditor.

19(a)(1)(iii) Exception to Fee Restriction

1. *Requirements.* A creditor or other person may impose a fee before the consumer receives the required disclosures if it is for obtaining the consumer's credit history, such as by purchasing a credit report(s) on the consumer. The fee also must be *bona fide* and reasonable in amount. For example, a creditor may collect a fee for obtaining a credit report(s) if it is in the creditor's ordinary course of business to obtain a credit report(s). If the criteria in §1026.19(a)(1)(iii) are met, the creditor may describe or refer to this fee, for example, as an ''application fee.''

19(a)(2) Waiting Periods for Early Disclosures and Corrected Disclosures

1. *Business day definition.* For purposes of §1026.19(a)(2), ''business day'' means all calendar days except Sundays and the legal public holidays referred to in §1026.2(a)(6). *See* comment 2(a)(6)–2.

2. *Consummation after both waiting periods expire.* Consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired. For example, assume a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, and the creditor then delivers corrected disclosures in person to the consumer on Wednesday, June 3. Although Saturday, June 6 is the third business day after the consumer received the corrected disclosures, consummation may not occur before Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

Paragraph 19(a)(2)(i)

1. *Timing.* The disclosures required by §1026.19(a)(1)(i) must be delivered or placed in the mail no later than the seventh business day before consummation. The seven-business-day waiting period begins when the creditor delivers the early disclosures or places them in the mail, not when the consumer receives or is deemed to have received the early 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.

Paragraph 19(a)(2)(ii)

1. *Conditions for redisclosure.* If, at the time of consummation, the annual percentage rate disclosed is accurate under §1026.22, the creditor does not have to make corrected disclosures under §1026.19(a)(2). If, on the other hand, the annual percentage rate disclosed is not accurate under §1026.22, the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them not later than the third business day before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%:

i. On Thursday, June 11, the annual percentage rate will be 7.10%. The creditor is not required to make corrected disclosures under §1026.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.15%. The creditor must make corrected disclosures so that the consumer receives them on or before Monday, June 8.

2. *Content of new disclosures.* If redisclosure is required, the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of §1026.17(a). If the creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the only inaccuracies involve estimates other than the annual percentage rate, and no variable rate feature has been added. For a discussion of the requirement to redisclose when a variable-rate feature is added, *see* comment 17(f)–2. For a discussion of redisclosure requirements in general, *see* the commentary on §1026.17(f).

3. *Timing.* When redisclosures are necessary because the annual percentage rate has become inaccurate, they must be received by the consumer no later than the third business day before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures

before consummation. *See* §1026.17(f).) If the creditor delivers the corrected disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the corrected 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(a)(2)(ii) begins. Creditors that use electronic mail or a courier other than the postal service may also follow this approach.

4. *Basis for annual percentage rate comparison.* To determine whether a creditor must make corrected disclosures under §1026.22, a creditor compares (a) what the annual percentage rate will be at consummation to (b) the annual percentage rate stated in the most recent disclosures the creditor made to the consumer. For example, assume consummation for a regular mortgage transaction is scheduled for Thursday, June 11, the early disclosures provided in May stated an annual percentage rate of 7.00%, and corrected disclosures received by the consumer on Friday, June 5 stated an annual percentage rate of 7.15%:

i. On Thursday, June 11, the annual percentage rate will be 7.25%, which exceeds the most recently disclosed annual percentage rate by less than the applicable tolerance. The creditor is not required to make additional corrected disclosures or wait an additional three business days under §1026.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.30%, which exceeds the most recently disclosed annual percentage rate by more than the applicable tolerance. The creditor must make corrected disclosures such that the consumer receives them on or before Monday, June 8.

19(a)(3) Consumer's Waiver of Waiting Period Before Consummation

1. *Modification or waiver.* A consumer may modify or waive the right to a waiting period required by §1026.19(a)(2) only after the creditor makes the disclosures required by §1026.18. 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.

2. *Examples of waivers within the seven-business-day waiting period.* Assume the early disclosures are delivered to the consumer in person on Monday, June 1, and at that time the consumer executes a waiver of the seven-business-day waiting period (which would end on Tuesday, June 9) so that the loan can be consummated on Friday, June 5:

i. If the annual percentage rate on the early disclosures is inaccurate under §1026.22, the creditor must provide a corrected disclosure to the consumer before consummation, which triggers the three-business-day waiting period in §1026.19(a)(2)(ii). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 5.

ii. If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate under §1026.22, the creditor must disclose the changed terms before consummation, consistent with §1026.17(f). Disclosure of the changed terms does not trigger an additional waiting period, and the transaction may be consummated on June 5 without the consumer giving the creditor an additional modification or waiver.

3. *Examples of waivers made after the seven-business-day waiting period.* Assume the early disclosures are delivered to the consumer in person on Monday, June 1 and consummation is scheduled for Friday, June 19. On Wednesday, June 17, a change to the annual percentage rate occurs:

i. If the annual percentage rate on the early disclosures is inaccurate under §1026.22, the creditor must provide a corrected disclosure to the consumer before consummation, which triggers the three-business-day waiting period in §1026.19(a)(2). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 19.

ii. If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate under §1026.22, the creditor must disclose the changed terms before consummation, consistent with §1026.17(f). Disclosure of the changed terms does not trigger an additional waiting period, and the transaction may be consummated on Friday, June 19 without the consumer giving the creditor an additional modification or waiver.

19(a)(4) Notice

1. *Inclusion in other disclosures.* The notice required by §1026.19(a)(4) must be grouped together with the disclosures required by §1026.19(a)(1)(i) or §1026.19(a)(2). *See* comment

17(a)(1)–2 for a discussion of the rules for segregating disclosures. In other cases, the notice set forth in §1026.19(a)(4) may be disclosed together with or separately from the disclosures required under §1026.18. *See* comment 17(a)(1)–5.xvi.

19(b) Certain Variable-Rate Transactions

1. *Coverage.* Section 1026.19(b) 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. Closed-end variable-rate transactions that are not secured by the principal dwelling, or are secured by the principal dwelling but have a term of one year or less, are subject to the disclosure requirements of §1026.18(f)(1) rather than those of §1026.19(b). (Furthermore, "shared-equity" or "shared-appreciation" mortgages are subject to the disclosure requirements of §1026.18(f)(1) rather than those of §1026.19(b) regardless of the general coverage of those sections.) For purposes of this section, the term of a variable-rate demand loan is determined in accordance with the commentary to §1026.17(c)(5). 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. For purposes of the disclosures required under §1026.18, the creditor may nevertheless treat the two phases either as separate transactions or as a single combined transaction in accordance with §1026.17(c)(6). Finally, in any assumption of a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year, disclosures need not be provided under §§1026.18(f)(2)(ii) or 1026.19(b).

2. *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 nonrefundable fee, whichever is earlier.

i. *Intermediary agent or broker.* In cases where a creditor receives a written application through an intermediary agent or broker, however, §1026.19(b) provides a substitute timing rule requiring the creditor to deliver the disclosures or place them in the mail not later than three business days after the creditor receives the consumer's written application. (See comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) This three-day rule also applies where the creditor takes an application over the telephone.

ii. *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.

iii. *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.

iv. *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. (See the commentary to §1026.20(a) for information on the timing requirements for §1026.19(b)(2) disclosures when a variable-rate feature is later added to a transaction.)

v. *Form of electronic disclosures provided on or with electronic applications.* Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. There are various methods creditors could use to satisfy the requirement. Whatever method is used, a creditor need not confirm that the consumer has read the disclosures. Methods include, but are not limited to, the following examples:

A. The disclosures could automatically appear on the screen when the application appears;

B. The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

C. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

D. The disclosures could be located on the same web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

3. *Intermediary agent or broker.* i. In certain transactions involving an "intermediary agent or broker," a creditor may delay providing disclosures. A creditor may not delay

providing disclosures in transactions involving either a legal agent (as determined by applicable law) or any other third party that is not an ''intermediary agent or broker.'' In determining whether or not a transaction involves an ''intermediary agent or broker'' the following factors should be considered:

A. The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the creditor. The greater the percentage of total loan applications submitted by the broker in any given period of time, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor during the next period.

B. The number of applications submitted by the broker to the creditor as compared to the total number of applications received by the broker. (This factor is applicable only if the creditor has such information.) The greater the percentage of total loan applications received by the broker that is submitted to a creditor in any given period of time, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor during the next period.

C. The amount of work (such as document preparation) the creditor expects to be done by the broker on an application based on the creditor's prior dealings with the broker and on the creditor's requirements for accepting applications, taking into consideration the customary practice of brokers in a particular area. The more work that the creditor expects the broker to do on an application, in excess of what is usually expected of a broker in that area, the less likely it is that the broker would be considered an ''intermediary agent or broker'' of the creditor.

ii. An example of an ''intermediary agent or broker'' is a broker who, customarily within a brief period of time after receiving an application, inquires about the credit terms of several creditors with whom the broker does business and submits the application to one of them. The broker is responsible for only a small percentage of the applications received by that creditor. During the time the broker has the application, it might request a credit report and an appraisal (or even prepare an entire loan package if customary in that particular area).

4. *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 §1026.19(b), by virtue of §1026.19(d). The exception is also available to creditors that are required by State law to comply with the Federal variable-rate regulations noted above. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

5. *Examples of variable-rate transactions.* i. 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 §1026.19(b).

A. 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. (See comment 17(c)(1)–11 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.)

B. 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 under §§1026.19(b)(1) and 1026.19(b)(2)(v), (viii), (ix), and (xii) are not applicable to such loans.

C. ''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. The disclosures under §1026.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest rate discounts: §1026.19(b)(2)(i), (iii), (iv), (v), (vi), (vii), (viii), and (ix). (See comments 20(c)(1)(ii)–3.ii, 20(d)(1)(ii)–2.ii, and 30–1 regarding the inapplicability of variable-rate adjustment notices and interest rate limitations to price-level-adjusted or similar mortgages.)

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

Paragraph 19(b)(1)

1. *Substitute.* Creditors who wish to use publications other than the *Consumer Handbook on Adjustable Rate Mortgages,* available on the Bureau's Web site, 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.*

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

underlying interest rate is fixed. (See comment 19(b)–5 for an example of a variable-rate transaction where the underlying interest rate is fixed.)

Paragraph 19(b)(2)

1. *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 nonrefundable 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 subject to 1026.19(b)(2), 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. The creditor, of course, is permitted to give the consumer information about additional programs subject to §1026.19(b) initially.

2. *Variable-rate loan program defined.* i. 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:

A. The index or other formula used to calculate interest rate adjustments.

B. The rules relating to changes in the index value, interest rate, payments, and loan balance.

C. The presence or absence of, and the amount of, rate or payment caps.

D. The presence of a demand feature.

E. The possibility of negative amortization.

F. The possibility of interest rate carryover.

G. The frequency of interest rate and payment adjustments.

H. The presence of a discount feature.

I. 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).

ii. 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:

A. The amount of a discount.

B. The amount of a margin.

3. *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.

4. *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.

5. *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.

Paragraph 19(b)(2)(i)

1. *Change in interest rate, payment, or term.* A creditor must disclose the fact that the terms of the legal obligation permit the creditor, after consummation of the transaction, to increase (or decrease) the interest

rate, payment, or term of the loan initially disclosed to the consumer. For example, the disclosures for a variable-rate program in which the interest rate and payment (but not loan term) can change might read, ''Your interest rate and payment can change yearly.'' In transactions where the term of the loan may change due to rate fluctuations, the creditor must state that fact.

Paragraph 19(b)(2)(ii)

1. *Identification of index or formula.* If a creditor ties interest rate changes to a particular index, this fact must be disclosed, along with a source of information about the index. For example, if a creditor uses the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity as its index, the disclosure might read, ''Your index is the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year published weekly in the *Wall Street Journal.*'' If no particular index is used, the creditor must briefly describe the formula used to calculate interest rate changes.

2. *Changes at creditor's discretion.* If interest rate changes are at the creditor's discretion, this fact must be disclosed. If an index is internally defined, such as by a creditor's prime rate, the creditor should either briefly describe that index or state that interest rate changes are at the creditor's discretion.

Paragraph 19(b)(2)(iii)

1. *Determination of interest rate and payment.* This provision requires an explanation of how the creditor will determine the consumer's interest rate and payment. In cases where a creditor bases its interest rate on a specific index and adjusts the index through the addition of a margin, for example, the disclosure might read, ''Your interest rate is based on the index plus a margin, and your payment will be based on the interest rate, loan balance, and remaining loan term.'' In transactions where paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor must disclose this fact. For example, the disclosure might read, ''Your periodic payments will not fully amortize your loan and you will be required to make a single payment of the periodic payment plus the remaining unpaid balance at the end of the loan term.'' The creditor, however, need not reflect any irregular final payment in the historical example or in the disclosure of the initial and maximum rates and payments. If applicable, the creditor should also disclose that the rate and payment will be rounded.

Paragraph 19(b)(2)(iv)

1. *Current margin value and interest rate.* Because the disclosures can be prepared in advance, the interest rate and margin may be several months old when the disclosures are delivered. A statement, therefore, is required alerting consumers to the fact that they should inquire about the current margin value applied to the index and the current interest rate. For example, the disclosure might state, ''Ask us for our current interest rate and margin.''

Paragraph 19(b)(2)(v)

1. *Discounted and premium interest rate.* 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. If the initial interest rate will be a discount or a premium rate, creditors must alert the consumer to this fact. For example, if a creditor discounted a consumer's initial rate, the disclosure might state, ''Your initial interest rate is not based on the index used to make later adjustments.'' (See the commentary to §1026.17(c)(1) for a further discussion of discounted and premium variable-rate transactions.) In addition, the disclosure must suggest that consumers inquire about the amount that the program is currently discounted. For example, the disclosure might state, ''Ask us for the amount our adjustable rate mortgages are currently discounted.'' In a transaction with a consumer buydown or with a third-party buydown that will be incorporated in the legal obligation, the creditor should disclose the program as a discounted variable-rate transaction, but need not disclose additional information regarding the buydown in its program disclosures. (See the commentary to §1026.19(b)(2)(viii) for a discussion of how to reflect the discount or premium in the historical example or the maximum rate and payment disclosure).

Paragraph 19(b)(2)(vi)

1. *Frequency.* The frequency of interest rate and payment adjustments must be disclosed. If interest rate changes will be imposed more frequently or at different intervals than payment changes, a creditor must disclose the frequency and timing of both types of changes. For example, in a variable-rate transaction where interest rate changes are made monthly, but payment changes occur on an annual basis, this fact must be disclosed. In certain ARM transactions, the interval between loan closing and the initial

adjustment is not known and may be different from the regular interval for adjustments. In such cases, the creditor may disclose the initial adjustment period as a range of the minimum and maximum amount of time from consummation or closing. For example, the creditor might state: ''The first adjustment to your interest rate and payment will occur no sooner than 6 months and no later than 18 months after closing. Subsequent adjustments may occur once each year after the first adjustment.'' (See comments 19(b)(2)(viii)(A)–7 and 19(b)(2)(viii)(B)–4 for guidance on other disclosures when this alternative disclosure rule is used.)

Paragraph 19(b)(2)(vii)

1. *Rate and payment caps.* The creditor must disclose limits on changes (increases or decreases) in the interest rate or payment. If an initial discount is not taken into account in applying overall or periodic rate limitations, that fact must be disclosed. If separate overall or periodic limitations apply to interest rate increases resulting from other events, such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitations must also be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. (See §1026.30 for the rule requiring that a maximum interest rate be included in certain variable-rate transactions.) The creditor need not disclose each periodic or overall rate limitation that is currently available. As an alternative, the creditor may disclose the range of the lowest and highest periodic and overall rate limitations that may be applicable to the creditor's ARM transactions. For example, the creditor might state: ''The limitation on increases to your interest rate at each adjustment will be set at an amount in the following range: Between 1 and 2 percentage points at each adjustment. The limitation on increases to your interest rate over the term of the loan will be set at an amount in the following range: Between 4 and 7 percentage points above the initial interest rate.'' A creditor using this alternative rule must include a statement in its program disclosures suggesting that the consumer ask about the overall rate limitations currently offered for the creditor's ARM programs. (See comments 19(b)(2)(viii)(A)–6 and 19(b)(2)(viii)(B)–3 for an explanation of the additional requirements for a creditor using this alternative rule for disclosure of periodic and overall rate limitations.)

2. *Negative amortization and interest rate carryover.* A creditor must disclose, where applicable, the possibility of negative amortization. For example, the disclosure might state, ''If any of your payments is not sufficient to cover the interest due, the difference will be added to your loan amount.'' Loans that provide for more than one way to trigger negative amortization are separate variable-rate programs requiring separate disclosures. (See the commentary to §1026.19(b)(2) for a discussion on the definition of a variable-rate loan program and the format for disclosure.) If a consumer is given the option to cap monthly payments that may result in negative amortization, the creditor must fully disclose the rules relating to the option, including the effects of exercising the option (such as negative amortization will occur and the principal loan balance will increase); however, the disclosure in §1026.19(b)(2)(viii) need not be provided.

3. *Conversion option.* If a loan program permits consumers to convert their variable-rate loans to fixed-rate loans, the creditor must disclose that the interest rate may increase if the consumer converts the loan to a fixed-rate loan. The creditor must also disclose the rules relating to the conversion feature, such as the period during which the loan may be converted, that fees may be charged at conversion, and how the fixed rate will be determined. The creditor should identify any index or other measure or formula used to determine the fixed rate and state any margin to be added. In disclosing the period during which the loan may be converted and the margin, the creditor may use information applicable to the conversion feature during the six months preceding preparation of the disclosures and state that the information is representative of conversion features recently offered by the creditor. The information may be used until the program disclosures are otherwise revised. Although the rules relating to the conversion option must be disclosed, the effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example or in the calculation of the initial and maximum interest rate and payments.

4. *Preferred-rate loans.* Section 1026.19(b) applies to preferred-rate loans, where the rate will increase upon the occurrence of some event, such as an employee leaving the creditor's employ, whether or not the underlying rate is fixed or variable. In these transactions, the creditor must disclose the event that would allow the creditor to increase the rate such as that the rate may increase if the employee leaves the creditor's employ. The creditor must also disclose the rules relating to termination of the preferred rate, such as that fees may be charged when the rate is changed and how the new rate will be determined.

Paragraph 19(b)(2)(viii)

1. *Historical example and initial and maximum interest rates and payments.* A creditor may disclose both the historical example and

the initial and maximum interest rates and payments.

Paragraph 19(b)(2)(viii)(A)

1. *Index movement.* This section requires a creditor to provide an historical example, based on a $10,000 loan amount originating in 1977, showing how interest rate changes implemented according to the terms of the loan program would have affected payments and the loan balance at the end of each year during a 15-year period. (In all cases, the creditor need only calculate the payments and loan balance for the term of the loan. For example, in a five-year loan, a creditor would show the payments and loan balance for the five-year term, from 1977 to 1981, with a zero loan balance reflected for 1981. For the remaining ten years, 1982–1991, the creditor need only show the remaining index values, margin and interest rate and must continue to reflect all significant loan program terms such as rate limitations affecting them.) Pursuant to this section, the creditor must provide a history of index values for the preceding 15 years. Initially, the disclosures would give the index values from 1977 to the present. Each year thereafter, the revised program disclosures should include an additional year's index value until 15 years of values are shown. If the values for an index have not been available for 15 years, a creditor need only go back as far as the values are available in giving a history and payment example. In all cases, only one index value per year need be shown. Thus, in transactions where interest rate adjustments are implemented more frequently than once per year, a creditor may assume that the interest rate and payment resulting from the index value chosen will stay in effect for the entire year for purposes of calculating the loan balance as of the end of the year and for reflecting other loan program terms. In cases where interest rate changes are at the creditor's discretion (see the commentary to §1026.19(b)(2)(ii)), the creditor must provide a history of the rates imposed for the preceding 15 years, beginning with the rates in 1977. In giving this history, the creditor need only go back as far as the creditor's rates can reasonably be determined.

2. *Selection of index values.* The historical example must reflect the method by which index values are determined under the program. If a creditor uses an average of index values or any other index formula, the history given should reflect those values. The creditor should select one date or, when an average of single values is used as an index, one period and should base the example on index values measured as of that same date or period for each year shown in the history. A date or period at any time during the year may be selected, but the same date or period must be used for each year in the historical example. For example, a creditor could use values for the first business day in July or for the first week ending in July for each of the 15 years shown in the example.

3. *Selection of margin.* For purposes of the disclosure required under §1026.19(b)(2)(viii)(A), a creditor may select a representative margin that has been used during the six months preceding preparation of the disclosures, and should disclose that the margin is one that the creditor has used recently. The margin selected may be used until a creditor revises the disclosure form.

4. *Amount of discount or premium.* For purposes of the disclosure required under §1026.19(b)(2)(viii)(A), a creditor may select a discount or premium (amount and term) that has been used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the historical example for as long as the discount or premium is in effect. A creditor may assume that a discount that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example. For example, a 3-month discount may be treated as being in effect for the entire first year of the example; a 15-month discount may be treated as being in effect for the first two years of the example. In illustrating the effect of the discount or premium, creditors should adjust the value of the interest rate in the historical example, and should not adjust the margin or index values. For example, if during the six months preceding preparation of the disclosures the fully indexed rate would have been 10% but the first year's rate under the program was 8%, the creditor would discount the first interest rate in the historical example by 2 percentage points.

5. *Term of the loan.* In calculating the payments and loan balances in the historical example, a creditor need not base the disclosures on each term to maturity or payment amortization that it offers. Instead, disclosures for ARMs may be based upon terms to maturity or payment amortizations of 5, 15 and 30 years, as follows: ARMs with terms or amortizations from over 1 year to 10 years may be based on a 5-year term or amortization; ARMs with terms or amortizations from over 10 years to 20 years may be based on a 15-year term or amortization; and ARMs with terms or amortizations over 20 years may be based on a 30-year term or amortization. Thus, disclosures for ARMs offered with any term from over 1 year to 40 years may be based solely on terms of 5, 15 and 30 years. Of course, a creditor may always base the disclosures on the actual terms or amortizations offered. If the creditor bases the disclosures on 5-, 15- or 30-year terms or payment amortization as provided above, the term or

payment amortization used in making the disclosure must be stated.

6. *Rate caps.* A creditor using the alternative rule described in comment 19(b)(2)(vii)–1 for disclosure of rate limitations must base the historical example upon the highest periodic and overall rate limitations disclosed under §1026.19(b)(2)(vii). In addition, the creditor must state the limitations used in the historical example. (See comment 19(b)(2)(viii)(B)–3 for an explanation of the use of the highest rate limitation in other disclosures.)

7. *Frequency of adjustments.* In certain transactions, creditors may use the alternative rule described in comment 19(b)(2)(vi)–1 for disclosure of the frequency of rate and payment adjustments. In such cases, the creditor may assume for purposes of the historical example that the first adjustment occurred at the end of the first full year in which the adjustment could occur. For example, in an ARM in which the first adjustment may occur between 6 and 18 months after closing and annually thereafter, the creditor may assume that the first adjustment occurred at the end of the first year in the historical example. (See comment 19(b)(2)(viii)(B)–4 for an explanation of how to compute the maximum interest rate and payment when the initial adjustment period is not known.)

Paragraph 19(b)(2)(viii)(B)

1. *Initial and maximum interest rates and payments.* The disclosure form must state the initial and maximum interest rates and payments for a $10,000 loan originated at an 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. (See comment 19(b)(2)–5 on revisions to the loan program disclosure.) In calculating the maximum payment under this paragraph, a creditor should assume that the interest rate increases as rapidly as possible under the loan program, and the maximum payment disclosed should reflect the amortization of the loan during this period. Thus, in a loan with 2 percentage point annual (and 5 percentage point overall) interest rate limitations or ''caps,'' the maximum interest rate would be 5 percentage points higher than the initial interest rate disclosed. Moreover, the loan would not reach the maximum interest rate until the fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed would reflect the amortization of the loan during this period. If the loan program includes a discounted or premium initial interest rate, the initial interest rate should be adjusted by the amount of the discount or premium.

2. *Term of the loan.* In calculating the initial and maximum payments, the creditor need not base the disclosures on each term to maturity or payment amortization offered under the program. Instead, the creditor may follow the rules set out in comment 19(b)(2)(viii)(A)–5. If a historical example is provided under §1026.19(b)(2)(viii)(A), the terms to maturity or payment amortization used in the historical example must be used in calculating the initial and maximum payment. In addition, creditors must state the term or payment amortization used in making the disclosures under this section.

3. *Rate caps.* A creditor using the alternative rule for disclosure of interest rate limitations described in comment 19(b)(2)(vii)–1 must calculate the maximum interest rate and payment based upon the highest periodic and overall rate limitations disclosed under §1026.19(b)(2)(vii). In addition, the creditor must state the rate limitations used in calculating the maximum interest rate and payment. (See comment 19(b)(2)(viii)(A)–6 for an explanation of the use of the highest rate limitation in other disclosures.)

4. *Frequency of adjustments.* In certain transactions, a creditor may use the alternative rule for disclosure of the frequency of rate and payment adjustments described in comment 19(b)(2)(vi)–1. In such cases, the creditor must base the calculations of the initial and maximum rates and payments upon the earliest possible first adjustment disclosed under §1026.19(b)(2)(vi). (See comment 19(b)(2)(viii)(A)–7 for an explanation of how to disclose the historical example when the initial adjustment period is not known.)

5. *Periodic payment statement.* The statement that the periodic payment may increase or decrease substantially may be satisfied by the disclosure in paragraph 19(b)(2)(vi) if it states for example, ''your monthly payment can increase or decrease substantially based on annual changes in the interest rate.''

Paragraph 19(b)(2)(ix)

1. *Calculation of payments.* A creditor is required to include a statement on the disclosure form that explains how a consumer may calculate his or her actual monthly payments for a loan amount other than $10,000. The example should be based upon the most recent payment shown in the historical example or upon the initial interest rate reflected in the maximum rate and payment disclosure. In transactions in which the latest payment shown in the historical example is not for the latest year of index values shown (such as in a five-year loan), a creditor may provide additional examples based on the initial and maximum payments disclosed under §1026.19(b)(2)(viii)(B). The creditor, however, is not required to calculate the consumer's payments. (See the model clauses in appendix H–4(C).)

Paragraph 19(b)(2)(x)

1. *Demand feature.* If a variable-rate loan subject to §1026.19(b) requirements contains a demand feature as discussed in the commentary to §1026.18(i), this fact must be disclosed. (Pursuant to §1026.18(i), creditors would also disclose the demand feature in the standard disclosures given later.)

Paragraph 19(b)(2)(xi)

1. *Adjustment notices.* A creditor must disclose to the consumer the type of information that will be contained in subsequent notices of adjustments and when such notices will be provided. (See the commentary to §1026.20(c) and (d) regarding notices of adjustments.) For example, the disclosure provided pursuant to §1026.20(d) might state, ''You will be notified at least 210, but no more than 240, days before the first payment at the adjusted level is due after the initial interest rate adjustment of the loan. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.'' The disclosure provided pursuant to §1026.20(c) might state, ''You will be notified at least 60, but no more than 120, days before the first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.''

Paragraph 19(b)(2)(xii)

1. *Multiple loan programs.* A creditor that offers multiple variable-rate loan programs is required to have disclosures for each variable-rate loan program subject to §1026.19(b)(2). Unless disclosures for all of its variable-rate programs are provided initially, the creditor must inform the consumer that other closed-end variable-rate programs exist, and that disclosure forms are available for these additional loan programs. For example, the disclosure form might state, ''Information on other adjustable rate mortgage programs is available upon request.''

19(c) Electronic Disclosures

1. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses an ARM loan application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses an ARM loan application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

19(e) Mortgage loans—Early disclosures.

1. *Affiliate.* The term ''affiliate,'' as used in §1026.19(e), has the same meaning as in §1026.32(b)(5).

19(e)(1) Provision of disclosures.

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

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

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

19(e)(1)(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, §1026.19(e)(4)(i) states that 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) or the disclosures required under §1026.19(f)(1)(i) (including any corrected disclosures provided under §1026.19(f)(2)(i) or (ii)) reflecting the revised estimate. ''Mortgage broker'' could not be read in place of ''creditor'' in reference to the disclosures required under §1026.19(f)(1)(i), (f)(2)(i), or (f)(2)(ii) because mortgage brokers are not responsible for the disclosures required under §1026.19(f)(1)(i), (f)(2)(i), or (f)(2)(ii). 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).

5. *Multiple-advance construction loans.* Section 1026.19(e)(1)(iii) generally requires a creditor to deliver the Loan Estimate or place it in the mail not later than the third business day after the creditor receives the consumer's application and not later than the seventh business day before consummation. When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, §1026.17(c)(6)(ii) and comment 17(c)(6)–2 permit creditors to treat the construction phase

and the permanent phase as either one transaction, with one combined disclosure, or more than one transaction, with a separate disclosure for each transaction. For construction—permanent transactions disclosed as one transaction, the creditor complies with §1026.19(e)(1)(iii) by delivering or placing in the mail one combined disclosure required by §1026.19(e)(1)(i) not later than the third business day after the creditor receives an application and not later than the seventh business day before consummation. For construction—permanent transactions disclosed as a separate construction phase and a separate permanent phase for which an application for both the construction and permanent financing has been received, the creditor complies with §1026.19(e)(1)(iii) by delivering or placing in the mail the separate disclosures required by §1026.19(e)(1)(i) for both the construction financing and the permanent financing not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation. A creditor may also provide a separate disclosure required by §1026.19(e)(1)(i) for the permanent phase before receiving an application for permanent financing at any time not later than the seventh business day before consummation. To illustrate:

i. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. The creditor must deliver or place in the mail the disclosures required by §1026.19(e)(1)(i) for only the construction financing no later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

ii. Assume the creditor receives a consumer's application for both construction and permanent financing on Monday, June 1. The creditor must deliver or place in the mail the disclosures required by §1026.19(e)(1)(i) for both the construction and permanent financing, disclosed as either one transaction or separate transactions, no later than Thursday, June 4, the third business day after the creditor received the consumer's application, and not later than the seventh business day before consummation of the transaction.

iii. Assume the creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor receives the consumer's application for permanent financing on Monday, June 8. The creditor must deliver or place in the mail the disclosures required by §1026.19(e)(1)(i) for the construction financing no later than Thursday, June 4, the third business day after the creditor received the consumer's application for the construction financing only, and not later than the seventh business day before consummation of the construction transaction. The creditor must deliver or place in the mail the disclosures required by §1026.19(e)(1)(i) for the permanent financing no later than Thursday, June 11, the third business day after the creditor received the consumer's application for the permanent financing, and not later than the seventh business day before consummation of the permanent financing transaction.

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

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 the creditor. Whether the creditor permits the consumer to shop consistent with §1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances. 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.* If a creditor permits a consumer to shop for a settlement service, §1026.19(e)(1)(vi)(B) requires the creditor to identify settlement services required by the creditor 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 required by the creditor for which the consumer is permitted to shop.

3. *Written list of providers.* If the creditor permits the consumer to shop for a settlement service it requires, §1026.19(e)(1)(vi)(C) requires the creditor to provide the consumer with a written list identifying at least one available provider of that service and stating that the consumer may choose a different provider for that service. The settlement service providers identified on the written list required by §1026.19(e)(1)(vi)(C) must correspond to the required settlement services for which the consumer may shop, disclosed under §1026.37(f)(3). See form H–27 in appendix H to this part for a model list. Creditors using form H–27 in appendix H properly are deemed to be in compliance with §1026.19(e)(1)(vi)(C). Creditors may make changes in the format or content of form H–27 in appendix H and be deemed to be in compliance with §1026.19(e)(1)(vi)(C), so long as the changes do not affect the substance, clarity, or meaningful sequence of the form. An acceptable change to form H–27 in appendix H includes, for example, deleting the column for estimated fee amounts.

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, for the settlement services that are required by the creditor for which a consumer is permitted to shop. 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).

19(e)(2) Predisclosure activity.

19(e)(2)(i) Imposition of fees on consumer.

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)(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).

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 under §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 are generally subject to §1026.19(e)(3)(i) include, but are not limited to, the following:

i. Fees paid to the creditor.

ii. Fees paid to a mortgage broker.

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

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

v. Transfer taxes.

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 non-specific, 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 shop for the third-party service, consistent with § 1026.19(e)(1)(vi)(A).

ii. Recording fees.

2. *Aggregate increase limited to ten percent.* Under § 1026.19(e)(3)(ii)(A), whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in good faith depends on whether the sum of all charges subject to § 1026.19(e)(3)(ii) increases by more than 10 percent, regardless of whether a particular charge increases by more than 10 percent. This is true even if an individual charge was omitted from the estimate provided under § 1026.19(e)(1)(i) and then imposed at consummation. The following examples illustrate the determination of good faith for charges subject to § 1026.19(e)(3)(ii):

i. Assume that, in the disclosures provided under § 1026.19(e)(1)(i), the creditor includes a $300 estimated fee for a settlement agent, the settlement agent fee is included in the category of charges subject to § 1026.19(e)(3)(ii), and the sum of all charges subject to § 1026.19(e)(3)(ii) (including the settlement agent fee) equals $1,000. In this case, the creditor does not violate § 1026.19(e)(3)(ii) if the actual settlement agent fee exceeds the estimated settlement agent fee by more than 10 percent (*i.e.*, the fee exceeds $330), provided that the sum of all such actual charges does not exceed the sum of all such estimated charges by more than 10 percent (*i.e.*, the sum of all such charges does not exceed $1,100).

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

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.

6. *Shopping for a third-party service.* For good faith to be determined under § 1026.19(e)(3)(ii) a creditor must permit a consumer to shop consistent with § 1026.19(e)(1)(vi)(A). Section 1026.19(e)(1)(vi)(A) provides that 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. If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) good faith is determined under § 1026.19(e)(3)(ii), unless the settlement service provider is the creditor or an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i). As noted in comment 19(e)(1)(vi)–1, whether the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

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 under § 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 under § 1026.19(e)(3)(i) or (ii). 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. 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 under § 1026.19(e)(1)(vi)(C), and the creditor discloses an unreasonably low estimated settlement agent fee of $20 when the average prices for settlement agent fees in that area are $150, then the under-disclosure does not

comply with §1026.19(e)(3)(iii) and good faith is determined under §1026.19(e)(3)(i). If the creditor permits the consumer to shop consistent with §1026.19(e)(1)(vi)(A) but fails to provide the written list required under §1026.19(e)(1)(vi)(C), good faith is determined under §1026.19(e)(3)(ii) instead of §1026.19(e)(3)(iii) unless the settlement service provider is the creditor or an affiliate of the creditor in which case good faith is determined under §1026.19(e)(3)(i). As noted in comment 19(e)(1)(vi)–1 whether the creditor permits the consumer to shop consistent with §1026.19(e)(1)(vi)(A) is determined based on all the relevant facts and circumstances.

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

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

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

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).

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

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

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, then, no later than three business days after the date the interest rate is subsequently 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 under §1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms. The following example illustrates this requirement:

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

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

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

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

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

19(e)(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).

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) or the disclosures required under §1026.19(f)(1)(i) (including any corrected disclosures provided under §1026.19(f)(2)(i) or (ii)) 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 (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 Between Revised Loan Estimates and Closing Disclosures

1. *Revised Loan Estimate 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 any 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. However, 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), §1026.19(e)(4)(i) permits the creditor to provide the revised estimate in the disclosures required under §1026.19(f)(1)(i) (including any corrected disclosures provided under §1026.19(f)(2)(i) or (ii)). 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, June 3, and the APR becomes inaccurate on Tuesday, June 2, 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, June 3. However, the creditor does not comply with the requirements of §1026.19(e)(4) if it provides both a revised version of the disclosures required under §1026.19(e)(1)(i) reflecting the revised APR on Wednesday, June 3, and also provides the disclosures required under §1026.19(f)(1)(i) on Wednesday, June 3.

ii. If the creditor is scheduled to email the disclosures required under §1026.19(f)(1)(i) to the consumer on Wednesday, June 3, 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, June 2, 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, June 3. However, the creditor does not comply with the requirements of §1026.19(e)(4) if it provides disclosures reflecting the consumer-requested changes using both the revised version of the disclosures required under § 1026.19(e)(1)(i) on Wednesday, June 3, and also the disclosures required under § 1026.19(f)(1)(i) on Wednesday, June 3.

iii. Consummation is scheduled for Thursday, June 4. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, and, on Tuesday, June 2, the consumer requests a change to the loan that would result in revised disclosures pursuant to § 1026.19(e)(3)(iv)(C) but would not require a new waiting period pursuant to § 1026.19(f)(2)(ii). Under § 1026.19(f)(2)(i), the creditor is required to provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. The creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(i) reflecting the consumer-requested changes on Thursday, June 4.

iv. Consummation is originally scheduled for Wednesday, June 10. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Friday, June 5. On Monday, June 8, the consumer reschedules consummation for Wednesday, June 17. Also on Monday, June 8, the consumer requests a rate lock extension that would result in revised disclosures pursuant to § 1026.19(e)(3)(iv)(C) but would not require a new waiting period pursuant to § 1026.19(f)(2)(ii). The creditor complies with the requirements of § 1026.19(e)(4) by delivering or placing in the mail the disclosures required by § 1026.19(f)(2)(i) reflecting the consumer-requested changes on Thursday, June 11. Under § 1026.19(f)(2)(i), the creditor is required to provide corrected disclosures reflecting any changed terms to the consumer so that the consumer receives the corrected disclosures at or before consummation. The creditor complies with § 1026.19(f)(2)(i) by hand delivering the disclosures on Thursday, June 11. Alternatively, the creditor complies with § 1026.19(f)(2)(i) by providing the disclosures to the consumer by mail, including by electronic mail, on Thursday, June 11, because the consumer is considered to have received the corrected disclosures on Monday, June 15 (unless the creditor relies on evidence that the consumer received the corrected disclosures earlier). See § 1026.19(f)(1)(iii) and comments 19(f)(1)(iii)–1 and –2. See also § 1026.38(t)(3) and comment 19(f)(1)(iii)–2 regarding providing the disclosures required by § 1026.19(f)(1)(i) (including any corrected disclosures provided under § 1026.19(f)(2)(i) or (ii)) in electronic form.

v. Consummation is originally scheduled for Wednesday, June 10. The creditor hand delivers the disclosures required by § 1026.19(f)(1)(i) on Friday, June 5, and the APR becomes inaccurate on Monday, June 8, such that 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). Consummation is rescheduled for Friday, June 12. The creditor complies with the requirements of § 1026.19(e)(4) by hand delivering the disclosures required by § 1026.19(f)(2)(ii) reflecting the revised APR and any other changed terms to the consumer on Tuesday, June 9. See § 1026.19(f)(2)(ii) and associated commentary regarding changes before consummation requiring a new waiting period. See comment 19(e)(4)(i)–1 for further guidance on when sufficient information has been received to establish an event has occurred.

19(f) Mortgage loans—Final disclosures.

19(f)(1) Provision of disclosures.

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

1. *Requirements.* Section 1026.19(f)(1)(i) requires disclosure of the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction, for closed-end credit transactions that are secured by real property or a cooperative unit, other than reverse mortgages subject to § 1026.33. For example, if the creditor requires the consumer to pay money into a reserve account for the future payment of taxes, the creditor must disclose to the consumer the exact amount that the consumer is required to pay into the reserve account. If the disclosures provided under § 1026.19(f)(1)(i) do not contain the actual terms of the transaction, the creditor does not violate § 1026.19(f)(1)(i) if the creditor provides corrected disclosures that contain the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements in § 1026.19(f)(1)(ii) and (f)(2). For example, if the creditor provides the disclosures required by § 1026.19(f)(1)(i) on Monday, June 1, but the consumer adds a mobile notary service to the terms of the transaction on Tuesday, June 2, the creditor complies with § 1026.19(f)(1)(i) if it provides disclosures reflecting the revised terms of the transaction on or after Tuesday, June 2, assuming that the corrected disclosures are also provided at or before consummation, under § 1026.19(f)(2)(i).

2. *Best information reasonably available.* Creditors may estimate disclosures provided under § 1026.19(f)(1)(ii)(A) and (f)(2)(ii) using the best information reasonably available when the actual term is unknown to the creditor at the time disclosures are made, consistent with § 1026.17(c)(2)(i).

i. *Actual term unknown.* An actual term is unknown if it is not reasonably available to the creditor at the time the disclosures are made. The ''reasonably available'' standard requires that the creditor, acting in good faith, exercise due diligence in obtaining the information. For example, the creditor must at a minimum utilize generally accepted calculation tools, but need not invest in the most sophisticated computer program to make a particular type of calculation. The creditor normally may rely on the representations of other parties in obtaining information. For example, the creditor might look to the consumer for the time of consummation, to insurance companies for the cost of insurance, to realtors for taxes and escrow fees, or to a settlement agent for homeowner's association dues or other information in connection with a real estate settlement. The following examples illustrate the reasonably available standard for purposes of §1026.19(f)(1)(i).

A. Assume a creditor provides the disclosure under §1026.19(f)(1)(ii)(A) for a transaction in which the title insurance company that is providing the title insurance policies is acting as the settlement agent in connection with the transaction, but the creditor does not request the actual cost of the lender's title insurance policy that the consumer is purchasing from the title insurance company and instead discloses an estimate based on information from a different transaction. The creditor has not exercised due diligence in obtaining the information about the cost of the lender's title insurance policy required under the ''reasonably available'' standard in connection with the estimate disclosed for the lender's title insurance policy.

B. Assume that in the prior example the creditor obtained information about the terms of the consumer's transaction from the settlement agent regarding the amounts disclosed under §1026.38(j) and (k). The creditor has exercised due diligence in obtaining the information about the costs under §1026.38(j) and (k) for purposes of the ''reasonably available'' standard in connection with such disclosures under §1026.38(j) and (k).

ii. *Estimates.* If an actual term is unknown, the creditor may utilize estimates using the best information reasonably available in making disclosures even though the creditor knows that more precise information will be available at or before consummation. However, the creditor may not utilize an estimate without exercising due diligence to obtain the actual term for the consumer's transaction. *See* comment 19(f)(1)(i)–2.i. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before consummation under §1026.19(f)(2), subject to the exceptions provided for in that paragraph. Disclosures under §1026.19(f) are subject to the labeling rules set forth in §1026.38. See comment 17(c)(2)(i)–2 for guidance on labeling estimates.

iii. *Settlement agent.* If a settlement agent provides disclosures required by §1026.19(f)(1)(i) three business days before consummation pursuant to §1026.19(f)(1)(v), the ''best information reasonably available'' standard applies to terms for which the actual term is unknown to the settlement agent at the time the disclosures are provided. The settlement agent normally may rely on the representations of other parties in obtaining information, but if information about actual terms is not reasonably available, the settlement agent also must satisfy the ''best information reasonably available'' standard. Accordingly, the settlement agent is required to exercise due diligence to obtain information if it is providing the Closing Disclosure pursuant to §1026.19(f)(1)(v). For example, for the loan terms table required to be disclosed under §1026.38(b), the settlement agent would be considered to have exercised due diligence if it obtained such information from the creditor. Because the creditor remains responsible under §1026.19(f)(1)(v) for ensuring that the Closing Disclosure is provided in accordance with §1026.19(f), the creditor is expected to maintain communication with the settlement agent to ensure that the settlement agent is acting in place of the creditor. See comment 19(f)(1)(v)–3 for guidance on a creditor's responsibilities where a settlement agent provides disclosures.

3. *Denied or withdrawn applications.* The creditor is not required to provide the disclosures required under §1026.19(f)(1)(i) if, before the time the creditor is required to provide the disclosures under §1026.19(f), the creditor determines the consumer's application will not or cannot be approved on the terms requested, or the consumer has withdrawn the application, and, as such, the transaction will not be consummated. For transactions covered by §1026.19(f)(1)(i), the creditor may rely on comment 19(e)(1)(iii)–3 in determining that disclosures are not required by §1026.19(f)(1)(i) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application.

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.

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.

2. *Per-diem interest.* Under § 1026.19(f)(2)(iii), if during the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor must provide the consumer corrected disclosures, except as described in this comment. A creditor is not required to provide corrected disclosures under § 1026.19(f)(2)(iii) if the only changes that would be required to be disclosed in the corrected disclosure are changes to per-diem interest and any disclosures affected by the change in per-diem interest, even if the amount of per-diem interest actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). Nonetheless, if a creditor is providing a corrected disclosure under § 1026.19(f)(2)(iii) for reasons other than changes in per-diem interest and the per-diem interest has changed as well, the creditor must disclose in the corrected disclosures under § 1026.19(f)(2)(iii) the correct amount of the per-diem interest and provide corrected disclosures for any disclosures that are affected by the change in per-diem interest.

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

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 or a cooperative unit located within a particular metropolitan statistical area. The creditor must then charge the average appraisal charge to all consumers obtaining fixed rate loans originated between May 1 and August 30 secured by real property or a cooperative unit located within the same metropolitan statistical area.

ii. The example in paragraph i of this comment assumes that a consumer would not be required to pay the average appraisal charge unless an appraisal was required on that particular loan. Using the example above, if a consumer applies for a loan within the defined class, but already has an appraisal report acceptable to the creditor from a prior loan application, the creditor may not charge the consumer the average appraisal fee because an acceptable appraisal report has already been obtained for the consumer's application. Similarly, although the creditor defined the class broadly to include all fixed rate loans, the creditor may not require the consumer to pay the average appraisal charge if the particular fixed rate loan program the consumer applied for does not require an appraisal.

4. *Average amount paid.* The average charge must correspond to the average amount paid by or imposed on consumers and sellers during the prior defined time period. For example, assume a creditor calculates an average tax certification fee based on four-month periods starting January 1 of each year. The tax certification fees charged to a consumer on May 20 may not exceed the average tax certification fee paid from January 1 through April 30. A creditor may delay the period by a reasonable amount of time if such delay is needed to perform the necessary analysis and update the affected systems, provided that each subsequent period is scheduled accordingly. For example, a creditor may define a four-month period from January 1 to April 30 and begin using the average charge from that period on May 15, provided the average charge is used until September 15, at which time the average charge for the period from May 1 to August 31 becomes effective.

5. *Adjustments based on retrospective analysis required.* Creditors using average charges must ensure that the total amount paid by or imposed on consumers for a service does not exceed the total amount paid to the providers of that service for the particular class of transactions. A creditor may find that, even though it developed an average-cost pricing program in accordance with the requirements of §1026.19(f)(3)(ii), over time it has collected more from consumers than it has paid to settlement service providers. For example, assume a creditor defines a class of transactions and uses that class to develop an average charge of $135 for pest inspections. The creditor then charges $135 per transaction for 100 transactions from January 1 through April 30, but the actual average cost to the creditor of pest inspections during this period is $115. The creditor then decreases the average charge for the May to August period to account for the lower average cost during the January to April period.

At this point, the creditor has collected $2,000 more than it has paid to settlement service providers for pest inspections. The creditor then charges $115 per transaction for 70 transactions from May 1 to August 30, but the actual average cost to the creditor of pest inspections during this period is $125. Based on the average cost to the creditor from the May to August period, the average charge to the consumer for the September to December period should be $125. However, while the creditor spent $700 more than it collected during the May to August period, it collected $1,300 more than it spent from January to August. In cases such as these, the creditor remains responsible for ensuring that the amount collected from consumers does not exceed the total amounts paid for the corresponding settlement services over time. The creditor may develop a variety of methods that achieve this outcome. For example, the creditor may choose to refund the proportional overage paid to the affected consumers. Or the creditor may choose to factor in the excess amount collected to decrease the average charge for an upcoming period. Although any method may comply with this requirement, a creditor is deemed to have complied if it defines a six-month time period and establishes a rolling monthly period of reevaluation. For example, assume a creditor defines a six-month time period from January 1 to June 30 and the creditor uses the average charge starting July 1. If, at the end of July, the creditor recalculates the average cost from February 1 to July 31, and then uses the recalculated average cost for transactions starting 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.

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

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

1. *Requirement.* Section 1026.19(f)(4)(i) requires the settlement agent to provide the seller with the disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. The settlement agent complies with this provision by providing a copy of the Closing Disclosure provided to the consumer, if the Closing Disclosure also contains the information under § 1026.38 relating to the seller's transaction or, alternatively, by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

2. *Simultaneous subordinate financing.* In a purchase transaction with simultaneous subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the first-lien transaction disclosures required under § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)–1 if the first-lien Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, the settlement agent complies with § 1026.19(f)(4)(i)

by providing the seller with both the first-lien and simultaneous subordinate financing transaction disclosures required under §1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction in accordance with comment 19(f)(4)(i)–1.

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.

19(g) Special information booklet at time of application.

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 October 3, 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 October 3, 2015, a creditor may change the title appearing on the cover of the version of the special information booklet in use before October 3, 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 October 3, 2015.

Section 1026.20 Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

1. *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.

i. 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.

ii. 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.

2. *Exceptions.* A transaction is subject to §1026.20(a) only if it meets the general definition of a refinancing. Section 1026.20(a)(1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate.* i. 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.

ii. 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:

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

B. 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.

iii. 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.

4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage.* Section 1026.20(a) 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.

Paragraph 20(a)(1)

1. *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:

i. Accrued unpaid interest is added to the principal balance.

ii. Changes are made in the terms of renewal resulting from the factors listed in §1026.17(c)(3).

iii. The principal at renewal is reduced by a curtailment of the obligation.

Paragraph 20(a)(2)

1. *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.

2. *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 in §1026.20(a)(2) 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.

Paragraph 20(a)(3)

1. *Court agreements.* This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to §1026.2(a)(14) for a discussion of court-approved agreements that are not considered ''credit.'')

Paragraph 20(a)(4)

1. *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.

Paragraph 20(a)(5)

1. *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.

20(b) Assumptions

1. *General definition.* i. An assumption as defined in §1026.20(b) is a new transaction and new disclosures must be made to the subsequent consumer. An assumption under the regulation requires the following three elements:

A. A residential mortgage transaction.

B. An express acceptance of the subsequent consumer by the creditor.

C. A written agreement.

ii. The assumption of a nonexempt consumer credit obligation requires no disclosures unless all three elements are present. For example, an automobile dealer need not provide Truth in Lending disclosures to a customer who assumes an existing obligation secured by an automobile. However, a residential mortgage transaction with the elements described in §1026.20(b) is an assumption that calls for new disclosures; the disclosures must be given whether or not the assumption is accompanied by changes in the terms of the obligation. (See comment 2(a)(24)–5 for a discussion of assumptions that are not considered residential mortgage transactions.)

2. *Existing residential mortgage transaction.* A transaction may be a residential mortgage transaction as to one consumer and not to the other consumer. In that case, the creditor must look to the assuming consumer in determining whether a residential mortgage transaction exists. To illustrate: The original consumer obtained a mortgage to purchase a home for vacation purposes. The loan was not a residential mortgage transaction as to that consumer. The mortgage is assumed by a consumer who will use the home as a principal dwelling. As to that consumer, the loan is a residential mortgage transaction. For purposes of §1026.20(b), the assumed loan is an ''existing residential mortgage transaction'' requiring disclosures, if the other criteria for an assumption are met.

3. *Express agreement. Expressly agrees* means that the creditor's agreement must relate specifically to the new debtor and must unequivocally accept that debtor as a primary obligor. The following events are not construed to be express agreements between the creditor and the subsequent consumer:

i. Approval of creditworthiness.

ii. Notification of a change in records.

iii. Mailing of a coupon book to the subsequent consumer.

iv. Acceptance of payments from the new consumer.

4. *Retention of original consumer.* The retention of the original consumer as an obligor in some capacity does not prevent the change from being an assumption, provided the new consumer becomes a primary obligor. But the mere addition of a guarantor to an obligation for which the original consumer remains primarily liable does not give rise to an assumption. However, if neither party is designated as the primary obligor but the creditor accepts payment from the subsequent consumer, an assumption exists for purposes of §1026.20(b).

5. *Status of parties.* Section 1026.20(b) applies only if the previous debtor was a consumer and the obligation is assumed by another consumer. It does not apply, for example, when an individual takes over the obligation of a corporation.

6. *Disclosures.* For transactions that are assumptions within this provision, the creditor must make disclosures based on the ''remaining obligation.'' For example:

i. The amount financed is the remaining principal balance plus any arrearages or other accrued charges from the original transaction.

ii. If the finance charge is computed from time to time by application of a percentage rate to an unpaid balance, in determining the amount of the finance charge and the annual percentage rate to be disclosed, the creditor should disregard any prepaid finance charges paid by the original obligor, but must include in the finance charge any prepaid finance charge imposed in connection with the assumption.

iii. If the creditor requires the assuming consumer to pay any charges as a condition of the assumption, those sums are prepaid finance charges as to that consumer, unless exempt from the finance charge under §1026.4. If a transaction involves add-on or discount finance charges, the creditor may make abbreviated disclosures, as outlined in §1026.20(b)(1) through (5). Creditors providing disclosures pursuant to this section for assumptions of variable-rate transactions secured by the consumer's principal dwelling with a term longer than one year need not provide new disclosures under §1026.18(f)(2)(ii) or §1026.19(b). In such transactions, a creditor may disclose the variable-rate feature solely in accordance with §1026.18(f)(1).

7. *Abbreviated disclosures.* The abbreviated disclosures permitted for assumptions of transactions involving add-on or discount finance charges must be made clearly and conspicuously in writing in a form that the consumer may keep. However, the creditor need not comply with the segregation requirement of §1026.17(a)(1). The terms *annual percentage rate* and *total of payments,* when disclosed according to §1026.20(b)(4) and (5), are not subject to the description requirements of §1026.18(e) and (h). The term *annual percentage rate* disclosed under §1026.20(b)(4) need not be more conspicuous than other disclosures.

20(c) Rate adjustments with a corresponding change in payment.

1. *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.

2. *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).

3. *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.

Paragraph 20(c)(1)(i).

1. *In general.* An adjustable-rate mortgage, as defined in §1026.20(c)(1)(i), 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.

Paragraph 20(c)(1)(ii).

1. *Short-term ARMs.* Under §1026.20(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.

2. *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.

3. *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.

Paragraph 20(c)(2).

1. *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.

Paragraph 20(c)(2)(ii)(A).

1. *Current and new interest rates.* The current interest rate is the interest rate that applies on the date the disclosure is provided to the consumer. The new interest rate is the actual interest rate that will apply on the date of the adjustment. The new interest rate is used to determine the new payment. The ''new interest rate'' has the same meaning as the ''adjusted interest rate.'' The requirements of §1026.20(c)(2)(ii)(A) do not preclude creditors, assignees, and servicers from rounding the interest rate, pursuant to the requirements of the ARM contract.

Paragraph 20(c)(2)(iv).

1. *Rate limits and foregone interest rate increases.* Interest rate carryover, or foregone interest rate increases, is the amount of interest rate increase foregone at any ARM interest rate adjustment that, subject to rate caps, can be added to future interest rate adjustments to increase, or to offset decreases in, the rate determined by using the index or formula. The disclosures required by §1026.20(c)(2)(iv) regarding foregone interest rate increases apply only to transactions permitting interest rate carryover.

Paragraph 20(c)(2)(v)(B).

1. *Application of previously foregone interest rate increases.* The disclosures regarding the application of previously foregone interest rate increases apply only to transactions permitting interest rate carryover.

Paragraph 20(c)(2)(vi).

1. *Amortization statement.* For ARMs requiring the payment of interest only, such as interest-only loans, §1026.20(c)(2)(vi) requires a statement that the new payment covers all of the interest but none of the principal, and therefore will not reduce the loan balance. For negatively-amortizing ARMs, §1026.20(c)(2)(vi) requires a statement that the new payment covers only part of the interest and none of the principal, and therefore the unpaid interest will be added to the principal balance.

2. *Amortization payment.* Disclosure of the payment needed to amortize fully the outstanding balance at the new interest rate over the remainder of the loan term is required only when negative amortization occurs as a result of the interest rate adjustment. The disclosure is not required simply because a loan has interest-only or partially-amortizing payments. For example, an ARM with a five-year term and payments based on a longer amortization schedule, in which the final payment will equal the periodic payment plus the remaining unpaid balance, does not require disclosure of the payment necessary to amortize fully the loan in the remainder of the five-year term. A disclosure is also not required when the new payment is sufficient to prevent negative amortization but the final loan payment will be a different amount due to rounding.

Paragraph 20(c)(2)(vii).

1. *Prepayment penalty.* The creditor, assignee, or servicer of an ARM with no prepayment penalty, as that term is used in §1026.20(c)(2)(vii), may decide to exclude the prepayment section from the §1026.20(c) disclosure, retain the prepayment section and insert after the heading ''None'' or other indication that there is no prepayment penalty, or indicate there is no prepayment penalty in some other manner. *See also* comment 1.vi to Appendices G and H—Open-End and Closed-End Model Forms and Clauses.

Paragraph 20(c)(3)(i).

1. *Format of disclosures.* The requirements of §1026.20(c)(3)(i) and (ii) to provide the §1026.20(c) disclosures in the same order as, and with headings and format substantially similar to, the model and sample forms do not preclude creditors, assignees, and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the forms. For example, in the case of a consumer bankruptcy or under certain State laws, the creditor, assignee, or servicer may modify the forms to remove language regarding personal liability. Creditors, assignees, and servicers providing the required notice to a consumer whose ARM is converting to a fixed-rate mortgage, may modify the model language to explain that the interest rate will no longer adjust. Creditors, assignees, and servicers electing to provide consumers with interest rate notices in cases where the interest rate adjusts without a corresponding change in payment may modify the forms to fit that circumstance. A payment-option ARM, which is an ARM permitting consumers to choose among several different payment options for each billing period, is an example of a loan that may require modification of the §1026.20(c) model and sample forms. See appendix H–30(C) for an example of an allocation table for a payment-option loan.

20(d) Initial rate adjustment.

1. *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(d). Creditors, assignees, and servicers are also subject to the requirements of any provision of subpart C that governs §1026.20(d). For example, the form requirements of §1026.17(a) apply to §1026.20(d) 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(d), they may decide among themselves which of them will provide the required disclosures.

2. *Loan modifications.* Under §1026.20(d), the interest rate adjustment disclosures are required only for the initial interest rate adjustment 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. The initial interest rate adjustment occurring pursuant to the modified loan contract, however, is subject to the requirements of §1026.20(d).

3. *Timing and form of initial rate adjustment.* The requirement that §1026.20(d) disclosures be provided in writing, separate and distinct from all other correspondence, means that the initial ARM interest rate adjustment notice must be provided to consumers as a separate document but may, in the case of mailing the disclosure, be in the same envelope with other material and, in the case of emailing the disclosure, be a separate attachment from other attachments in the same email. The requirement that the disclosures be provided to consumers between 210 and 240 days ''before the first payment at the adjusted level is due'' means the creditor, assignee, or servicer must deliver the notice or place it in the mail between 210 and 240 days prior to the due date, excluding any grace or courtesy periods, of the first payment calculated using the adjusted interest rate.

4. *Conversions.* When an open-end account converts to a closed-end adjustable-rate mortgage, the §1026.20(d) disclosure is not required until the implementation of the initial interest rate adjustment post-conversion. 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 §1026.20(d) disclosure would not be required until three years after the conversion when the interest rate adjusts for the first time.

Paragraph 20(d)(1)(i).

1. *In general.* An adjustable-rate mortgage, as defined in §1026.20(d)(1)(i), is a variable-rate transaction as that term is used in subpart C, except as distinguished by comment §1026.20(d)(1)(ii)–2. The requirements of this section are not limited to transactions financing the initial acquisition of the consumer's principal dwelling.

Paragraph 20(d)(1)(ii).

1. *Short-term ARMs.* Under §1026.20(d)(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(d). 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.

2. *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(d):

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.

Paragraph 20(d)(2)(i).

1. *Date of the disclosure.* The date that must appear on the disclosure is the date the creditor, assignee, or servicer generates the notice to be provided to the consumer.

Paragraph 20(d)(2)(iii)(A).

1. *Current and new interest rates.* The current interest rate is the interest rate that applies on the date of the disclosure. The new interest rate is the interest rate used to calculate the new payment and may be an estimate pursuant to §1026.20(d)(2). The new payment, if calculated from an estimated new interest rate, will also be an estimate. The ''new interest rate'' has the same meaning as the ''adjusted interest rate.'' The requirements of §1026.20(d)(2)(iii)(A) do not preclude creditors, assignees, and servicers from rounding the interest rate, pursuant to the requirements of the ARM contract.

Paragraph 20(d)(2)(v).

1. *Rate limits and foregone interest rate increases.* Interest rate carryover, or foregone interest rate increases, is the amount of interest rate increase foregone at the first ARM interest rate adjustment that, subject to rate caps, can be added to future interest rate adjustments to increase, or to offset decreases in, the rate determined by using the index or formula. The disclosures required by §1026.20(d)(2)(v) regarding foregone interest rate increases apply only to transactions permitting interest rate carryover.

Paragraph 20(d)(2)(vii).

1. *Amortization statement.* For ARMs requiring the payment of interest only, such as interest-only loans, §1026.20(d)(2)(vii) requires a statement that the new payment covers all of the interest but none of the principal, and therefore will not reduce the loan balance. For negatively-amortizing ARMs, §1026.20(d)(2)(vii) requires a statement that

the new payment covers only part of the interest and none of the principal, and therefore the unpaid interest will be added to the principal balance.

2. *Amortization payment.* Disclosure of the payment needed to amortize fully the outstanding balance at the new interest rate over the remainder of the loan term is required only when negative amortization occurs as a result of the interest rate adjustment. The disclosure is not required simply because a loan has interest-only or partially-amortizing payments. For example, an ARM with a five-year term and payments based on a longer amortization schedule, in which the final payment will equal the periodic payment plus the remaining unpaid balance, does not require disclosure of the payment necessary to amortize fully the loan in the remainder of the five-year term. A disclosure is also not required when the new payment is sufficient to prevent negative amortization but the final loan payment will be a different amount due to rounding.

Paragraph 20(d)(2)(viii).

1. *Prepayment penalty.* The creditor, assignee, or servicer of an ARM with no prepayment penalty, as that term is used in §1026.20(d)(2)(viii), may decide to exclude the prepayment section from the §1026.20(d) disclosure, retain the prepayment section and insert after the heading ''None'' or other indication that there is no prepayment penalty, or indicate there is no prepayment penalty in some other manner. *See also* comment to Appendices G and H—Open-End and Closed-End Model Forms and Clauses—1.vi.

Paragraph 20(d)(3)(i).

1. *Format of disclosures.* The requirements of §1026.20(d)(3)(i) and (iii) to provide the §1026.20(d) disclosures in the same order as, and with headings and format substantially similar to, the model and sample forms do not preclude creditors, assignees, and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the forms. For example, in the case of a consumer bankruptcy or under certain State laws, the creditor, assignee, or servicer may modify the forms to remove language regarding personal liability. A payment-option ARM, which is an ARM permitting consumers to choose among several different payment options for each billing period, is an example of a loan that may require modification of the §1026.20(d) model and sample forms. See appendix H–30(C) for an example of an allocation table for a payment-option loan.

20(e) Escrow account cancellation notice for certain mortgage transactions.

20(e)(1) Scope.

1. *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.''

2. *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.

3. *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.

20(e)(2) Content requirements.

1. *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.

Paragraph 20(e)(2)(i).

1. *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).

20(e)(3) Optional information.

1. *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).

20(e)(4) Form of disclosures.

1. *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.

2. *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).

3. *Modifications of disclosures.* The requirements of §1026.20(e)(4) to provide the §1026.20(e) disclosures with the headings, content, order, and format substantially similar to model form H–29 in appendix H to this part do not preclude creditors and servicers from modifying the disclosures to accommodate particular consumer circumstances or transactions not addressed by the form or from adjusting the statement required by §1026.20(e)(2)(ii)(A), concerning consequences if the consumer fails to pay property costs, to the circumstances of the particular consumer.

20(e)(5) Timing.

20(e)(5)(i) Cancellation upon consumer's request.

1. *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.

20(e)(5)(iii) Receipt of disclosure.

1. *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.

Section 1026.21—Treatment of Credit Balances

Paragraph 21(a)

1. *Credit balance.* A credit balance arises whenever the creditor receives or holds funds in an account in excess of the total balance due from the consumer on that account. A balance might result, for example, from the debtor's paying off a loan by transmitting funds in excess of the total balance owed on the account, or from the early payoff of a loan entitling the consumer to a rebate of insurance premiums and finance charges. However, §1026.21 does not determine whether the creditor in fact owes or holds sums for the consumer. For example, if a creditor has no obligation to rebate any portion of precomputed finance charges on prepayment, the consumer's early payoff would not create a credit balance with respect to those charges. Similarly, nothing in this provision interferes with any rights the creditor may have under the contract or under state law with respect to set-off, cross collateralization, or similar provisions.

2. *Total balance due.* The phrase *total balance due* refers to the total outstanding balance. Thus, this provision does not apply where the consumer has simply paid an amount in excess of the payment due for a given period.

3. *Timing of refund.* The creditor may also fulfill its obligation under this section by:

i. Refunding any credit balance to the consumer immediately.

ii. Refunding any credit balance prior to a written request from the consumer.

iii. Making a good faith effort to refund any credit balance before 6 months have passed. If that attempt is unsuccessful, the creditor need not try again to refund the credit balance at the end of the 6-month period.

Paragraph 21(b)

1. *Written requests—standing orders.* The creditor is not required to honor standing orders requesting refunds of any credit balance that may be created on the consumer's account.

Paragraph 21(c)

1. *Good faith effort to refund.* The creditor must take positive steps to return any credit balance that has remained in the account for over 6 months. This includes, if necessary, attempts to trace the consumer through the consumer's last known address or telephone number, or both.

2. *Good faith effort unsuccessful.* Section 1026.21 imposes no further duties on the creditor if a good faith effort to return the balance is unsuccessful. The ultimate disposition of the credit balance (or any credit balance of $1 or less) is to be determined under other applicable law.

Section 1026.22—Determination of Annual Percentage Rate

22(a) Accuracy of Annual Percentage Rate

Paragraph 22(a)(1)

1. *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.

2. *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.

3. *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.

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

5. *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; §1026.22(a)(1) 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.

Paragraph 22(a)(2)

1. *Regular transactions.* The annual percentage rate for a regular transaction is considered accurate if it varies in either direction by not more than ⅛ of 1 percentage point from the actual annual percentage rate. For example, when the exact annual percentage rate is determined to be 101/8%, a disclosed annual percentage rate from 10% to 10 ¼%, or the decimal equivalent, is deemed to comply with the regulation.

Paragraph 22(a)(3)

1. *Irregular transactions.* The annual percentage rate for an irregular transaction is considered accurate if it varies in either direction by not more than ¼ of 1 percentage point 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 ¼ of 1 percentage point 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.

22(a)(4) Mortgage Loans

1. *Example.* If a creditor improperly omits a $75 fee from the finance charge on a regular transaction, the understated finance charge is considered accurate under §1026.18(d)(1) or §1026.38(o)(2), as applicable, and the annual percentage rate corresponding to that understated finance charge also is considered accurate even if it falls outside the tolerance of ⅛ of 1 percentage point provided under §1026.22(a)(2). Because a $75 error was made, an annual percentage rate corresponding to a $100 understatement of the finance charge would not be considered accurate.

22(a)(5) Additional Tolerance for Mortgage Loans

1. *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 in §1026.22(a)(4). To illustrate: in an irregular transaction subject to a ¼ of 1 percentage point 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 under §1026.22(a)(4), a disclosed APR of 8.65 percent is within the tolerance in §1026.22(a)(5). In this example of an understated finance charge, a disclosed annual percentage rate below 8.50 or above 9.25 percent will not be considered accurate.

22(b) Computation Tools

Paragraph 22(b)(1)

1. *Bureau tables.* Volumes I and II of the Bureau's Annual Percentage Rate Tables provide a means of calculating annual percentage rates for regular and irregular transactions, respectively. An annual percentage rate computed in accordance with the instructions in the tables is deemed to comply with the regulation, even where use of the tables produces a rate that falls outside the general standard of accuracy. To illustrate:Volume I may be used for single advance transactions with completely regular payment schedules or with payment schedules that are regular except for an odd first payment, odd first period or odd final payment. When used for a transaction with a large final balloon payment, Volume I may produce a rate that is considerably higher than the exact rate produced using a computer program based directly on appendix J. However, the Volume I rate—produced using certain adjustments in that volume—is considered to be in compliance.

Paragraph 22(b)(2)

1. *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 ⅛ or ¼ of 1 percentage point, as applicable, of the precise actuarial or U.S. Rule annual percentage rate.

22(c) Single Add-On Rate Transactions

1. *General rule.* Creditors applying a single add-on rate to all transactions up to 60 months in length may disclose the same annual percentage rate for all those transactions, although the actual annual percentage rate varies according to the length of the transaction. Creditors utilizing this provision must show the highest of those rates. For example, an add-on rate of 10 percent converted to an annual percentage rate produces the following actual annual percentage rates at various maturities: At 3 months, 14.94 percent; at 21 months, 18.18 percent; and at 60 months, 17.27 percent. The creditor must disclose an annual percentage rate of 18.18 percent (the highest annual percentage rate) for any transaction up to 5 years, even though that rate is precise only for a transaction of 21 months.

22(d) Certain Transactions Involving Ranges of Balances

1. *General rule.* Creditors applying a fixed dollar finance charge to all balances within a specified range of balances may understate the annual percentage rate by up to 8 percent of that rate, by disclosing for all those balances the annual percentage rate computed on the median balance within that range. For example: If a finance charge of $9 applies to all balances between $91 and $100, an annual percentage rate of 10 percent (the rate on the median balance) may be disclosed as the annual percentage rate for all balances, even though a $9 finance charge applied to the lowest balance ($91) would actually produce an annual percentage rate of 10.7 percent.

Section 1026.23—Right of Rescission

1. *Transactions not covered.* Credit extensions that are not subject to the regulation are not covered by §1026.23 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.

23(a) Consumer's Right to Rescind

Paragraph 23(a)(1)

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

A. A security interest that is acquired by a contractor who is also extending the credit in the transaction.

B. A mechanic's or materialman'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.

ii. 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. A mechanic's or materialman'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.

B. All security interests that may arise in connection with the credit transaction are validly waived.

C. 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.

iii. 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 under §1026.18(m), it may still give rise to the right of rescission.

2. *Consumer.* To be a consumer within the meaning of §1026.2, 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.

3. *Principal dwelling.* A consumer can only have one principal dwelling at a time. (But see comment 23(a)(1)–4.) 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, as defined in §1026.2, includes structures that are classified as personalty 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.

4. *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.

5. *Addition of a security interest.* Under §1026.23(a), 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 under §1026.3(b). The right of rescission applies only to the added security interest, however, and not to the original obligation. In those situations, only the §1026.23(b) notice need be delivered, not new material disclosures; the rescission period will begin to run from the delivery of the notice.

Paragraph 23(a)(2)

1. *Consumer's exercise of right.* The consumer must exercise the right of rescission in writing but not necessarily on the notice supplied under §1026.23(b). Whatever the means of sending the notification of rescission—mail, telegram or other written means—the time period for the creditor's performance under §1026.23(d)(2) 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 notice provided to the consumer under §1026.23(b). Where the creditor fails to provide the consumer with a designated address for sending the notification of rescission, delivering notification to the person or address to which the consumer has been directed to send, payments constitutes delivery to the creditor or assignee. State law determines whether delivery of the notification to a third party other than the person to whom payments are made is delivery to the creditor or assignee, in the case where the creditor fails to designate an address for sending the notification of rescission.

Paragraph 23(a)(3)

1. *Rescission period.* i. The period within which the consumer may exercise the right to rescind runs for 3 business days from the last of 3 events:

A. Consummation of the transaction.

B. Delivery of all material disclosures.

C. Delivery to the consumer of the required rescission notice.

ii. For example:

A. 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—that is, Tuesday, June 5.

B. 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.

2. *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.

3. *Unexpired right of rescission.* i. 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:

A. The expiration of three years after consummation of the transaction.

B. Transfer of all the consumer's interest in the property.

C. 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.

ii. Transfer of all the consumers' 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.

Paragraph 23(a)(4)

1. *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.

Paragraph 23(b)

23(b)(1) Notice of Right To Rescind

1. *Who receives notice.* Each consumer entitled to rescind must be given two copies of the rescission notice and 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 (one copy to each if the notice is provided in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act) and one copy of the disclosures.

2. *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.

3. *Content.* The notice must include all of the information outlined in Section 1026.23(b)(1)(i) through (v). The requirement in §1026.23(b) 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:

i. A description of the property subject to the security interest.

ii. A statement that joint owners may have the right to rescind and that a rescission by one is effective for all.

iii. The name and address of an agent of the creditor to receive notice of rescission.

4. *Time of providing notice.* The notice required by §1026.23(b) 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 3-business day rescission period will run from May 15.

23(c) Delay of Creditor's Performance

1. *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:

i. Disburse loan proceeds to the consumer.

ii. Begin performing services for the consumer.

iii. Deliver materials to the consumer.

2. *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.

3. *Actions during the delay period.* Section 1026.23(c) 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:

i. Prepare the loan check.

ii. Perfect the security interest.

iii. Prepare to discount or assign the contract to a third party.

iv. Accrue finance charges during the delay period.

4. *Delay beyond rescission period.* i. 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:

A. Waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice.

B. Obtaining a written statement from the consumer that the right has not been exercised.

ii. 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.

23(d) Effects of Rescission

Paragraph 23(d)(1)

1. *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. Under §1026.23(d)(2), however, the creditor must take any action necessary to reflect the fact that the security interest no longer exists.

Paragraph 23(d)(2)

1. *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.

2. *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 under §1026.23(d)(3).

3. *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.

Paragraph 23(d)(3)

1. *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.

2. *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.

Paragraph 23(d)(4)

1. *Modifications.* The procedures outlined in §1026.23(d)(2) and (3) 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. The sequence of procedures under §1026.23(d)(2) and (3), or a court's modification of those procedures under §1026.23(d)(4), does not affect a consumer's substantive right to rescind and to have the loan amount adjusted accordingly. Where the consumer's right to rescind is contested by the creditor, a court would normally determine whether the consumer has a right to rescind and determine the amounts owed before establishing the procedures for the parties to tender any money or property.

23(e) Consumer's Waiver of Right to Rescind

1. *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.

2. *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.

23(f) Exempt Transactions

1. *Residential mortgage transaction.* Any transaction to construct or acquire a principal dwelling, whether considered real or personal property, is exempt. (See the commentary to §1026.23(a).) 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.

2. *Lien status.* The lien status of the mortgage is irrelevant for purposes of the exemption in §1026.23(f)(1); 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.

3. *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.

4. *New advances.* The exemption in §1026.23(f)(2) 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 in §1026.23(f)(2). 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 §1026.4(c)(7) 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.) To illustrate, if the sum of the outstanding principal balance plus the earned unpaid finance charge is $50,000 and the new amount financed is $51,000, then the refinancing would be exempt if the extra $1,000 is attributed solely to costs financed in connection with the refinancing that are not finance charges. Of course, if new advances of money are made (for example, to pay for home improvements) and the consumer exercises the right of rescission, the consumer must be placed in the same position as he or she was in prior to entering into the new credit transaction. Thus, all amounts of money (which would include all the costs of the refinancing) already paid by the consumer to the creditor or to a third party as part of the refinancing would have to be refunded to the consumer. (See the commentary to §1026.23(d)(2) for a discussion of refunds to consumers.) A model rescission notice applicable to transactions involving new advances appears in appendix H. The general rescission notice (model form H–8) is the appropriate form for use by creditors not considered original creditors in refinancing transactions.

5. *State creditors.* Cities and other political subdivisions of states acting as creditors are not exempted from this section.

6. *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 §1026.17(c)(6), 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.7. *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.

8. *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 in the commentary to §1026.17(b), 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. Rescission rights under §1026.15 are unaffected.

23(g) Tolerances for Accuracy

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

23(g)(2) One Percent Tolerance

1. *New advance.* The phrase ''new advance'' has the same meaning as in comment 23(f)–4.

23(h) Special Rules for Foreclosures

1. *Rescission.* Section 1026.23(h) applies only to transactions that are subject to rescission under §1026.23(a)(1).

Paragraph 23(h)(1)(i)

1. *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 §1026.23(h)(2) applies.

23(h)(2) Tolerance for Disclosures

1. *General.* The tolerance for disclosure of the finance charge is based on the accuracy of the total finance charge rather than its component charges. For transactions subject to §1026.19(e) and (f), the tolerance for disclosure of the total of payments is based on the accuracy of the total of payments, taken as a whole, rather than its component charges.

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

Section 1026.24—Advertising

24(a) Actually Available Terms

1. *General rule.* To the extent that an advertisement mentions specific credit terms, it may state only those terms that the creditor is actually prepared to offer. For example, a creditor may not advertise a very low annual percentage rate that will not in fact be available at any time. This provision is not intended to inhibit the promotion of new credit programs, but to bar the advertising of terms that are not and will not be available. For example, a creditor may advertise terms that will be offered for only a limited period, or terms that will become available at a future date.

24(b) Clear and Conspicuous Standard

1. *Clear and conspicuous standard—general.* This section is subject to the general ''clear and conspicuous'' standard for this subpart, *see* §1026.17(a)(1), but prescribes no specific rules for the format of the necessary disclosures, other than the format requirements related to the advertisement of rates and payments as described in comment 24(b)–2 below. The credit terms need not be printed in a certain type size nor need they appear in any particular place in the advertisement. For example, a merchandise tag that is an advertisement under the regulation complies with this section if the necessary credit terms are on both sides of the tag, so long as each side is accessible.

2. *Clear and conspicuous standard—rates and payments in advertisements for credit secured by a dwelling.* For purposes of §1026.24(f), a clear and conspicuous disclosure means that the required information in §§1026.24(f)(2)(i) and 1026.24(f)(3)(i)(A) and (B) is disclosed with equal prominence and in close proximity to the advertised rates or payments triggering the required disclosures, and that the required information in §1026.24(f)(3)(i)(C) is disclosed prominently and in close proximity to the advertised rates or payments triggering the required disclosures. If the required information in §§1026.24(f)(2)(i) and 1026.24(f)(3)(i)(A) and (B) is the same type size as the advertised rates or payments triggering the required disclosures, the disclosures are deemed to be equally prominent. The information in §1026.24(f)(3)(i)(C) must be disclosed prominently, but need not be disclosed with equal prominence or be the same type size as the payments triggering the required disclosures. If the required information in §§1026.24(f)(2)(i) and 1026.24(f)(3)(i) is located immediately next to or directly above or below the advertised rates or payments triggering the required disclosures, without any intervening text or graphical displays, the disclosures are deemed to be in close proximity. Notwithstanding the above, for electronic advertisements that disclose rates or payments, compliance with the requirements of §1026.24(e) is deemed to satisfy the clear and conspicuous standard.

3. *Clear and conspicuous standard—Internet advertisements for credit secured by a dwelling.* For purposes of this section, a clear and conspicuous disclosure for visual text advertisements on the Internet for credit secured by a dwelling means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or

other devices and comply with all other requirements for clear and conspicuous disclosures under §1026.24. *See also* comment 24(e)–4.

4. *Clear and conspicuous standard—televised advertisements for credit secured by a dwelling.* For purposes of this section, including alternative disclosures as provided for by §1026.24(g), a clear and conspicuous disclosure in the context of visual text advertisements on television for credit secured by a dwelling means that the required disclosures are not obscured by techniques such as graphical displays, shading, coloration, or other devices, are displayed in a manner that allows a consumer to read the information required to be disclosed, and comply with all other requirements for clear and conspicuous disclosures under §1026.24. For example, very fine print in a television advertisement would not meet the clear and conspicuous standard if consumers cannot see and read the information required to be disclosed.

5. *Clear and conspicuous standard—oral advertisements for credit secured by a dwelling.* For purposes of this section, including alternative disclosures as provided for by §1026.24(g), a clear and conspicuous disclosure in the context of an oral advertisement for credit secured by a dwelling, whether by radio, television, or other medium, means that the required disclosures are given at a speed and volume sufficient for a consumer to hear and comprehend them. For example, information stated very rapidly at a low volume in a radio or television advertisement would not meet the clear and conspicuous standard if consumers cannot hear and comprehend the information required to be disclosed.

24(c) Advertisement of Rate of Finance Charge

1. *Annual percentage rate.* Advertised rates must be stated in terms of an *annual percentage rate*, as defined in §1026.22. Even though state or local law permits the use of add-on, discount, time-price differential, or other methods of stating rates, advertisements must state them as annual percentage rates. Unlike the transactional disclosure of an annual percentage rate under §1026.18(e), the advertised annual percentage rate need not include a descriptive explanation of the term and may be expressed using the abbreviation *APR*. The advertisement must state that the rate is subject to increase after consummation if that is the case, but the advertisement need not describe the rate increase, its limits, or how it would affect the payment schedule. As under §1026.18(f), relating to disclosure of a variable rate, the rate increase disclosure requirement in this provision does not apply to any rate increase due to delinquency (including late payment), default, acceleration, assumption, or transfer of collateral.

2. *Simple or periodic rates.* The advertisement may not simultaneously state any other rate, except that a simple annual rate or periodic rate applicable to an unpaid balance may appear along with (but not more conspicuously than) the annual percentage rate. An advertisement for credit secured by a dwelling may not state a periodic rate, other than a simple annual rate, that is applied to an unpaid balance. For example, in an advertisement for credit secured by a dwelling, a simple annual interest rate may be shown in the same type size as the annual percentage rate for the advertised credit, subject to the requirements of §1026.24(f). A simple annual rate or periodic rate that is applied to an unpaid balance is the rate at which interest is accruing; those terms do not include a rate lower than the rate at which interest is accruing, such as an effective rate, payment rate, or qualifying rate.

3. *Buydowns.* When a third party (such as a seller) or a creditor wishes to promote the availability of reduced interest rates (consumer or seller buydowns), the advertised annual percentage rate must be determined in accordance with the commentary to §1026.17(c) regarding the basis of transactional disclosures for buydowns. The seller or creditor may advertise the reduced simple interest rate, provided the advertisement shows the limited term to which the reduced rate applies and states the simple interest rate applicable to the balance of the term. The advertisement may also show the effect of the buydown agreement on the payment schedule for the buydown period, but this will trigger the additional disclosures under §1026.24(d)(2).

4. *Discounted variable-rate transactions.* The advertised annual percentage rate for discounted variable-rate transactions must be determined in accordance with comment 17(c)(1)–10 regarding the basis of transactional disclosures for such financing.

i. A creditor or seller may promote the availability of the initial rate reduction in such transactions by advertising the reduced simple annual rate, provided the advertisement shows with equal prominence and in close proximity the limited term to which the reduced rate applies and the annual percentage rate that will apply after the term of the initial rate reduction expires. *See* §1026.24(f).

ii. Limits or caps on periodic rate or payment adjustments need not be stated. To illustrate using the second example in comment 17(c)(1)–10, the fact that the rate is presumed to be 11 percent in the second year and 12 percent for the remaining 28 years need not be included in the advertisement.

iii. The advertisement may also show the effect of the discount on the payment schedule for the discount period, but this will trigger the additional disclosures under §1026.24(d).

24(d) Advertisement of Terms That Require Additional Disclosures

1. *General rule.* Under §1026.24(d)(1), whenever certain triggering terms appear in credit advertisements, the additional credit terms enumerated in §1026.24(d)(2) must also appear. These provisions apply even if the triggering term is not stated explicitly but may be readily determined from the advertisement. For example, an advertisement may state ''80 percent financing available,'' which is in fact indicating that a 20 percent downpayment is required.

24(d)(1) Triggering Terms

1. *Downpayment.* i. The dollar amount of a downpayment or a statement of the downpayment as a percentage of the price requires further information. By virtue of the definition of *downpayment* in §1026.2, this triggering term is limited to credit sale transactions. It includes such statements as:

A. Only 5% down.

B. As low as $100 down.

C. Total move-in costs of $800.

ii. This provision applies only if a downpayment is actually required; statements such as *no downpayment* or *no trade-in required* do not trigger the additional disclosures under this paragraph.

2. *Payment period.* i. The number of payments required or the total period of repayment includes such statements as:

A. 48-month payment terms.

B. 30-year mortgage.

C. Repayment in as many as 36 monthly installments.

ii. But it does not include such statements as ''pay weekly,'' ''monthly payment terms arranged,'' or ''take years to repay,'' since these statements do not indicate a time period over which a loan may be financed.

3. *Payment amount.* i. The dollar amount of any payment includes statements such as:

A. ''Payable in installments of $103.''

B. ''$25 weekly.''

C. ''$500,000 loan for just $1,650 per month.''

D. ''$1,200 balance payable in 10 equal installments.''

ii. In the last example, the amount of each payment is readily determinable, even though not explicitly stated. But statements such as ''monthly payments to suit your needs'' or ''regular *monthly* payments'' are not deemed to be statements of the amount of any payment.

4. *Finance charge.* i. The dollar amount of the finance charge or any portion of it includes statements such as:

A. ''$500 total cost of credit.''

B. ''$2 monthly carrying charge.''

C. ''$50,000 mortgages, 2 points to the borrower.''

ii. In the last example, the $1,000 prepaid finance charge can be readily determined from the information given. Statements of the annual percentage rate or statements that there is no particular charge for credit (such as ''no closing costs'') are not triggering terms under this paragraph.

24(d)(2) Additional Terms

1. *Disclosure of downpayment.* The total downpayment as a dollar amount or percentage must be shown, but the word ''downpayment'' need not be used in making this disclosure. For example, ''10% cash required from buyer'' or ''credit terms require minimum $100 trade-in'' would suffice.

2. *Disclosure of repayment terms.* The phrase ''terms of repayment'' generally has the same meaning as the ''payment schedule'' required to be disclosed under §1026.18(g), the interest rate and payment summary table required to be disclosed pursuant to §1026.18(s), or the projected payments table required to be disclosed pursuant to §§1026.37(c) and 1026.38(c), as applicable. Section 1026.24(d)(2)(ii) provides flexibility to creditors in making this disclosure for advertising purposes. Repayment terms may be expressed in a variety of ways in addition to an exact repayment schedule; this is particularly true for advertisements that do not contemplate a single specific transaction. Repayment terms, however, must reflect the consumer's repayment obligations over the full term of the loan, including any balloon payment, *see* comment 24(d)(2)–3, not just the repayment terms that will apply for a limited period of time. For example:

i. A creditor may use a unit-cost approach in making the required disclosure, such as ''48 monthly payments of $27.83 per $1,000 borrowed.''

ii. In an advertisement for credit secured by a dwelling, when any series of payments varies because of the inclusion of mortgage insurance premiums, a creditor may state the number and timing of payments, the fact that payments do not include amounts for mortgage insurance premiums, and that the actual payment obligation will be higher.

iii. In an advertisement for credit secured by a dwelling, when one series of monthly payments will apply for a limited period of time followed by a series of higher monthly payments for the remaining term of the loan, the advertisement must state the number and time period of each series of payments, and the amounts of each of those payments. For this purpose, the creditor must assume that the consumer makes the lower series of payments for the maximum allowable period of time.

3. *Balloon payment; disclosure of repayment terms.* In some transactions, a balloon payment will occur when the consumer only makes the minimum payments specified in an advertisement. A balloon payment results if paying the minimum payments does not fully amortize the outstanding balance by a specified date or time, usually the end of the term of the loan, and the consumer must repay the entire outstanding balance at such time. If a balloon payment will occur when the consumer only makes the minimum payments specified in an advertisement, the advertisement must state with equal prominence and in close proximity to the minimum payment statement the amount and timing of the balloon payment that will result if the consumer makes only the minimum payments for the maximum period of time that the consumer is permitted to make such payments.

4. *Annual percentage rate.* The advertised annual percentage rate may be expressed using the abbreviation "APR." The advertisement must also state, if applicable, that the annual percentage rate is subject to increase after consummation.

5. *Use of examples.* A creditor may use illustrative credit transactions to make the necessary disclosures under §1026.24(d)(2). That is, where a range of possible combinations of credit terms is offered, the advertisement may use examples of typical transactions, so long as each example contains all of the applicable terms required by §1026.24(d). The examples must be labeled as such and must reflect representative credit terms made available by the creditor to present and prospective customers.

24(e) Catalogs or Other Multiple-Page Advertisements; Electronic Advertisements

1. *Definition.* The multiple-page advertisements to which this section refers are advertisements consisting of a series of sequentially numbered pages—for example, a supplement to a newspaper. A mailing consisting of several separate flyers or pieces of promotional material in a single envelope does not constitute a single multiple-page advertisement for purposes of §1026.24(e).

2. *General.* Section 1026.24(e) permits creditors to put credit information together in one place in a catalog or other multiple-page advertisement or in an electronic advertisement (such as an advertisement appearing on an Internet Web site). The rule applies only if the advertisement contains one or more of the triggering terms from §1026.24(d)(1). A list of different annual percentage rates applicable to different balances, for example, does not trigger further disclosures under §1026.24(d)(2) and so is not covered by §1026.24(e).

3. *Representative examples.* The table or schedule must state all the necessary information for a representative sampling of amounts of credit. This must reflect amounts of credit the creditor actually offers, up to and including the higher-priced items. This does not mean that the chart must make the disclosures for the single most expensive item the seller offers, but only that the chart cannot be limited to information about less expensive sales when the seller commonly offers a distinct level of more expensive goods or services. The range of transactions shown in the table or schedule in a particular catalog or multiple-page advertisement need not exceed the range of transactions actually offered in that advertisement.

4. *Electronic advertisement.* If an electronic advertisement (such as an advertisement appearing on an Internet Web site) contains the table or schedule permitted under §1026.24(e)(1), any statement of terms set forth in §1026.24(d)(1) appearing anywhere else in the advertisement must clearly direct the consumer to the location where the table or schedule begins. For example, a term triggering additional disclosures may be accompanied by a link that directly takes the consumer to the additional information.

24(f) Disclosure of Rates and Payments in Advertisements for Credit Secured by a Dwelling

1. *Applicability.* The requirements of §1026.24(f)(2) apply to advertisements for loans where more than one simple annual rate of interest will apply. The requirements of §1026.24(f)(3)(i)(A) require a clear and conspicuous disclosure of each payment that will apply over the term of the loan. In determining whether a payment will apply when the consumer may choose to make a series of lower monthly payments that will apply for a limited period of time, the creditor must assume that the consumer makes the series of lower payments for the maximum allowable period of time. *See* comment 24(d)(2)–2.iii. However, for purposes of §1026.24(f), the creditor may, but need not, assume that specific events which trigger changes to the simple annual rate of interest or to the applicable payments will occur. For example:

i. *Fixed-rate conversion loans.* If a loan program permits consumers to convert their variable-rate loans to fixed rate loans, the creditor need not assume that the fixed-rate conversion option, by itself, means that more than one simple annual rate of interest will apply to the loan under §1026.24(f)(2) and need not disclose as a separate payment under §1026.24(f)(3)(i)(A) the payment that would apply if the consumer exercised the fixed-rate conversion option.

ii. *Preferred-rate loans.* Some loans contain a preferred-rate provision, where the rate will increase upon the occurrence of some event, such as the consumer-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor or the consumer revoking an election to make automated payments. A creditor need not assume that the preferred-rate provision, by itself, means that more than one simple annual rate of interest will apply to the loan under §1026.24(f)(2) and the payments that would apply upon occurrence of the event that triggers the rate increase need not be disclosed as a separate payment under §1026.24(f)(3)(i)(A).

iii. *Rate reductions*. Some loans contain a provision where the rate will decrease upon the occurrence of some event, such as if the consumer makes a series of payments on time. A creditor need not assume that the rate reduction provision, by itself, means that more than one simple annual rate of interest will apply to the loan under §1026.24(f)(2) and need not disclose the payments that would apply upon occurrence of the event that triggers the rate reduction as a separate payment under §1026.24(f)(3)(i)(A).

2. *Equal prominence, close proximity*. Information required to be disclosed under §§1026.24(f)(2)(i) and 1026.24(f)(3)(i) that is immediately next to or directly above or below the simple annual rate or payment amount (but not in a footnote) is deemed to be closely proximate to the listing. Information required to be disclosed under §§1026.24(f)(2)(i) and 1026.24(f)(3)(i)(A) and (B) that is in the same type size as the simple annual rate or payment amount is deemed to be equally prominent.

3. *Clear and conspicuous standard*. For more information about the applicable clear and conspicuous standard, see comment 24(b)–2.

4. *Comparisons in advertisements*. When making any comparison in an advertisement between actual or hypothetical credit payments or rates and the payments or rates available under the advertised product, the advertisement must state all applicable payments or rates for the advertised product and the time periods for which those payments or rates will apply, as required by this section.

5. *Application to variable-rate transactions—disclosure of rates*. In advertisements for variable-rate transactions, if a simple annual rate that applies at consummation is not based on the index and margin that will be used to make subsequent rate adjustments over the term of the loan, the requirements of §1026.24(f)(2)(i) apply.

6. *Reasonably current index and margin*. For the purposes of this section, an index and margin is considered reasonably current if:

i. For direct mail advertisements, it was in effect within 60 days before mailing;

ii. For advertisements in electronic form it was in effect within 30 days before the advertisement is sent to a consumer's email address, or in the case of an advertisement made on an Internet Web site, when viewed by the public; or

iii. For printed advertisements made available to the general public, including ones contained in a catalog, magazine, or other generally available publication, it was in effect within 30 days before printing.

24(f)(3) Disclosure of Payments

1. *Amounts and time periods of payments*. Section 1026.24(f)(3)(i) requires disclosure of the amounts and time periods of all payments that will apply over the term of the loan. This section may require disclosure of several payment amounts, including any balloon payment. For example, if an advertisement for credit secured by a dwelling offers $300,000 of credit with a 30-year loan term for a payment of $600 per month for the first six months, increasing to $1,500 per month after month six, followed by a balloon payment of $30,000 at the end of the loan term, the advertisement must disclose the amount and time periods of each of the two monthly payment streams, as well as the amount and timing of the balloon payment, with equal prominence and in close proximity to each other. However, if the final scheduled payment of a fully amortizing loan is not greater than two times the amount of any other regularly scheduled payment, the final payment need not be disclosed.

2. *Application to variable-rate transactions—disclosure of payments*. In advertisements for variable-rate transactions, if the payment that applies at consummation is not based on the index and margin that will be used to make subsequent payment adjustments over the term of the loan, the requirements of §1026.24(f)(3)(i) apply.

24(g) Alternative Disclosures—Television or Radio Advertisements

1. *Multi-purpose telephone number*. When an advertised telephone number provides a recording, disclosures should be provided early in the sequence to ensure that the consumer receives the required disclosures. For example, in providing several options—such as providing directions to the advertiser's place of business—the option allowing the consumer to request disclosures should be provided early in the telephone message to ensure that the option to request disclosures is not obscured by other information.

2. *Statement accompanying telephone number*. Language must accompany a telephone number indicating that disclosures are available by calling the telephone number, such as "call 1–(800) 000–0000 for details about credit costs and terms."

24(i) Prohibited Acts or Practices in Advertisements for Credit Secured by a Dwelling

1. *Comparisons in advertisements.* The requirements of §1026.24(i)(2) apply to all advertisements for credit secured by a dwelling, including radio and television advertisements. A comparison includes a claim about the amount a consumer may save under the advertised product. For example, a statement such as ''save $300 per month on a $300,000 loan'' constitutes an implied comparison between the advertised product's payment and a consumer's current payment.

2. *Misrepresentations about government endorsement.* A statement that the Federal Community Reinvestment Act entitles the consumer to refinance his or her mortgage at the low rate offered in the advertisement is prohibited because it conveys a misleading impression that the advertised product is endorsed or sponsored by the Federal government.

3. *Misleading claims of debt elimination.* The prohibition against misleading claims of debt elimination or waiver or forgiveness does not apply to legitimate statements that the advertised product may reduce debt payments, consolidate debts, or shorten the term of the debt. Examples of misleading claims of debt elimination or waiver or forgiveness of loan terms with, or obligations to, another creditor of debt include: ''Wipe-Out Personal Debts!'', ''New DEBT–FREE Payment'', ''Set yourself free; get out of debt today'', ''Refinance today and wipe your debt clean!'', ''Get yourself out of debt * * * Forever!'', and ''Pre-payment Penalty Waiver.''

SUBPART D—MISCELLANEOUS

Section 1026.25—Record Retention

25(a) General Rule

1. *Evidence of required actions.* The creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, for example, evidence that the creditor properly handled adverse credit reports in connection with amounts subject to a billing dispute under §1026.13, and properly handled the refunding of credit balances under §§1026.11 and 1026.21.

2. *Methods of retaining evidence.* Adequate evidence of compliance does not necessarily mean actual paper copies of disclosure statements or other business records. The evidence may be retained by any method that reproduces records accurately (including computer programs). Unless otherwise required, the creditor need retain only enough information to reconstruct the required disclosures or other records. Thus, for example, the creditor need not retain each open-end periodic statement, so long as the specific information on each statement can be retrieved.

3. *Certain variable-rate transactions.* In variable-rate transactions that are subject to the disclosure requirements of §1026.19(b), written procedures for compliance with those requirements as well as a sample disclosure form for each loan program represent adequate evidence of compliance. (See comment 25(a)–2 pertaining to permissible methods of retaining the required disclosures.)

4. *Home equity plans.* In home equity plans that are subject to the requirements of §1026.40, written procedures for compliance with those requirements as well as a sample disclosure form and contract for each home equity program represent adequate evidence of compliance. (See comment 25(a)–2 pertaining to permissible methods of retaining the required disclosures.)

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

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

1. *Evidence of required actions.* The creditor must retain evidence that it performed the required actions as well as made the required disclosures. This includes, for example, evidence that the creditor properly differentiated between affiliated and independent third party settlement service providers for determining good faith under §1026.19(e)(3); evidence that the creditor properly documented the reason for revisions under §1026.19(e)(3)(iv); or evidence that the creditor properly calculated average cost under §1026.19(f)(3)(ii).

2. *Mortgage brokers.* See §1026.19(e)(1)(ii)(B) for the responsibilities of mortgage brokers to comply with the requirements of §1026.25(c).

25(c)(2) Records Related to Requirements for Loan Originator Compensation

1. *Scope of records of loan originator compensation.* Section 1026.25(c)(2)(i) requires a creditor to maintain records sufficient to evidence all compensation it pays to a loan originator, as well as the compensation agreements that govern those payments, for three years after the date of the payments. Section 1026.25(c)(2)(ii) requires that a loan originator organization maintain records sufficient to evidence all compensation it receives from a creditor, a consumer, or another person and all compensation it pays to any individual loan originators, as well as the compensation agreements that govern those payments or receipts, for three years after the date of the receipts or payments.

i. *Records sufficient to evidence payment and receipt of compensation.* Records are sufficient to evidence payment and receipt of compensation if they demonstrate the following facts: The nature and amount of the compensation; that the compensation was paid, and by whom; that the compensation was received, and by whom; and when the payment and receipt of compensation occurred. The compensation agreements themselves are to be retained in all circumstances consistent with §1026.25(c)(2)(i). The additional records that are sufficient necessarily will vary on a case-by-case basis depending on the facts and circumstances, particularly with regard to the nature of the compensation. For example, if the compensation is in the form of a salary, records to be retained might include copies of required filings under the Internal Revenue Code that demonstrate the amount of the salary. If the compensation is in the form of a contribution to or a benefit under a designated tax-advantaged plan, records to be maintained might include copies of required filings under the Internal Revenue Code or other applicable Federal law relating to the plan, copies of the plan and amendments thereto in which individual loan originators participate and the names of any loan originators covered by the plan, or determination letters from the Internal Revenue Service regarding the plan. If the compensation is in the nature of a commission or bonus, records to be retained might include a settlement agent ''flow of funds'' worksheet or other written record or a creditor closing instructions letter directing disbursement of fees at consummation. Where a loan originator is a mortgage broker, a disclosure of compensation or broker agreement required by applicable State law that recites the broker's total compensation for a transaction is a record of the amount actually paid to the loan originator in connection with the transaction, unless actual compensation deviates from the amount in the disclosure or agreement. Where compensation has been decreased to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA (or omitted from that disclosure), records to be maintained are those documenting the decrease in compensation and reasons for it.

ii. *Compensation agreement*. For purposes of §1026.25(c)(2), a compensation agreement includes any agreement, whether oral, written, or based on a course of conduct that establishes a compensation arrangement between the parties (e.g., a brokerage agreement between a creditor and a mortgage broker or provisions of employment contracts between a creditor and an individual loan originator employee addressing payment of compensation). Where a compensation agreement is oral or based on a course of conduct and cannot itself be maintained, the records to be maintained are those, if any, evidencing the existence or terms of the oral or course of conduct compensation agreement. Creditors and loan originators are free to specify what transactions are governed by a particular compensation agreement as they see fit. For example, they may provide, by the terms of the agreement, that the agreement governs compensation payable on transactions consummated on or after some future effective date (in which case, a prior agreement governs transactions consummated in the meantime). For purposes of applying the record retention requirement to transaction-specific commissions, the relevant compensation agreement for a given transaction is the agreement pursuant to which compensation for that transaction is determined.

iii. *Three-year retention period*. The requirements in §1026.25(c)(2)(i) and (ii) that the records be retained for three years after the date of receipt or payment, as applicable, means that the records are retained for three years after each receipt or payment, as applicable, even if multiple compensation payments relate to a single transaction. For example, if a loan originator organization pays an individual loan originator a commission consisting of two separate payments of $1,000 each on June 5 and July 7, 2014, then the loan originator organization is required to retain records sufficient to evidence the two payments through June 4, 2017, and July 6, 2017, respectively.

2. *Example*. An example of the application of §1026.25(c)(2) to a loan originator organization is as follows: Assume a loan originator organization originates only transactions that are not subject to §1026.36(d)(2), thus all of its origination compensation is paid exclusively by creditors that fund its originations. Further assume that the loan originator organization pays its individual loan originator employees commissions and annual bonuses. The loan originator organization must retain a copy of the agreement with any creditor that pays the loan originator organization compensation for originating consumer credit transactions subject to §1026.36 and documentation evidencing the specific payment it receives from the creditor for each transaction originated. In addition, the loan originator organization must retain copies of the agreements with its individual loan originator employees governing their commissions and their annual bonuses and records of any specific commissions and bonuses paid.

25(c)(3) Records related to minimum standards for transactions secured by a dwelling.

1. *Evidence of compliance with repayment ability provisions*. A creditor must retain evidence of compliance with §1026.43 for three years after the date of consummation of a consumer credit transaction covered by that section. (See comment 25(c)(3)–2 for guidance on the retention of evidence of compliance with the requirement to offer a consumer a loan without a prepayment penalty under §1026.43(g)(3).) If a creditor must verify and document information used in underwriting a transaction subject to §1026.43, the creditor

shall retain evidence sufficient to demonstrate compliance with the documentation requirements of the rule. Although a creditor need not retain actual paper copies of the documentation used in underwriting a transaction subject to §1026.43, to comply with §1026.25(c)(3), the creditor must be able to reproduce such records accurately. For example, if the creditor uses a consumer's Internal Revenue Service (IRS) Form W–2 to verify the consumer's income, the creditor must be able to reproduce the IRS Form W–2 itself, and not merely the income information that was contained in the form.

2. *Dwelling-secured transactions and prepayment penalties.* If a transaction covered by §1026.43 has a prepayment penalty, the creditor must maintain records that document that the creditor complied with requirements for offering the consumer an alternative transaction that does not include a prepayment penalty under §1026.43(g)(3), (4), or (5). However, the creditor need not maintain records that document compliance with those provisions if a transaction is consummated without a prepayment penalty or if the creditor and consumer do not consummate a covered transaction. If a creditor offers a transaction with a prepayment penalty to a consumer through a mortgage broker, to evidence compliance with §1026.43(g)(4) the creditor should retain evidence of the alternative covered transaction presented to the mortgage broker, such as a rate sheet, and the agreement with the mortgage broker required by §1026.43(g)(4)(ii).

Section 1026.26—Use of Annual Percentage Rate in Oral Disclosures

1. *Application of rules.* The restrictions of §1026.26 apply only if the creditor chooses to respond orally to the consumer's request for credit cost information. Nothing in the regulation requires the creditor to supply rate information orally. If the creditor volunteers information (including rate information) through oral solicitations directed generally to prospective customers, as through a telephone solicitation, those communications may be advertisements subject to the rules in §§1026.16 and 1026.24.

26(a) Open-End Credit

1. *Information that may be given.* The creditor may state periodic rates in addition to the required annual percentage rate, but it need not do so. If the annual percentage rate is unknown because transaction charges, loan fees, or similar finance charges may be imposed, the creditor must give the corresponding annual percentage rate (that is, the periodic rate multiplied by the number of periods in a year, as described in §§1026.6(a)(1)(ii) and (b)(4)(i)(A) and 1026.7(a)(4) and (b)(4)). In such cases, the creditor may, but need not, also give the consumer information about other finance charges and other charges.

26(b) Closed-End Credit

1. *Information that may be given.* The creditor may state other annual or periodic rates that are applied to an unpaid balance, along with the required annual percentage rate. This rule permits disclosure of a simple interest rate, for example, but not an add-on, discount, or similar rate. If the creditor cannot give a precise annual percentage rate in its oral response because of variables in the transaction, it must give the annual percentage rate for a comparable sample transaction; in this case, other cost information may, but need not, be given. For example, the creditor may be unable to state a precise annual percentage rate for a mortgage loan without knowing the exact amount to be financed, the amount of loan fees or mortgage insurance premiums, or similar factors. In this situation, the creditor should state an annual percentage rate for a sample transaction; it may also provide information about the consumer's specific case, such as the contract interest rate, points, other finance charges, and other charges.

Section 1026.27—Language of Disclosures

1. *Subsequent disclosures.* If a creditor provides account-opening disclosures in a language other than English, subsequent disclosures need not be in that other language. For example, if the creditor gave Spanish-language account-opening disclosures, periodic statements and change-in-terms notices may be made in English.

Section 1026.28—Effect on State Laws

28(a) Inconsistent Disclosure Requirements

1. *General.* There are three sets of preemption criteria: One applies to the general disclosure and advertising rules of the regulation, and two apply to the credit billing provisions. Section 1026.28 also provides for Bureau determinations of preemption. For purposes of determining whether a State law is inconsistent with the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and §§1026.19(e) and (f), 1026.37, and 1026.38 under §1026.28, any reference to "creditor" in §1026.28 or this commentary includes a creditor, a mortgage broker, or a settlement agent, as applicable.

2. *Rules for chapters 1, 2, and 3.* The standard for judging whether state laws that cover the types of requirements in chapters 1 (General provisions), 2 (Credit transactions), and 3 (Credit advertising) of the Act are inconsistent and therefore preempted, is contradiction of the Federal law. Examples of laws that would be preempted include:

i. A state law that requires use of the term *finance charge*, but defines the term to include fees that the Federal law excludes, or to exclude fees the Federal law includes.

ii. A state law that requires a label such as *nominal annual interest rate* to be used for what the Federal law calls the *annual percentage rate*.

3. *Laws not contradictory to chapters 1, 2, and 3.* i. Generally, state law requirements that call for the disclosure of items of information not covered by the Federal law, or that require more detailed disclosures, do not contradict the Federal requirements. Examples of laws that are not preempted include:

A. A state law that requires disclosure of the minimum periodic payment for open-end credit, even though not required by §1026.7.

B. A state law that requires contracts to contain warnings such as: ''Read this contract before you sign. Do not sign if any spaces are left blank. You are entitled to a copy of this contract.''

ii. Similarly, a state law that requires itemization of the amount financed does not automatically contradict the permissive itemization under §1026.18(c). However, a state law requirement that the itemization appear with the disclosure of the amount financed in the segregated closed-end credit disclosures is inconsistent, and this location requirement would be preempted.

4. *Creditor's options.* Before the Bureau makes a determination about a specific state law, the creditor has certain options.

i. Since the prohibition against giving the state disclosures does not apply until the Bureau makes its determination, the creditor may choose to give state disclosures until the Bureau formally determines that the state law is inconsistent. (The Bureau will provide sufficient time for creditors to revise forms and procedures as necessary to conform to its determinations.) Under this first approach, as in all cases, the Federal disclosures must be clear and conspicuous, and the closed-end disclosures must be properly segregated in accordance with §1026.17(a)(1). This ability to give state disclosures relieves any uncertainty that the creditor might have prior to Bureau determinations of inconsistency.

ii. As a second option, the creditor may apply the preemption standards to a state law, conclude that it is inconsistent, and choose not to give the state-required disclosures. However, nothing in §1026.28(a) provides the creditor with immunity for violations of state law if the creditor chooses *not* to make state disclosures and the Bureau later determines that the state law is not preempted.

5. *Rules for correction of billing errors and regulation of credit reports.* The preemption criteria for the fair credit billing provisions set forth in §1026.28 have two parts. With respect to the rules on correction of billing errors and regulation of credit reports (which are in §1026.13), §1026.28(a)(2)(i) provides that a state law is inconsistent and preempted if its requirements are different from the Federal law. An exception is made, however, for state laws that allow the consumer to inquire about an account and require the creditor to respond to such inquiries beyond the time limits in the Federal law. Such a state law is not preempted with respect to the extra time period. For example, §1026.13 requires the consumer to submit a written notice of billing error within 60 days after transmittal of the periodic statement showing the alleged error. If a state law allows the consumer 90 days to submit a notice, the state law remains in effect to provide the extra 30 days. Any state law disclosures concerning this extended state time limit must reflect the qualifications and conform to the format specified in §1026.28(a)(2)(i). Examples of laws that would be preempted include:

i. A state law that has a narrower or broader definition of *billing error*.

ii. A state law that requires the creditor to take different steps to resolve errors.

iii. A state law that provides different timing rules for error resolution (subject to the exception discussed above).

6. *Rules for other fair credit billing provisions.* The second part of the criteria for fair credit billing relates to the other rules implementing chapter 4 of the Act (addressed in §§1026.4(c)(8), 1026.5(b)(2)(ii), 1026.6(a)(5) and (b)(5)(iii), 1026.7(a)(9) and (b)(9), 1026.9(a), 1026.10, 1026.11, 1026.12(c) through (f), 1026.13, and 1026.21). Section 1026.28(a)(2)(ii) provides that the test of inconsistency is whether the creditor can comply with state law without violating Federal law. For example:

i. A state law that allows the card issuer to offset the consumer's credit-card indebtedness against funds held by the card issuer would be preempted, since §1026.12(d) prohibits such action.

ii. A state law that requires periodic statements to be sent more than 14 days before the end of a free-ride period would not be preempted.

iii. A state law that permits consumers to assert claims and defenses against the card issuer without regard to the $50 and 100-mile limitations of §1026.12(c)(3)(ii) would not be preempted.

iv. In paragraphs ii. and iii. of this comment, compliance with state law would involve no violation of the Federal law.

7. *Who may receive a chapter 4 determination.* Only states (through their authorized officials) may request and receive determinations on inconsistency with respect to the fair credit billing provisions.

8. *Preemption determination—Arizona.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior

to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1983, the Board of Governors determined that the following provisions in the state law of Arizona are preempted by the Federal law:

i. Section 44–287 B.5—Disclosure of final cash price balance. This provision is preempted in those transactions in which the amount of the final cash price balance is the same as the Federal amount financed, since in such transactions the state law requires the use of a term different from the Federal term to represent the same amount.

ii. Section 44–287 B.6—Disclosure of finance charge. This provision is preempted in those transactions in which the amount of the finance charge is different from the amount of the Federal finance charge, since in such transactions the state law requires the use of the same term as the Federal law to represent a different amount.

iii. Section 44–287 B.7—Disclosure of the time balance. The time balance disclosure provision is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the state law requires the use of a term different from the Federal term to represent the same amount.

9. *Preemption determination—Florida.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1983, the Board of Governors determined that the following provisions in the state law of Florida are preempted by the Federal law:

i. Sections 520.07(2)(f) and 520.34(2)(f)—Disclosure of amount financed. This disclosure is preempted in those transactions in which the amount is different from the Federal amount financed, since in such transactions the state law requires the use of the same term as the Federal law to represent a different amount.

ii. Sections 520.07(2)(g), 520.34(2)(g), and 520.35(2)(d)—Disclosure of finance charge and a description of its components. The finance charge disclosure is preempted in those transactions in which the amount of the finance charge is different from the Federal amount, since in such transactions the state law requires the use of the same term as the Federal law to represent a different amount. The requirement to describe or itemize the components of the finance charge, which is also included in these provisions, is not preempted.

iii. Sections 520.07(2)(h) and 520.34(2)(h)—Disclosure of total of payments. The total of payments disclosure is preempted in those transactions in which the amount differs from the amount of the Federal total of payments, since in such transactions the state law requires the use of the same term as the Federal law to represent a different amount than the Federal law.

iv. Sections 520.07(2)(i) and 520.34(2)(i)—Disclosure of deferred payment price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the state law requires the use of a different term than the Federal law to represent the same amount as the Federal law.

10. *Preemption determination—Missouri.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1983, the Board of Governors determined that the following provisions in the state law of Missouri are preempted by the Federal law:

i. Sections 365.070–6(9) and 408.260–5(6)—Disclosure of principal balance. This disclosure is preempted in those transactions in which the amount of the principal balance is the same as the Federal amount financed, since in such transactions the state law requires the use of a term different from the Federal term to represent the same amount.

ii. Sections 365.070–6(10) and 408.260–5(7)—Disclosure of time price differential and time charge, respectively. These disclosures are preempted in those transactions in which the amount is the same as the Federal finance charge, since in such transactions the state law requires the use of a term different from the Federal law to represent the same amount.

iii. Sections 365.070–2 and 408.260–2—Use of the terms *time price differential* and *time charge* in certain notices to the buyer. In those transactions in which the state disclosure of the time price differential or time charge is preempted, the use of the terms in this notice also is preempted. The notice itself is not preempted.

iv. Sections 365.070–6(11) and 408.260–5(8)—Disclosure of time balance. The time balance disclosure is preempted in those transactions in which the amount is the same as the amount of the Federal total of payments, since in such transactions the state law requires the use of a different term than the Federal law to represent the same amount.

v. Sections 365.070–6(12) and 408.260–5(9)—Disclosure of time sale price. This disclosure is preempted in those transactions in which the amount is the same as the Federal total sale price, since in such transactions the state law requires the use of a different term from the Federal law to represent the same amount.

11. *Preemption determination—Mississippi.* The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau

makes and publishes any contrary determination. Effective October 1, 1984, the Board of Governors determined that the following provision in the state law of Mississippi is preempted by the Federal law:

i. Section 63–19–31(2)(g)—Disclosure of finance charge. This disclosure is preempted in those cases in which the term *finance charge* would be used under state law to describe a different amount than the finance charge disclosed under Federal law.

12. *Preemption determination—South Carolina*. The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1984, the Board of Governors determined that the following provision in the state law of South Carolina is preempted by the Federal law.

i. Section 37–10–102(c)—Disclosure of due-on-sale clause. This provision is preempted, but only to the extent that the creditor is required to include the disclosure with the segregated Federal disclosures. If the creditor may comply with the state law by placing the due-on-sale notice apart from the Federal disclosures, the state law is not preempted.

13. *Preemption determination—Arizona*. The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination.

i. Effective October 1, 1986, the Board of Governors determined that the following provision in the state law of Arizona is preempted by the Federal law:

A. Section 6–621A.2—Use of the term *the total sum of* $_______ in certain notices provided to borrowers. This term describes the same item that is disclosed under Federal law as the *total of payments*. Since the state law requires the use of a different term than Federal law to describe the same item, the state-required term is preempted. The notice itself is not preempted.

ii. Note: The state disclosure notice that incorporated the above preempted term was amended on May 4, 1987, to provide that disclosures must now be made pursuant to the Federal disclosure provisions.

14. *Preemption determination—Indiana*. The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1988, the Board of Governors determined that the following provision in the state law of Indiana is preempted by the Federal law:

i. Section 23–2–5–8—Inclusion of the loan broker's fees and charges in the calculation of, among other items, the finance charge and annual percentage rate disclosed to potential borrowers. This disclosure is inconsistent with section 106(a) and § 1026.4(a) of the Federal statute and regulation, respectively, and is preempted in those instances where the use of the same term would disclose a different amount than that required to be disclosed under Federal law.

15. *Preemption determination—Wisconsin*. The Bureau recognizes state law preemption determinations made by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1991, the Board of Governors determined that the following provisions in the state law of Wisconsin are preempted by the Federal law:

i. Section 422.308(1)—the disclosure of the annual percentage rate in cases where the amount of the annual percentage rate disclosed to consumers under the state law differs from the amount that would be disclosed under Federal law, since in those cases the state law requires the use of the same term as the Federal law to represent a different amount than the Federal law.

ii. Section 766.565(5)—the provision permitting a creditor to include in an open-end home equity agreement authorization to declare the account balance due and payable upon receiving notice of termination from a non-obligor spouse, since such provision is inconsistent with the purpose of the Federal law.

28(b) Equivalent Disclosure Requirements

1. *General*. A state disclosure may be substituted for a Federal disclosure only *after* the Bureau has made a finding of substantial similarity. Thus, the creditor may not unilaterally choose to make a state disclosure in place of a Federal disclosure, even if it believes that the state disclosure is substantially similar. Since the rule stated in § 1026.28(b) does not extend to any requirement relating to the finance charge or annual percentage rate, no state provision on computation, description, or disclosure of these terms may be substituted for the Federal provision.

28(d) Special Rule for Credit and Charge Cards

1. *General*. The standard that applies to preemption of state laws as they affect transactions of the type subject to §§ 1026.60 and 1026.9(e) differs from the preemption standards generally applicable under the Truth in Lending Act. The Fair Credit and Charge Card Disclosure Act fully preempts state laws relating to the disclosure of credit information in consumer credit or charge card applications or solicitations. (For purposes of this section, a single credit or

charge card application or solicitation that may be used to open either an account for consumer purposes or an account for business purposes is deemed to be a ''consumer credit or charge card application or solicitation.'') For example, a state law requiring disclosure of credit terms in direct mail solicitations for consumer credit card accounts is preempted. A state law requiring disclosures in telephone applications for consumer credit card accounts also is preempted, even if it applies to applications initiated by the consumer rather than the issuer, because the state law relates to the disclosure of credit information in applications or solicitations within the general field of preemption, that is, consumer credit and charge cards.

2. *Limitations on field of preemption.* Preemption under the Fair Credit and Charge Card Disclosure Act does not extend to state laws applying to types of credit other than open-end consumer credit and charge card accounts. Thus, for example, a state law is not preempted as it applies to disclosures in credit and charge card applications and solicitations solely for business-purpose accounts. On the other hand, state credit disclosure laws will not apply to a single application or solicitation to open either an account for consumer purposes or an account for business purposes. Such ''dual purpose'' applications and solicitations are treated as ''consumer credit or charge card applications or solicitations'' under this section and state credit disclosure laws applicable to them are preempted. Preemption under this statute does not extend to state laws applicable to home equity plans; preemption determinations in this area are based on the Home Equity Loan Consumer Protection Act, as implemented in §1026.40 of the regulation.

3. *Laws not preempted.* State laws relating to disclosures concerning credit and charge cards other than in applications, solicitations, or renewal notices are not preempted under §1026.28(d). In addition, state laws regulating the terms of credit and charge card accounts are not preempted, nor are laws preempted that regulate the form or content of information unrelated to the information required to be disclosed under §§1026.60 and 1026.9(e). Finally, state laws concerning the enforcement of the requirements of §§1026.60 and 1026.9(e) and state laws prohibiting unfair or deceptive acts or practices concerning credit and charge card applications, solicitations and renewals are not preempted. Examples of laws that are not preempted include:

i. A state law that requires card issuers to offer a grace period or that prohibits certain fees in credit and charge card transactions.

ii. A state retail installment sales law or a state plain language law, except to the extent that it regulates the disclosure of credit information in applications, solicitations and renewals of accounts of the type subject to §§1026.60 and 1026.9(e).

iii. A state law requiring notice of a consumer's rights under antidiscrimination or similar laws or a state law requiring notice about credit information available from state authorities.

Section 1026.29—State Exemptions

29(a) General Rule

1. *Classes eligible.* The state determines the classes of transactions for which it will request an exemption, and makes its application for those classes. Classes might be, for example, all open-end credit transactions, all open-end and closed-end transactions, or all transactions in which the creditor is a bank.

2. *Substantial similarity.* The ''substantially similar'' standard requires that State statutory or regulatory provisions and State interpretations of those provisions be generally the same as the Federal Act and Regulation Z. This includes the requirement that State provisions for reimbursement to consumers for overcharges be at least equivalent to those required in section 108 of the Act. A State will be eligible for an exemption even if its law covers classes of transactions not covered by the Federal law. For example, if a State's law covers agricultural credit, this will not prevent the Bureau from granting an exemption for consumer credit, even though agricultural credit is not covered by the Federal law. For transactions subject to §1026.19(e) and (f), §1026.29(a)(1) requires that the State statutory or regulatory provisions and State interpretations of those provisions require disclosures that are generally the same as the disclosures required by §1026.19(e) and (f), with form and content as prescribed by §§1026.37 and 1026.38.

3. *Adequate enforcement.* The standard requiring adequate provision for enforcement generally means that appropriate state officials must be authorized to enforce the state law through procedures and sanctions comparable to those available to Federal enforcement agencies. Furthermore, state law must make adequate provision for enforcement of the reimbursement rules.

4. *Exemptions granted.* i. The Bureau recognizes exemptions granted by the Board of Governors of the Federal Reserve System prior to July 21, 2011, until and unless the Bureau makes and publishes any contrary determination. Effective October 1, 1982, the Board of Governors granted the following exemptions from portions of the revised Truth in Lending Act:

A. *Maine.* Credit or lease transactions subject to the Maine Consumer Credit Code and its implementing regulations are exempt from chapters 2, 4 and 5 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor or lessor.)

B. *Connecticut.* Credit transactions subject to the Connecticut Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor.)

C. *Massachusetts.* Credit transactions subject to the Massachusetts Truth in Lending Act are exempt from chapters 2 and 4 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor.)

D. *Oklahoma.* Credit or lease transactions subject to the Oklahoma Consumer Credit Code are exempt from chapters 2 and 5 of the Federal Act. (The exemption does not apply to sections 132 through 135 of the Federal Act, nor does it apply to transactions in which a Federally chartered institution is a creditor or lessor.)

E. *Wyoming.* Credit transactions subject to the Wyoming Consumer Credit Code are exempt from chapter 2 of the Federal Act. (The exemption does not apply to transactions in which a Federally chartered institution is a creditor.)

ii. Although RESPA and its implementing Regulation X do not provide procedures for granting State exemptions, for transactions subject to §1026.19(e) and (f), compliance with the requirements of §§1026.19(e) and (f), 1026.37, and 1026.38 satisfies the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors). If such a transaction is subject to one of the State exemptions previously granted by the Board of Governors and noted in comment 29(a)–4.i above, however, then compliance with the requirements of any State laws and regulations incorporating the requirements of §§1026.19(e) and (f), 1026.37, and 1026.38 likewise satisfies the requirements of sections 4 and 5 of RESPA (other than the RESPA section 5(c) requirements regarding provision of a list of certified homeownership counselors) and the provisions of Regulation X (12 CFR part 1024) implementing those sections of RESPA.

29(b) Civil Liability

1. *Not eligible for exemption.* The provision that an exemption may not extend to sections 130 and 131 of the Act assures that consumers retain access to both Federal and state courts in seeking damages or civil penalties for violations, while creditors retain the defenses specified in those sections.

Section 1026.30—Limitation on Rates

1. *Scope of coverage.* i. The requirement of this section applies to consumer credit obligations secured by a dwelling (as dwelling is defined in §1026.2(a)(19)) in which the annual percentage rate may increase after consummation (or during the term of the plan, in the case of open-end credit) as a result of an increase in the interest rate component of the finance charge—whether those increases are tied to an index or formula or are within a creditor's discretion. The section applies to credit sales as well as loans. Examples of credit obligations subject to this section include:

A. Dwelling-secured credit obligations that require variable-rate disclosures under the regulation because the interest rate may increase during the term of the obligation.

B. Dwelling-secured open-end credit plans entered into before November 7, 1989 (the effective date of the home equity rules) that are not considered variable-rate obligations for purposes of disclosure under the regulation but where the creditor reserves the contractual right to increase the interest rate—periodic rate and corresponding annual percentage rate—during the term of the plan.

ii. In contrast, credit obligations in which there is no contractual right to increase the interest rate during the term of the obligation are not subject to this section. Examples include:

A. "Shared-equity" or "shared-appreciation" mortgage loans that have a fixed rate of interest and a shared-appreciation feature based on the consumer's equity in the mortgaged property. (The appreciation share is payable in a lump sum at a specified time.)

B. Dwelling-secured fixed-rate closed-end balloon-payment mortgage loans and dwelling-secured fixed-rate open-end plans with a stated term that the creditor may renew at maturity. (Contrast with the renewable balloon-payment mortgage instrument described in comment 17(c)(1)–11.)

C. Dwelling-secured fixed-rate closed-end multiple advance transactions in which each advance is disclosed as a separate transaction.

D. "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.

iii. The requirement of this section does not apply to credit obligations entered into prior to December 9, 1987. Consequently, new advances under open-end credit plans existing prior to December 9, 1987, are not subject to this section.

2. *Refinanced obligations.* On or after December 9, 1987, when a credit obligation is refinanced, as defined in §1026.20(a), the new obligation is subject to this section if it is dwelling-secured and allows for increases in the interest rate.

3. *Assumptions.* On or after December 9, 1987, when a credit obligation is assumed, as defined in §1026.20(b), the obligation becomes subject to this section if it is dwelling-secured and allows for increases in the interest rate.

4. *Modifications of obligations.* The modification of an obligation, regardless of when the

obligation was entered into, is generally not covered by this section. For example, increasing the credit limit on a dwelling-secured, open-end plan with a variable interest rate entered into before the effective date of the rule does not make the obligation subject to this section. If, however, a security interest in a dwelling is added on or after December 9, 1987, to a credit obligation that allows for interest rate increases, the obligation becomes subject to this section. Similarly, if a variable interest rate feature is added to a dwelling-secured credit obligation, the obligation becomes subject to this section.

5. *Land trusts.* In some states, a land trust is used in residential real estate transactions. (See discussion in comment 3(a)–8.) If a consumer-purpose loan that allows for interest rate increases is secured by an assignment of a beneficial interest in a land trust that holds title to a consumer's dwelling, that loan is subject to this section.

6. *Relationship to other sections.* Unless otherwise provided for in the commentary to this section, other provisions of the regulation such as definitions, exemptions, rules and interpretations also apply to this section where appropriate. To illustrate:

i. An adjustable interest rate business-purpose loan is not subject to this section even if the loan is secured by a dwelling because such credit extensions are not subject to the regulation. (See generally §1026.3(a).)

ii. Creditors subject to this section are only those that fall within the definition of a creditor in §1026.2(a)(17).

7. *Consumer credit contract.* Creditors are required to specify a lifetime maximum interest rate in their credit contracts—the instrument that creates personal liability and generally contains the terms and conditions of the agreement (for example, a promissory note or home-equity line of credit agreement). In some states, the signing of a commitment letter may create a binding obligation, for example, constituting *consummation* as defined in §1026.2(a)(13). The maximum interest rate must be included in the credit contract, but a creditor may include the rate ceiling in the commitment instrument as well.

8. *Manner of stating the maximum interest rate.* The maximum interest rate must be stated in the credit contract either as a specific amount or in any other manner that would allow the consumer to easily ascertain, at the time of entering into the obligation, what the rate ceiling will be over the term of the obligation.

i. For example, the following statements would be sufficiently specific:

A. The maximum interest rate will not exceed X%.

B. The interest rate will never be higher than X percentage points above the initial rate of Y%.

C. The interest rate will not exceed X%, or X percentage points above [a rate to be determined at some future point in time], whichever is less.

D. The maximum interest rate will not exceed X%, or the state usury ceiling, whichever is less.

ii. The following statements would not comply with this section:

A. The interest rate will never be higher than X percentage points over the prevailing market rate.

B. The interest rate will never be higher than X percentage points above [a rate to be determined at some future point in time].

C. The interest rate will not exceed the state usury ceiling which is currently X%.

iii. A creditor may state the maximum rate in terms of a maximum annual percentage rate that may be imposed. Under an open-end credit plan, this normally would be the corresponding annual percentage rate. (*See generally* §1026.6(a)(1)(ii) and (b)(4)(i)(A).)

9. *Multiple interest rate ceilings.* Creditors are not prohibited from setting multiple interest rate ceilings. For example, on loans with multiple variable-rate features, creditors may establish a maximum interest rate for each feature. To illustrate, in a variable-rate loan that has an option to convert to a fixed rate, a creditor may set one maximum interest rate for the initially imposed index-based variable-rate feature and another for the conversion option. Of course, a creditor may establish one maximum interest rate applicable to all features.

10. *Interest rate charged after default.* State law may allow an interest rate after default higher than the contract rate in effect at the time of default; however, the interest rate after default is subject to a maximum interest rate set forth in a credit obligation that is otherwise subject to this section. This rule applies only in situations in which a post-default agreement is still considered part of the original obligation.

11. *Increasing the maximum interest rate—general rule.* Generally, a creditor may not increase the maximum interest rate originally set on a credit obligation subject to this section unless the consumer and the creditor enter into a new obligation. Therefore, under an open-end plan, a creditor may not increase the rate ceiling imposed merely because there is an increase in the credit limit. If an open-end plan is closed and another opened, a new rate ceiling may be imposed. Furthermore, where an open-end plan has a fixed maturity and a creditor renews the plan at maturity, or enters into a closed-end credit transaction, a new maximum interest rate may be set at that time. If the open-end plan provides for a repayment phase, the maximum interest rate cannot be increased when the repayment phase begins unless the agreement provided for such an increase. For a closed-end credit transaction,

a new maximum interest rate may be set only if the transaction is satisfied and replaced by a new obligation. (The exceptions in §1026.20(a)(1)–(5) which limit what transactions are considered refinancings for purposes of disclosure do not apply with respect to increasing a rate ceiling that has been imposed; if a transaction is satisfied and replaced, the rate ceiling may be increased.)

12. *Increasing the maximum interest rate—assumption of an obligation.* If an obligation subject to this section is assumed by a new obligor and the original obligor is released from liability, the maximum interest rate set on the obligation may be increased as part of the assumption agreement. (This rule applies whether or not the transaction constitutes an assumption as defined in §1026.20(b).)

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 1026.31—General Rules

31(c) Timing of Disclosure

1. *Furnishing disclosures.* Disclosures are considered furnished when received by the consumer.

31(c)(1) Disclosures for high-cost mortgages.

1. *Pre-consummation or account opening waiting period.* A creditor must furnish §1026.32 disclosures at least three business days prior to consummation for a closed-end, high-cost mortgage and at least three business days prior to account opening for an open-end, high-cost mortgage. Under §1026.32, ''business day'' has the same meaning as the rescission rule in comment 2(a)(6)–2—all calendar days except Sundays and the Federal legal holidays listed in 5 U.S.C. 6103(a). However, while the disclosure rule under §§1026.15 and 1026.23 extends to midnight of the third business day, the rule under §1026.32 does not. For example, under §1026.32, if disclosures were provided on a Friday, consummation or account opening could occur any time on Tuesday, the third business day following receipt of the disclosures. If the timing of the rescission rule were to be used, consummation or account opening could not occur until after midnight on Tuesday.

31(c)(1)(i) Change in Terms

1. *Redisclosure required.* Creditors must provide new disclosures when a change in terms makes disclosures previously provided under §1026.32(c) inaccurate, including disclosures based on and labeled as an estimate. A change in terms may result from a formal written agreement or otherwise.

2. *Premiums or other charges financed at consummation or account opening.* If the consumer finances the payment of premiums or other charges as permitted under §1026.34(a)(10), and as a result the monthly payment differs from what was previously disclosed under §1026.32, redisclosure is required and a new three-day waiting period applies.

31(c)(1)(ii) Telephone disclosures.

1. *Telephone disclosures.* Disclosures by telephone must be furnished at least three business days prior to consummation or account opening, as applicable, calculated in accordance with the timing rules under §1026.31(c)(1).

31(c)(1)(iii) Consumer's waiver of waiting period before consummation or account opening.

31(c)(1)(iii) Consumer's waiver of waiting period before consummation or account opening.

1. *Modification or waiver.* A consumer may modify or waive the right to the three-day waiting period only after receiving the disclosures required by §1026.32 and only if the circumstances meet the criteria for establishing a bona fide personal financial emergency under §1026.23(e). Whether these criteria are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure during the three-day period is one example of a bona fide personal financial emergency. Each consumer entitled to the three-day waiting period must sign the handwritten statement for the waiver to be effective.

31(c)(2) Disclosures for Reverse Mortgages

1. *Business days.* For purposes of providing reverse mortgage disclosures, ''business day'' has the same meaning as in comment 31(c)(1)–1—all calendar days except Sundays and the Federal legal holidays listed in 5 U.S.C. 6103(a). This means if disclosures are provided on a Friday, consummation could occur any time on Tuesday, the third business day following receipt of the disclosures.

2. *Open-end plans.* Disclosures for open-end reverse mortgages must be provided at least three business days before the first transaction under the plan (*see* §1026.5(b)(1)).

31(d) Basis of Disclosures and Use of Estimates

1. *Redisclosure.* Section 1026.31(d) allows the use of estimates when information necessary for an accurate disclosure is unknown to the creditor, provided that the disclosure is clearly identified as an estimate. For purposes of Subpart E, the rule in §1026.31(c)(1)(i) requiring new disclosures when the creditor changes terms also applies to disclosures labeled as estimates.

31(d)(3) Per-Diem Interest

1. *Per-diem interest.* This paragraph applies to the disclosure of 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 were not labeled as estimates. (See comment 17(c)(2)(ii)–1 generally.)

31(h) Corrections and unintentional violations.

1. *Notice requirements.* Notice of a violation pursuant to §1026.31(h)(1) or (2) should be in writing. The notice should make the consumer aware of the choices available under §1026.31(h)(1)(iii) and (2)(iii). For notice to be adequate, the consumer should have at least 60 days in which to consider the available options and communicate a choice to the creditor or assignee.

2. *Reasonable time.* To claim the benefit of §1026.31(h), a creditor or assignee must implement appropriate restitution and the consumer's elected adjustment within a reasonable time after the consumer provides notice of that election to the creditor or assignee. What length of time is reasonable will depend on what changes to a loan or credit plan's documentation, disclosure, or terms are necessary to effectuate the adjustment. In general, implementing appropriate restitution and completing an adjustment within 30 days of the consumer's providing notice of the election can be considered reasonable.

Section 1026.32—Requirements for High-Cost Mortgages

32(a) Coverage

Paragraph 32(a)(1).

1. The term *high-cost mortgage* includes both a closed-end credit transaction and an open-end credit plan secured by the consumer's principal dwelling. For purposes of determining coverage under §1026.32, an open-end consumer credit transaction is the account opening of an open-end credit plan. An advance of funds or a draw on the credit line under an open-end credit plan subsequent to account opening does not constitute an open-end ''transaction.''

Paragraph 32(a)(1)(i).

1. *Average prime offer rate. High-cost mortgages* include closed- and open-end consumer credit transactions 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 amount. The term ''average prime offer rate'' is defined in §1026.35(a)(2).

2. *Comparable transaction.* Guidance for determining a comparable transaction is set forth in comments 35(a)(1)–1 and 35(a)(2)–2 and –3, which direct creditors to published tables of average prime offer rates for fixed- and variable-rate closed-end credit transactions. Creditors opening open-end credit plans must compare the annual percentage rate for the plan to the average prime offer rate for the most closely comparable closed-end transaction. To identify the most closely comparable closed-end transaction, the creditor should identify whether the credit plan is fixed- or variable-rate; if the plan is fixed-rate, the term of the plan to maturity; if the plan is variable-rate, the duration of any initial, fixed-rate period; and the date the interest rate for the plan is set. If a fixed-rate plan has no definite plan length, a creditor must use the average prime offer rate for a 30-year fixed-rate loan. If a variable-rate plan has an optional, fixed-rate feature, a creditor must use the rate table for variable-rate transactions. If a variable-rate plan has an initial, fixed-rate period that is not in whole years, a creditor must identify the most closely-comparable transaction by using the number of whole years closest to the actual fixed-rate period. For example, if a variable-rate plan has an initial fixed-rate period of 20 months, a creditor must use the average prime offer rate for a two-year adjustable-rate loan. If a variable-rate plan has no initial fixed-rate period, or if it has an initial fixed-rate period of less than one year, a creditor must use the average prime offer rate for a one-year adjustable-rate loan. Thus, for example, if the initial fixed-rate period is six months, a creditor must use the average prime offer rate for a one-year adjustable-rate loan.

3. *Rate set.* Comment 35(a)(1)–2 provides guidance for determining the average prime offer rate in effect on the date that the interest rate for the transaction is set.

Paragraph 32(a)(1)(i)(B).

1. *Loan amount less than $50,000.* The creditor must determine whether to apply the APR threshold in §1026.32(a)(1)(i)(B) based on the loan amount, which is the face amount of the note.

Paragraph 32(a)(1)(ii).

1. *Annual adjustment of $1,000 amount.* The $1,000 figure in §1026.32(a)(1)(ii)(B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2015, $1,020, reflecting a 2 percent increase in the CPI–U from June 2013 to June 2014, rounded to the nearest whole dollar.

ii. For 2016, $1,017, reflecting a 0.2 percent decrease in the CPI–U from June 2014 to June 2015, rounded to the nearest whole dollar.

iii. For 2017, $1,029, reflecting a 1.1 percent increase in the CPI–U from June 2015 to June 2016, rounded to the nearest whole dollar.

iv. For 2018, $1,052, reflecting a 2.2 percent increase in the CPI–U from June 2016 to June 2017, rounded to the nearest whole dollar.

v. For 2019, $1,077, reflecting a 2.5 percent increase in the CPI–U from June 2017 to June 2018, rounded to the nearest whole dollar.

vi. For 2020, $1,099, reflecting a 2 percent increase in the CPI–U from June 2018 to June 2019, rounded to the nearest whole dollar.

vii. For 2021, $1,103, reflecting a 0.3 percent increase in the CPI–U from June 2019 to June 2020, rounded to the nearest whole dollar.

viii. For 2022, $1,148, reflecting a 4.2 percent increase in the CPI–U from June 2020 to June 2021, rounded to the nearest whole dollar.

2. *Historical adjustment of $400 amount.* Prior to January 10, 2014, a mortgage loan was covered by §1026.32 if the total points and fees payable by the consumer at or before loan consummation exceeded the greater of $400 or 8 percent of the total loan amount. The $400 figure was adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1, as follows:

i. For 1996, $412, reflecting a 3 percent increase in the CPI–U from June 1994 to June 1995, rounded to the nearest whole dollar.

ii. For 1997, $424, reflecting a 2.9 percent increase in the CPI–U from June 1995 to June 1996, rounded to the nearest whole dollar.

iii. For 1998, $435, reflecting a 2.5 percent increase in the CPI–U from June 1996 to June 1997, rounded to the nearest whole dollar.

iv. For 1999, $441, reflecting a 1.4 percent increase in the CPI–U from June 1997 to June 1998, rounded to the nearest whole dollar.

v. For 2000, $451, reflecting a 2.3 percent increase in the CPI–U from June 1998 to June 1999, rounded to the nearest whole dollar.

vi. For 2001, $465, reflecting a 3.1 percent increase in the CPI–U from June 1999 to June 2000, rounded to the nearest whole dollar.

vii. For 2002, $480, reflecting a 3.27 percent increase in the CPI–U from June 2000 to June 2001, rounded to the nearest whole dollar.

viii. For 2003, $488, reflecting a 1.64 percent increase in the CPI–U from June 2001 to June 2002, rounded to the nearest whole dollar.

ix. For 2004, $499, reflecting a 2.22 percent increase in the CPI–U from June 2002 to June 2003, rounded to the nearest whole dollar.

x. For 2005, $510, reflecting a 2.29 percent increase in the CPI–U from June 2003 to June 2004, rounded to the nearest whole dollar.

xi. For 2006, $528, reflecting a 3.51 percent increase in the CPI–U from June 2004 to June 2005, rounded to the nearest whole dollar.

xii. For 2007, $547, reflecting a 3.55 percent increase in the CPI–U from June 2005 to June 2006, rounded to the nearest whole dollar.

xiii. For 2008, $561, reflecting a 2.56 percent increase in the CPI–U from June 2006 to June 2007, rounded to the nearest whole dollar.

xiv. For 2009, $583, reflecting a 3.94 percent increase in the CPI–U from June 2007 to June 2008, rounded to the nearest whole dollar.

xv. For 2010, $579, reflecting a 0.74 percent decrease in the CPI–U from June 2008 to June 2009, rounded to the nearest whole dollar.

xvi. For 2011, $592, reflecting a 2.2 percent increase in the CPI–U from June 2009 to June 2010, rounded to the nearest whole dollar.

xvii. For 2012, $611, reflecting a 3.2 percent increase in the CPI–U from June 2010 to June 2011, rounded to the nearest whole dollar.

xviii. For 2013, $625, reflecting a 2.3 percent increase in the CPI–U from June 2011 to June 2012, rounded to the nearest whole dollar.

xix. For 2014, $632, reflecting a 1.1 percent increase in the CPI–U from June 2012 to June 2013, rounded to the nearest whole dollar.

3. *Applicable threshold.* For purposes of §1026.32(a)(1)(ii), a creditor must determine the applicable points and fees threshold based on the face amount of the note (or, in the case of an open-end credit plan, the credit limit for the plan when the account is opened). However, the creditor must apply the allowable points and fees percentage to the "total loan amount," as defined in §1026.32(b)(4). For closed-end credit transactions, the total loan amount may be different than the face amount of the note. The $20,000 amount in §1026.32(a)(1)(ii)(A) and (B) is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1.

i. For 2015, $20,391, reflecting a 2 percent increase in the CPI–U from June 2013 to June 2014, rounded to the nearest whole dollar.

ii. For 2016, $20,350, reflecting a .2 percent decrease in the CPI–U from June 2014 to June 2015, rounded to the nearest whole dollar.

iii. For 2017, $20,579, reflecting a 1.1 percent increase in the CPI–U from June 2015 to June 2016, rounded to the nearest whole dollar.

iv. For 2018, $21,032, reflecting a 2.2 percent increase in the CPI–U from June 2016 to June 2017, rounded to the nearest whole dollar.

v. For 2019, $21,549, reflecting a 2.5 percent increase in the CPI–U from June 2017 to June 2018, rounded to the nearest whole dollar.

vi. For 2020, $21,980, reflecting a 2 percent increase in the CPI–U from June 2018 to June 2019, rounded to the nearest whole dollar.

vii. For 2021, $22,052 reflecting a 0.3 percent increase in the CPI–U from June 2019 to June 2020, rounded to the nearest whole dollar.

viii. For 2022, $22,969 reflecting a 4.2 percent increase in the CPI–U from June 2020 to June 2021, rounded to the nearest whole dollar.

Paragraph 32(a)(1)(iii).

1. *Maximum period and amount.* Section 1026.32(a)(1)(iii) provides that a closed-end credit transaction or an open-end credit plan is a high-cost mortgage if, under the terms of the loan contract or open-end credit agreement, a creditor can charge either a prepayment penalty more than 36 months

after consummation or account opening, or total prepayment penalties that exceed 2 percent of any amount prepaid. Section 1026.32(a)(1)(iii) applies only for purposes of determining whether a transaction is subject to the high-cost mortgage requirements and restrictions in §1026.32(c) and (d) and §1026.34. However, if a transaction is subject to those requirements and restrictions by operation of any provision of §1026.32(a)(1), including by operation of §1026.32(a)(1)(iii), then the transaction may not include a prepayment penalty. *See* §1026.32(d)(6). As a result, §1026.32(a)(1)(iii) effectively establishes a maximum period during which a prepayment penalty may be imposed, and a maximum prepayment penalty amount that may be imposed, on a closed-end credit transaction or open-end credit plan (other than such a mortgage as described in §1026.32(a)(2)) secured by a consumer's principal dwelling. Closed-end credit transactions covered by §1026.43 are subject to the additional prepayment penalty restrictions set forth in §1026.43(g).

2. *Examples; open-end credit.* If the terms of an open-end credit agreement allow for a prepayment penalty that exceeds 2 percent of the initial credit limit for the plan, the agreement will be deemed to be a transaction with a prepayment penalty that exceeds 2 percent of the "amount prepaid" within the meaning of §1026.32(a)(1)(iii). The following examples illustrate how to calculate whether the terms of an open-end credit agreement comply with the maximum prepayment penalty period and amounts described in §1026.32(a)(1)(iii).

i. Assume that the terms of a home-equity line of credit with an initial credit limit of $10,000 require the consumer to pay a $500 flat fee if the consumer terminates the plan less than 36 months after account opening. The $500 fee constitutes a prepayment penalty under §1026.32(b)(6)(ii), and the penalty is greater than 2 percent of the $10,000 initial credit limit, which is $200. Under §1026.32(a)(1)(iii), the plan is a high-cost mortgage subject to the requirements and restrictions set forth in §§1026.32 and 1026.34.

ii. Assume that the terms of a home-equity line of credit with an initial credit limit of $10,000 and a ten-year term require the consumer to pay a $200 flat fee if the consumer terminates the plan prior to its normal expiration. The $200 prepayment penalty does not exceed 2 percent of the initial credit limit, but the terms of the agreement permit the creditor to charge the fee more than 36 months after account opening. Thus, under §1026.32(a)(1)(iii), the plan is a high-cost mortgage subject to the requirements and restrictions set forth in §§1026.32 and 1026.34.

iii. Assume that, under the terms of a home-equity line of credit with an initial credit limit of $150,000, the creditor may charge the consumer any closing costs waived by the creditor if the consumer terminates the plan less than 36 months after account opening. Assume also that the creditor waived closing costs of $1,000. Bona fide third-party charges comprised $800 of the $1,000 in waived closing costs, and origination charges retained by the creditor or its affiliate comprised the remaining $200. Under §1026.32(b)(6)(ii), the $800 in bona fide third-party charges is not a prepayment penalty, while the $200 for the creditor's own originations costs is a prepayment penalty. The total prepayment penalty of $200 is less than 2 percent of the initial $150,000 credit limit, and the penalty does not apply if the consumer terminates the plan more than 36 months after account opening. Thus, the plan is not a high-cost mortgage under §1026.32(a)(1)(iii).

32(a)(2) Exemptions.

Paragraph 32(a)(2)(ii).

1. *Construction-permanent loans.* Section 1026.32 does not apply to a transaction to finance the initial construction of a dwelling. This exemption applies to a construction-only loan as well as to the construction phase of a construction-to-permanent loan. Section 1026.32 may apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor. When a construction loan may be permanently financed by the same creditor, §1026.17(c)(6)(ii) 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 each of the two phases as though they were two separate transactions. *See also* comment 17(c)(6)–2. Section 1026.17(c)(6)(ii) addresses only how a creditor may elect to disclose a construction to permanent transaction. Which disclosure option a creditor elects under §1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to §1026.32. When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under §1026.32. Likewise, a single amount of points and fees, also reflecting the appropriate charges from the permanent phase, must be calculated and compared with the total loan amount to determine coverage under §1026.32. When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with §1026.32(a)(3) and appendix D to part 1026. This annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage

under §1026.32. Likewise, a single amount of points and fees, also reflecting the appropriate charges from both phases of the transaction, must be calculated and compared with the total loan amount to determine coverage under §1026.32. If the transaction is determined to be a high-cost mortgage, only the permanent phase is subject to the requirements of §§1026.32 and 1026.34.

Paragraph 32(a)(2)(iii).

1. *Housing Finance Agency.* For purposes of §1026.32(a)(2)(iii), a Housing Finance Agency means a housing finance agency as defined in 24 CFR 266.5.

32(a)(3) Determination of annual percentage rate.

1. *In general.* The guidance set forth in the commentary to §1026.17(c)(1) and in §1026.40 addresses calculation of the annual percentage rate disclosures for closed-end credit transactions and open-end credit plans, respectively. Section 1026.32(a)(3) requires a different calculation of the annual percentage rate solely to determine coverage under §1026.32(a)(1)(i).

2. *Open-end credit.* The annual percentage rate for an open-end credit plan must be determined in accordance with §1026.32(a)(3), regardless of whether there is an advance of funds at account opening. Section 1026.32(a)(3) does not require the calculation of the annual percentage rate for any extensions of credit subsequent to account opening. Any draw on the credit line subsequent to account opening is not treated as a separate transaction for purposes of determining annual percentage rate threshold coverage.

3. *Rates that vary; index rate plus maximum margin.* i. Section 1026.32(a)(3)(ii) applies in the case of a closed- or open-end credit transaction when the interest rate for the transaction varies solely in accordance with an index. For purposes of §1026.32(a)(3)(ii), a transaction's interest rate varies in accordance with an index even if the transaction has an initial rate that is not determined by the index used to make later interest rate adjustments provided that, following the first rate adjustment, the interest rate for the transaction varies solely in accordance with an index.

ii. In general, for transactions subject to §1026.32(a)(3)(ii), the annual percentage rate is determined by adding the index rate in effect on the date that the interest rate for the transaction is set to the maximum margin for the transaction, as set forth in the agreement for the loan or plan. In some cases, a transaction subject to §1026.32(a)(3)(ii) may have an initial rate that is a premium rate and is higher than the index rate plus the maximum margin as of the date the interest rate for the transaction is set. In such cases, the annual percentage rate is determined based on the initial ''premium'' rate.

iii. The following examples illustrate the rule:

A. Assume that the terms of a closed-end, adjustable-rate mortgage loan provide for a fixed, initial interest rate of 2 percent for two years following consummation, after which the interest rate will adjust annually in accordance with an index plus a 2 percent margin. Also assume that the applicable index is 3 percent as of the date the interest rate for the transaction is set, and a lifetime interest rate cap of 15 percent applies to the transaction. Pursuant to §1026.32(a)(3)(ii), for purposes of determining the annual percentage rate for §1026.32(a)(1)(i), the interest rate for the transaction is 5 percent (3 percent index rate plus 2 percent margin).

B. Assume the same transaction terms set forth in paragraph 3.iii.A, except that an initial interest rate of 6 percent applies to the transaction. Pursuant to §1026.32(a)(3)(ii), for purposes of determining the annual percentage rate for §1026.32(a)(1)(i), the interest rate for the transaction is 6 percent.

C. Assume that the terms of an open-end credit agreement with a five-year draw period and a five-year repayment period provide for a fixed, initial interest rate of 2 percent for the first year of the repayment period, after which the interest rate will adjust annually pursuant to a publicly-available index outside the creditor's control, in accordance with the limitations applicable to open-end credit plans in §1026.40(f). Also assume that, pursuant to the terms of the open-end credit agreement, a margin of 2 percent applies because the consumer is employed by the creditor, but that the margin will increase to 4 percent if the consumer's employment with the creditor ends. Finally, assume that the applicable index rate is 3.5 percent as of the date the interest rate for the transaction is set, and a lifetime interest rate cap of 15 percent applies to the transaction. Pursuant to §1026.32(a)(3)(ii), for purposes of determining the annual percentage rate for §1026.32(a)(1)(i), the interest rate for the transaction is 7.5 percent (3.5 percent index rate plus 4 percent maximum margin).

D. Assume the same transaction terms set forth in paragraph 3.iii.C, except that an initial interest rate of 8 percent applies to the transaction. Pursuant to §1026.32(a)(3)(ii), for purposes of determining the annual percentage rate for §1026.32(a)(1)(i), the interest rate for the transaction is 8 percent.

4. *Rates that vary other than in accordance with an index.* Section 1026.32(a)(3)(iii) applies when the interest rate applicable to a closed- or open-end transaction may or will vary, except as described in §1026.32(a)(3)(ii). Section 1026.32(a)(3)(iii) thus applies where multiple fixed rates apply to a transaction, such as in a step-rate mortgage. For example, assume the following interest rates will apply to a transaction: 3 percent for the first six months, 4 percent for the next 10 years, and 5 percent for the remaining loan term. In this example, §1026.32(a)(3)(iii) would be used

to determine the interest rate, and 5 percent would be the maximum interest rate applicable to the transaction used to determine the annual percentage rate for purposes of §1026.32(a)(1)(i). Section 1026.32(a)(3)(iii) also applies to any other adjustable-rate loan where the interest rate may vary but according to a formula other than the sum of an index and a margin.

5. *Fixed-rate and -term payment options.* If an open-end credit plan has only a fixed rate during the draw period, a creditor must use the interest rate applicable to that feature to determine the annual percentage rate, as required by §1026.32(a)(3)(i). However, if an open-end credit plan has a variable rate, but also offers a fixed-rate and -term payment option during the draw period, §1026.32(a)(3) requires a creditor to use the terms applicable to the variable-rate feature for determining the annual percentage rate, as described in §1026.32(a)(3)(ii).

32(b) Definitions.

32(b) Definitions

Paragraph 32(b)(1).

1. *Known at or before consummation.* Section 1026.32(b)(1) includes in points and fees for closed-end credit transactions those items listed in §1026.32(b)(1)(i) through (vi) that are known at or before consummation. The following examples clarify how to determine whether a charge or fee is known at or before consummation.

i. *General.* In general, a charge or fee is ''known at or before consummation'' if the creditor knows at or before consummation that the charge or fee will be imposed in connection with the transaction, even if the charge or fee is scheduled to be paid after consummation. Thus, for example, if the creditor charges the consumer $400 for an appraisal conducted by an affiliate of the creditor, the $400 is included in points and fees, even if the consumer finances it and repays it over the loan term, because the creditor knows at or before consummation that the charge or fee is imposed in connection with the transaction. By contrast, if a creditor does not know whether a charge or fee will be imposed, it is not included in points and fees. For example, charges or fees that the creditor may impose if the consumer seeks to modify a loan after consummation are not included in points and fees, because the creditor does not know at or before consummation whether the consumer will seek to modify the loan and therefore incur the fees or charges.

ii. *Prepayment penalties.* Notwithstanding the guidance in comment 32(b)(1)-1.i, under §1026.32(b)(1)(v) the maximum prepayment penalty that may be charged or collected under the terms of the mortgage loan is included in points and fees because the amount of the maximum prepayment penalty that may be charged or collected is known at or before consummation.

iii. *Certain mortgage and credit insurance premiums.* Notwithstanding the guidance in comment 32(b)(1)-1.i, under §1026.32(b)(1)(i)(C)(*1*) and (iii) premiums and charges for private mortgage insurance and credit insurance that are payable after consummation are not included in points and fees, even if the amounts of such premiums and charges are known at or before consummation.

2. *Charges paid by parties other than the consumer.* Under §1026.32(b)(1), points and fees may include charges paid by third parties in addition to charges paid by the consumer. Specifically, charges paid by third parties that fall within the definition of points and fees set forth in §1026.32(b)(1)(i) through (vi) are included in points and fees. In calculating points and fees in connection with a transaction, creditors may rely on written statements from the consumer or third party paying for a charge, including the seller, to determine the source and purpose of any third-party payment for a charge.

i. *Examples—included in points and fees.* A creditor's origination charge paid by a consumer's employer on the consumer's behalf that is included in the finance charge as defined in §1026.4(a) or (b), must be included in points and fees under §1026.32(b)(1)(i), unless other exclusions under §1026.4 or §1026.32(b)(1)(i)(A) through (F) apply. In addition, consistent with comment 32(b)(1)(i)–1, a third-party payment of an item excluded from the finance charge under a provision of §1026.4, while not included in the total points and fees under §1026.32(b)(1)(i), may be included under §1026.32(b)(1)(ii) through (vi). For example, a payment by a third party of a creditor-imposed fee for an appraisal performed by an employee of the creditor is included in points and fees under §1026.32(b)(1)(iii). *See* comment 32(b)(1)(i)–1.

ii. *Examples—not included in points and fees.* A charge paid by a third party is not included in points and fees under §1026.32(b)(1)(i) if the exclusions to points and fees in §1026.32(b)(1)(i)(A) through (F) apply. For example, certain bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either are excluded from points and fees under §1026.32(b)(1)(i)(D), regardless of whether those charges are paid by a third party or the consumer.

iii. *Seller's points.* Seller's points, as described in §1026.4(c)(5) and commentary, are excluded from the finance charge and thus are not included in points and fees under §1026.32(b)(1)(i). However, charges paid by the seller for items listed in §1026.32(b)(1)(ii) through (vi) are included in points and fees.

iv. *Creditor-paid charges.* Charges that are paid by the creditor, other than loan originator compensation paid by the creditor that is required to be included in points and fees under §1026.32(b)(1)(ii), are excluded from points and fees. *See* §§1026.32(b)(1)(i)(A), 1026.4(a), and comment 4(a)–(2).

Paragraph 32(b)(1)(i).

1. *General.* Section 1026.32(b)(1)(i) includes in the total ''points and fees'' items included in the finance charge under §1026.4(a) and (b). However, certain items that may be included in the finance charge are excluded from points and fees under §1026.32(b)(1)(i)(A) through (F). Items excluded from the finance charge under other provisions of §1026.4 are not included in the total points and fees under §1026.32(b)(1)(i), but may be included in points and fees under §1026.32(b)(1)(ii) through (vi). To illustrate: A fee imposed by the creditor for an appraisal performed by an employee of the creditor meets the definition of ''finance charge'' under §1026.4(a) as ''any charge payable directly or indirectly by the consumer and imposed directly or indirectly by the creditor as an incident to or a condition of the extension of credit.'' However, §1026.4(c)(7) specifies that appraisal fees are not included in the finance charge. A fee imposed by the creditor for an appraisal performed by an employee of the creditor therefore would not be included in the finance charge and would not be counted in points and fees under §1026.32(b)(1)(i). Section 1026.32(b)(1)(iii), however, expressly includes in points and fees items listed in §1026.4(c)(7) (including appraisal fees) if the creditor receives compensation in connection with the charge. A creditor would receive compensation for an appraisal performed by its own employee. Thus, the appraisal fee in this example must be included in the calculation of points and fees.

Paragraph 32(b)(1)(i)(B).

1. *Federal and State mortgage insurance premiums and guaranty fees.* Under §1026.32(b)(1)(i)(B), mortgage insurance premiums or guaranty fees in connection with a Federal or State agency program are excluded from points and fees, even though they are included in the finance charge under §1026.4(a) and (b). For example, if a consumer is required to pay a $2,000 mortgage insurance premium for a loan insured by the Federal Housing Administration, the $2,000 must be included in the finance charge but is not counted in points and fees. Similarly, if a consumer pays a 2 percent funding fee for a loan guaranteed by the U.S. Department of Veterans Affairs or through the U.S Department of Agriculture's Rural Development Single Family Housing Guaranteed Loan Program, the fee is included in the finance charge but is not included in points and fees.

Paragraph 32(b)(1)(i)(C).

1. *Private mortgage insurance premiums.* i. *Payable after consummation.* Under §1026.32(b)(1)(i)(C)(*1*), private mortgage insurance premiums payable after consummation are excluded from points and fees.

ii. *Payable at or before consummation.* A. *General.* Under §1026.32(b)(1)(i)(C)(*2*), private mortgage insurance premiums payable at or before consummation (*i.e.,* single or up-front premiums) may be excluded from points and fees, even though they are included in the finance charge under §1026.4(a) and (b). However, the portion of the premium that exceeds the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)) is included in points and fees. To determine whether any portion of the premium exceeds the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act, a creditor references the premium amount that would be payable for the transaction under that Act, as implemented by applicable regulations and other written authorities issued by the Federal Housing Administration (such as Mortgagee Letters), even if the transaction would not qualify to be insured under that Act (including, for example, because the principal amount exceeds the maximum insurable under that Act).

B. *Non-refundable premiums.* To qualify for the exclusion from points and fees, private mortgage insurance premiums payable at or before consummation must be required to be refunded on a pro rata basis and the refund must be automatically issued upon notification of the satisfaction of the underlying mortgage loan.

C. *Example.* Assume that a $3,000 private mortgage insurance premium charged on a closed-end mortgage loan is payable at or before closing and is required to be refunded on a pro rata basis and that the refund is automatically issued upon notification of the satisfaction of the underlying mortgage loan. Assume also that the maximum premium allowable under the National Housing Act is $2,000. In this case, the creditor could exclude $2,000 from points and fees but would have to include the $1,000 that exceeds the allowable premium under the National Housing Act. However, if the $3,000 private mortgage insurance premium were not required to be refunded on a pro rata basis or if the refund were not automatically issued upon notification of the satisfaction of the underlying mortgage loan, the entire $3,000 premium would be included in points and fees.

2. *Method of paying private mortgage insurance premiums.* The portion of any private mortgage insurance premiums payable at or before consummation that does not qualify for an exclusion from points and fees under §1026.32(b)(1)(i)(C)(*2*) must be included in points and fees for purposes of §1026.32(b)(1)(i) whether paid in cash or financed and whether the insurance is optional or required.

Paragraph 32(b)(1)(i)(D).

1. *Charges not retained by the creditor, loan originator, or an affiliate of either.* In general, a creditor is not required to count in points and fees any bona fide third-party charge not retained by the creditor, loan originator, or an affiliate of either. For example, if bona fide charges are imposed by a third-party settlement agent and are not retained by the creditor, loan originator, or an affiliate of either, those charges are not included in points and fees, even if those charges are included in the finance charge under §1026.4(a)(2). The term *loan originator* has the same meaning as in §1026.36(a)(1).

2. *Private mortgage insurance.* The exclusion for bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either is limited by §1026.32(b)(1)(i)(C) in the general definition of "points and fees." Section 1026.32(b)(1)(i)(C) requires inclusion in points and fees of premiums or other charges payable at or before consummation for any private guaranty or insurance protecting the creditor against the consumer's default or other credit loss to the extent that the premium or charge exceeds the amount payable under policies in effect at the time of origination under section 203(c)(2)(A) of the National Housing Act (12 U.S.C. 1709(c)(2)(A)). These premiums or charges must also be included if the premiums or charges are not required to be refundable on a pro-rated basis, or the refund is not required to be automatically issued upon notification of the satisfaction of the underlying mortgage loan. Under these circumstances, even if the premiums or other charges are not retained by the creditor, loan originator, or an affiliate of either, they must be included in the points and fees calculation for qualified mortgages. See comments 32(b)(1)(i)(c)–1 and –2 for further discussion of including private mortgage insurance premiums payable at or before consummation in the points and fees calculation.

3. *Real estate-related fees.* The exclusion for bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either is limited by §1026.32(b)(1)(iii) in the general definition of points and fees. Section 1026.32(b)(1)(iii) requires inclusion in points and fees of items listed in §1026.4(c)(7) 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. If a charge is required to be included in points and fees under §1026.32(b)(1)(iii), it may not be excluded under §1026.32(b)(1)(i)(D), even if the criteria for exclusion in §1026.32(b)(1)(i)(D) are satisfied.

4. *Credit insurance.* The exclusion for bona fide third-party charges not retained by the creditor, loan originator, or an affiliate of either is limited by §1026.32(b)(1)(iv) in the general definition of points and fees. Section 1026.32(b)(1)(iv) requires inclusion in points and fees of premiums and other charges for credit insurance and certain other types of insurance. If a charge is required to be included in points and fees under §1026.32(b)(1)(iv), it may not be excluded under §1026.32(b)(1)(i)(D), even if the criteria for exclusion in §1026.32(b)(1)(i)(D) are satisfied.

Paragraph 32(b)(1)(i)(E).

1. *Bona fide discount point.* The term *bona fide discount point* is defined in §1026.32(b)(3).

2. *Average prime offer rate.* The average prime offer rate for purposes of paragraph (b)(1)(i)(E) of this section is the average prime offer rate that applies to a comparable transaction as of the date the discounted interest rate for the transaction is set. For the meaning of "comparable transaction," refer to comment 35(a)(2)-2. The table of average prime offer rates published by the Bureau indicates how to identify the comparable transaction. *See* comment 35(a)(2)-2.

3. *Example.* Assume a transaction that is a first-lien, purchase-money home mortgage with a fixed interest rate and a 30-year term. Assume also that the consumer locks in an interest rate of 6 percent on May 1, 2014 that was discounted from a rate of 6.5 percent because the consumer paid two discount points. Finally, assume that the average prime offer rate as of May 1, 2014 for home mortgages with a fixed interest rate and a 30-year term is 5.5 percent. The creditor may exclude two bona fide discount points from the points and fees calculation because the rate from which the discounted rate was derived (6.5 percent) exceeded the average prime offer rate for a comparable transaction as of the date the rate on the transaction was set (5.5 percent) by only 1 percentage point.

Paragraph 32(b)(1)(i)(F).

1. *Bona fide discount point and average prime offer rate.* Comments 32(b)(1)(i)(E)–1 and –2 provide guidance concerning the definition of *bona fide discount point* and *average prime offer rate*, respectively.

2. *Example.* Assume a transaction that is a first-lien, purchase-money home mortgage with a fixed interest rate and a 30-year term. Assume also that the consumer locks in an interest rate of 6 percent on May 1, 2014, that was discounted from a rate of 7 percent because the consumer paid four discount points. Finally, assume that the average prime offer rate as of May 1, 2014, for home mortgages with a fixed interest rate and a 30-year term is 5 percent. The creditor may exclude one discount point from the points and fees calculation because the rate from which the discounted rate was derived (7 percent) exceeded the average prime offer rate for a comparable transaction as of the date the rate on the transaction was set (5 percent) by only 2 percentage points.

Paragraph 32(b)(1)(ii).

1. *Loan originator compensation—general.* Compensation paid by a consumer or creditor to a loan originator, other than an employee of the creditor, is included in the calculation of points and fees for a transaction, provided that such compensation can be attributed to that particular transaction at the time the interest rate is set. Compensation paid to an employee of a creditor is not included in points and fees. Loan originator 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.

2. *Loan originator compensation—attributable to a particular transaction.* Loan originator compensation is compensation that is paid by a consumer or creditor to a loan originator that can be attributed to that particular transaction. The amount of compensation that can be attributed to a particular transaction is the dollar value of compensation that the loan originator will receive if the transaction is consummated. As explained in comment 32(b)(1)(ii)–3, the amount of compensation that a loan originator will receive is calculated as of the date the interest rate is set and includes compensation that is paid before, at, or after consummation.

3. *Loan originator compensation—timing.* Compensation paid to a loan originator that can be attributed to a transaction must be included in the points and fees calculation for that loan regardless of whether the compensation is paid before, at, or after consummation. The amount of loan originator compensation that can be attributed to a transaction is determined as of the date the interest rate is set. Thus, loan originator compensation for a transaction includes compensation that can be attributed to that transaction at the time the creditor sets the interest rate for the transaction, even if that compensation is not paid until after consummation.

4. *Loan originator compensation—calculating loan originator compensation in connection with other charges or payments included in the finance charge or made to loan originators.* i. *Consumer payments to mortgage brokers.* As provided in §1026.32(b)(1)(ii)(A), consumer payments to a mortgage broker already included in the points and fees calculation under §1026.32(b)(1)(i) need not be counted again under §1026.32(b)(1)(ii). For example, assume a consumer pays a mortgage broker a $3,000 fee for a transaction. The $3,000 mortgage broker fee is included in the finance charge under §1026.4(a)(3). Because the $3,000 mortgage broker fee is already included in points and fees under §1026.32(b)(1)(i), it is not counted again under §1026.32(b)(1)(ii).

ii. *Payments by a mortgage broker to its individual loan originator employee.* As provided in §1026.32(b)(1)(ii)(B), compensation paid by a mortgage broker to its individual loan originator employee is not included in points and fees under §1026.32(b)(1)(ii). For example, assume a consumer pays a $3,000 fee to a mortgage broker, and the mortgage broker pays a $1,500 commission to its individual loan originator employee for that transaction. The $3,000 mortgage broker fee is included in points and fees, but the $1,500 commission is not included in points and fees because it has already been included in points and fees as part of the $3,000 mortgage broker fee.

iii. *Creditor's origination fees—loan originator not employed by creditor.* Compensation paid by a creditor to a loan originator who is not employed by the creditor is included in the calculation of points and fees under §1026.32(b)(1)(ii). Such compensation is included in points and fees in addition to any origination fees or charges paid by the consumer to the creditor that are included in points and fees under §1026.32(b)(1)(i). For example, assume that a consumer pays to the creditor a $3,000 origination fee and that the creditor pays a mortgage broker $1,500 in compensation attributed to the transaction. Assume further that the consumer pays no other charges to the creditor that are included in points and fees under §1026.32(b)(1)(i) and that the mortgage broker receives no other compensation that is included in points and fees under §1026.32(b)(1)(ii). For purposes of calculating points and fees, the $3,000 origination fee is included in points and fees under §1026.32(b)(1)(i) and the $1,500 in loan originator compensation is included in points and fees under §1026.32(b)(1)(ii), equaling $4,500 in total points and fees, provided that no other points and fees are paid or compensation received.

5. *Loan originator compensation—calculating loan originator compensation in manufactured home transactions.* i. If a manufactured home retailer qualifies as a loan originator under §1026.36(a)(1), then compensation that is paid by a consumer or creditor to the retailer for loan origination activities and that can be attributed to the transaction at the time the interest rate is set must be included in points and fees. For example, assume a manufactured home retailer takes a residential mortgage loan application and is entitled to receive at consummation a $1,000 commission from the creditor for taking the mortgage loan application. The $1,000 commission is loan originator compensation that must be included in points and fees.

ii. If the creditor has knowledge that the sales price of a manufactured home includes loan originator compensation, then such compensation can be attributed to the transaction at the time the interest rate is set and therefore is included in points and fees under §1026.32(b)(1)(ii). However, the creditor is not required to investigate the sales price of a manufactured home to determine if the sales price includes loan originator compensation.

iii. As provided in §1026.32(b)(1)(ii)(D), compensation paid by a manufactured home retailer to its employees is not included in points and fees under §1026.32(b)(1)(ii).

ii. If the creditor has knowledge that the sales price of a manufactured home includes loan originator compensation, then such compensation can be attributed to the transaction at the time the interest rate is set and therefore is included in points and fees under §1026.32(b)(1)(ii). However, the creditor is not required to investigate the sales price of a manufactured home to determine if the sales price includes loan originator compensation.

iii. As provided in §1026.32(b)(1)(ii)(D), compensation paid by a manufactured home retailer to its employees is not included in points and fees under §1026.32(b)(1)(ii).

Paragraph 32(b)(1)(iii).

1. *Other charges.* Section 1026.32(b)(1)(iii) defines points and fees to include all items listed in §1026.4(c)(7), other than amounts held for the future payment of taxes, unless certain exclusions apply. An item listed in §1026.4(c)(7) may be excluded from the points and fees calculation if the charge is reasonable; the creditor receives no direct or indirect compensation from the charge; and the charge is not paid to an affiliate of the creditor. For example, a reasonable fee paid by the consumer to an independent, third-party appraiser may be excluded from the points and fees calculation (assuming no compensation is paid to the creditor or its affiliate and no charge is paid to an affiliate). By contrast, a fee paid by the consumer for an appraisal performed by the creditor must be included in the calculation, even though the fee may be excluded from the finance charge if it is bona fide and reasonable in amount.

Paragraph 32(b)(1)(iv).

1. *Credit insurance and debt cancellation or suspension coverage.* In determining points and fees for purposes of §1026.32(b)(1), premiums paid at or before consummation for credit insurance or any debt cancellation or suspension agreement or contract are included in points and fees whether they are paid in cash or, if permitted by applicable law, financed and whether the insurance or coverage is optional or required. Such charges are also included whether the amount represents the entire premium or payment for the coverage or an initial payment.

2. *Credit property insurance.* Credit property insurance includes insurance against loss of or damage to personal property, such as a houseboat or manufactured home. Credit property insurance covers the creditor's security interest in the property. Credit property insurance does not include homeowners' insurance, which, unlike credit property insurance, typically covers not only the dwelling but its contents and protects the consumer's interest in the property.

3. *Life, accident, health, or loss-of-income insurance.* Premiums or other charges for these types of insurance are included in points and fees only if the creditor is a beneficiary. If the consumer or another person designated by the consumer is the sole beneficiary, then the premiums or other charges are not included in points and fees.

Paragraph 32(b)(2).

1. See comment 32(b)(1)–2 for guidance concerning the inclusion in points and fees of charges paid by parties other than the consumer.

Paragraph 32(b)(2)(i).

1. *Finance charge.* The points and fees calculation under §1026.32(b)(2) generally does not include items that are included in the finance charge but that are not known until after account opening, such as minimum monthly finance charges or charges based on account activity or inactivity. Transaction fees also generally are not included in the points and fees calculation, except as provided in §1026.32(b)(2)(vi). See comments 32(b)(1)–1 and 32(b)(1)(i)–1 for additional guidance concerning the calculation of points and fees.

Paragraph 32(b)(2)(i)(B).

1. See comment 32(b)(1)(i)(B)–1 for further guidance concerning the exclusion of mortgage insurance premiums payable in connection with any Federal or State agency program.

Paragraph 32(b)(2)(i)(C).

1. See comment 32(b)(1)(i)(C)–1 and –2 for further guidance concerning the exclusion of mortgage insurance premiums payable for any guaranty or insurance that protects the creditor against the consumer's default or other credit loss and that is not in connection with any Federal or State agency program.

Paragraph 32(b)(2)(i)(D).

1. For purposes of §1026.32(b)(2)(i)(D), the term *loan originator* means a loan originator as that term is defined in §1026.36(a)(1), without regard to §1026.36(a)(2). See comments 32(b)(1)(i)(D)–1 through –4 for further guidance concerning the exclusion of bona fide third-party charges from points and fees.

Paragraph 32(b)(2)(i)(E).

1. See comments 32(b)(1)(i)(E)–1 through –3 for further guidance concerning the exclusion of up to two bona fide discount points from points and fees.

Paragraph 32(b)(2)(i)(F).

1. See comments 32(b)(1)(i)(F)–1 and –2 for further guidance concerning the exclusion of up to one bona fide discount point from points and fees.

Paragraph 32(b)(2)(ii).

1. For purposes of §1026.32(b)(2)(ii), the term *loan originator* means a loan originator

as that term is defined in §1026.36(a)(1), without regard to §1026.36(a)(2). See the commentary to §1026.32(b)(1)(ii) for additional guidance concerning the inclusion of loan originator compensation in points and fees.

Paragraph 32(b)(2)(iii).

1. *Other charges.* See comment 32(b)(1)(iii)–1 for further guidance concerning the inclusion of items listed in §1026.4(c)(7) in points and fees.

Paragraph 32(b)(2)(iv).

1. *Credit insurance and debt cancellation or suspension coverage.* See comments 32(b)(1)(iv)–1 through –3 for further guidance concerning the inclusion of premiums for credit insurance and debt cancellation or suspension coverage in points and fees.

Paragraph 32(b)(2)(vii).

1. *Participation fees.* Fees charged for participation in a credit plan must be included in the points and fees calculation for purposes of §1026.32 if payable at or before account opening. These fees include annual fees or other periodic fees that must be paid as a condition of access to the plan itself. See commentary to §1026.4(c)(4) for a description of these fees.

Paragraph 32(b)(2)(viii).

1. *Transaction fees to draw down the credit line.* Section 1026.32(b)(2)(viii) requires creditors in open-end credit plans to include in points and fees any transaction fee, including any per-transaction fee, that will be charged for a draw on the credit line. Section 1026.32(b)(2)(viii) requires the creditor to assume that the consumer will make at least one draw during the term of the credit plan. Thus, if the terms of the open-end credit plan permit the creditor to charge a $10 transaction fee each time the consumer draws on the credit line, §1026.32(b)(2)(viii) requires the creditor to include one $10 charge in the points and fees calculation.

2. *Fixed-rate loan option.* If the terms of an open-end credit plan permit a consumer to draw on the credit line using either a variable-rate feature or a fixed-rate feature, §1026.32(b)(2)(viii) requires the creditor to use the terms applicable to the variable-rate feature for determining the transaction fee that must be included in the points and fees calculation.

32(b)(3) Bona fide discount point.

32(b)(3)(i) Closed-end credit.

1. *Definition of bona fide discount point.* Section 1026.32(b)(3) provides that, to be bona fide, a discount point must reduce the interest rate 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. To satisfy this standard, a creditor may show that the reduction is reasonably consistent with established industry norms and practices for secondary mortgage market transactions. For example, a creditor may rely on pricing in the to-be-announced (TBA) market for mortgage-backed securities (MBS) to establish that the interest rate reduction is consistent with the compensation that the creditor could reasonably expect to receive in the secondary market. The creditor may also establish that its interest rate reduction is consistent with established industry practices by showing that its calculation complies with requirements prescribed in Fannie Mae or Freddie Mac guidelines for interest rate reductions from bona fide discount points. For example, assume that the Fannie Mae Single-Family Selling Guide or the Freddie Mac Single Family Seller/Servicer Guide imposes a cap on points and fees but excludes from the cap discount points that result in a bona fide reduction in the interest rate. Assume the guidelines require that, for a discount point to be bona fide so that it would not count against the cap, a discount point must result in at least a 25 basis point reduction in the interest rate. Accordingly, if the creditor offers a 25 basis point interest rate reduction for a discount point and the requirements of §1026.32(b)(1)(i)(E) or (F) are satisfied, the discount point is bona fide and is excluded from the calculation of points and fees.

32(b)(4) Total loan amount.

32(b)(4)(i) Closed-end credit.

1. *Total loan amount; examples.* Below are several examples showing how to calculate the total loan amount for closed-end mortgage loans, each using a $10,000 amount borrowed, a $300 appraisal fee, and $400 in prepaid finance charges. A $500 single premium for optional credit unemployment insurance is used in one example.

i. If the consumer finances a $300 fee for a creditor-conducted appraisal and pays $400 in prepaid finance charges at closing, the amount financed under §1026.18(b) is $9,900 ($10,000 plus the $300 appraisal fee that is paid to and financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under §1026.32(b)(1)(iii). It is deducted from the amount financed ($9,900) to derive a total loan amount of $9,600.

ii. If the consumer pays the $300 fee for the creditor-conducted appraisal in cash at closing, the $300 is included in the points and fees calculation because it is paid to the creditor. However, because the $300 is not financed by the creditor, the fee is not part of the amount financed under §1026.18(b). In this case, the amount financed is the same as the total loan amount: $9,600 ($10,000, less $400 in prepaid finance charges).

iii. If the consumer finances a $300 fee for an appraisal conducted by someone other than the creditor or an affiliate, the $300 fee is not included with other points and fees under §1026.32(b)(1)(iii). In this case, the amount financed is the same as the total loan amount: $9,900 ($10,000 plus the $300 fee for an independently-conducted appraisal that is financed by the creditor, less the $400 paid in cash and deducted as prepaid finance charges).

iv. If the consumer finances a $300 fee for a creditor-conducted appraisal and a $500 single premium for optional credit unemployment insurance, and pays $400 in prepaid finance charges at closing, the amount financed under §1026.18(b) is $10,400 ($10,000, plus the $300 appraisal fee that is paid to and financed by the creditor, plus the $500 insurance premium that is financed by the creditor, less $400 in prepaid finance charges). The $300 appraisal fee paid to the creditor is added to other points and fees under §1026.32(b)(1)(ii), and the $500 insurance premium is added under 1026.32(b)(1)(iv). The $300 and $500 costs are deducted from the amount financed ($10,400) to derive a total loan amount of $9,600.

32(b)(6) Prepayment penalty.

1. *Examples of prepayment penalties; closed-end credit transactions.* For purposes of §1026.32(b)(6)(i), the following are examples of prepayment penalties:

i. A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such ''balance,'' even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract. ''Interest accrual amortization'' refers to the method by which the amount of interest due for each period (*e.g.*, month) in a transaction's term is determined. For example, ''monthly interest accrual amortization'' treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the loan contract will require payment of $3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is $2,000, then assessment of a charge of $3,000 constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

ii. A fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan. However, the term prepayment penalty does not include a waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation. For example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup the $3,000 in waived charges if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 charge is not a prepayment penalty. In contrast, for example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup $4,500, in part to recoup waived charges, if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 that the creditor may impose to cover the waived bona fide third-party charges is not a prepayment penalty, but the additional $1,500 charge is a prepayment penalty and subject to the restrictions under §1026.43(g).

iii. A minimum finance charge in a simple interest transaction.

iv. Computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.

2. *Fees that are not prepayment penalties; closed-end credit transactions.* For purposes of §1026.32(b)(6)(i), fees that are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full if such fees are imposed whether or not the loan is prepaid. Examples include a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.

ii. Loan guarantee fees.

3. *Examples of prepayment penalties; open-end credit.* For purposes of §1026.32(b)(6)(ii), the term *prepayment penalty* includes a charge, including a waived closing cost, imposed by the creditor if the consumer terminates the open-end credit plan prior to the end of its term. This includes a charge imposed if the consumer terminates the plan outright or, for example, if the consumer terminates the plan in connection with obtaining a new loan or plan with the current holder of the existing plan, a servicer acting on behalf of the current holder, or an affiliate of either. However, the term *prepayment penalty*

does not include a waived bona fide third-party charge imposed by the creditor if the consumer terminates the open-end credit plan during the first 36 months after account opening.

4. *Fees that are not prepayment penalties; open-end credit.* For purposes of §1026.32(b)(6)(ii), fees that are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when an open-end credit plan is terminated, if such fees are imposed whether or not the consumer terminates the plan prior to the end of its term. Examples include a payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the line of credit.

ii. Loan guarantee fees.

iii. Any fee that the creditor may impose in lieu of termination and acceleration under comment 40(f)(2)–2.

32(c)(2) Annual percentage rate.

1. *Disclosing annual percentage rate for open-end high-cost mortgages.* In disclosing the annual percentage rate for an open-end, high-cost mortgage under §1026.32(c)(2), creditors must comply with §1026.6(a)(1). If a fixed-rate, discounted introductory or initial interest rate is offered on the transaction, §1026.32(c)(2) requires a creditor to disclose the annual percentage rate of the fixed-rate, discounted introductory or initial interest rate feature, and the rate that would apply when the feature expires.

32(c)(3) Regular payment; minimum periodic payment example; balloon payment.

1. *Balloon payment.* Except as provided in §1026.32(d)(1)(ii) and (iii), a mortgage transaction subject to this section may not include a payment schedule that results in a balloon payment.

Paragraph 32(c)(3)(i).

1. *General.* The regular payment is the amount due from the consumer at regular intervals, such as monthly, bimonthly, quarterly, or annually. There must be at least two payments, and the payments must be in an amount and at such intervals that they fully amortize the amount owed. In disclosing the regular payment, creditors may rely on the rules set forth in §1026.18(g); however, the amounts for voluntary items, such as credit life insurance, may be included in the regular payment disclosure only if the consumer has previously agreed to the amounts.

i. If the loan has more than one payment level, the regular payment for each level must be disclosed. For example:

A. In a 30-year graduated payment mortgage where there will be payments of $300 for the first 120 months, $400 for the next 120 months, and $500 for the last 120 months, each payment amount must be disclosed, along with the length of time that the payment will be in effect.

B. If interest and principal are paid at different times, the regular amount for each must be disclosed.

C. In discounted or premium variable-rate transactions where the creditor sets the initial interest rate and later rate adjustments are determined by an index or formula, the creditor must disclose both the initial payment based on the discount or premium and the payment that will be in effect thereafter. Additional explanatory material which does not detract from the required disclosures may accompany the disclosed amounts. For example, if a monthly payment is $250 for the first six months and then increases based on an index and margin, the creditor could use language such as the following: "Your regular monthly payment will be $250 for six months. After six months your regular monthly payment will be based on an index and margin, which currently would make your payment $350. Your actual payment at that time may be higher or lower."

32(c)(4) Variable-rate.

1. *Calculating "worst-case" payment example.* For a closed-end credit transaction, creditors may rely on instructions in §1026.19(b)(2)(viii)(B) for calculating the maximum possible increases in rates in the shortest possible timeframe, based on the face amount of the note (not the hypothetical loan amount of $10,000 required by §1026.19(b)(2)(viii)(B)). The creditor must provide a maximum payment for each payment level, where a payment schedule provides for more than one payment level and more than one maximum payment amount is possible. For an open-end credit plan, the maximum monthly payment must be based on the following assumptions:

i. The consumer borrows the full credit line at account opening with no additional extensions of credit.

ii. The consumer makes only minimum periodic payments during the draw period and any repayment period.

iii. If the annual percentage rate may increase during the plan, the maximum annual percentage rate that is included in the contract, as required by §1026.30, applies to the plan at account opening.

32(c)(5) Amount Borrowed

1. *Optional insurance; debt-cancellation coverage.* This disclosure is required when the amount borrowed in a refinancing includes premiums or other charges for credit life, accident, health, or loss-of-income insurance, or debt-cancellation coverage (whether or not the debt-cancellation coverage is insurance under applicable law) that provides for cancellation of all or part of the consumer's liability in the event of the loss of life, health, or income or in the case of accident. See comment 4(d)(3)–2 and comment app. G and H–2 regarding terminology for debt-cancellation coverage.

Paragraph 32(d) Limitations

1. *Additional prohibitions applicable under other sections.* Section 1026.34 sets forth certain prohibitions in connection with high-cost mortgages, in addition to the limitations in §1026.32(d). Further, §1026.35(b) prohibits certain practices in connection with closed-end transactions that meet the coverage test in §1026.35(a). Because the coverage test in §1026.35(a) is generally broader than the coverage test in §1026.32(a), most closed-end high-cost mortgages are also subject to the prohibitions set forth in §1026.35(b) (such as escrows), in addition to the limitations in §1026.32(d).

32(d)(1)(i) Balloon Payment

1. *Regular periodic payments.* The repayment schedule for a high-cost mortgage must fully amortize the outstanding principal balance through "regular periodic payments." A payment is a "regular periodic payment" if it is not more than two times the amount of other payments. For purposes of open-end credit plans, the term "regular periodic payment" or "periodic payment" means the required minimum periodic payment.

2. *Repayment period.* If the terms of an open-end credit plan provide for a repayment period during which no further draws may be taken, the limitations in §1026.32(d)(1)(i) apply to regular periodic payments required by the credit plan during the draw period, but do not apply to any adjustment in the regular periodic payment that results from the transition from the credit plan's draw period to its repayment period. Further, the limitation on balloon payments in §1026.32(d)(1)(i) does not preclude increases in regular periodic payments that result solely from the initial draw or additional draws on the credit line during the draw period.

3. *No repayment period.* If the terms of an open-end credit plan do not provide for a repayment period, the repayment schedule must fully amortize any outstanding principal balance in the draw period through regular periodic payments. However, the limitation on balloon payments in §1026.32(d)(1)(i) does not preclude increases in regular periodic payments that result solely from the initial draw or additional draws on the credit line during the draw period.

32(d)(2) Negative Amortization

1. *Negative amortization.* The prohibition against negative amortization in a high-cost mortgage does not preclude reasonable increases in the principal balance that result from events permitted by the legal obligation unrelated to the payment schedule. For example, when a consumer fails to obtain property insurance and the creditor purchases insurance, the creditor may add a reasonable premium to the consumer's principal balance, to the extent permitted by applicable law and the consumer's legal obligation.

32(d)(4) Increased Interest Rate

1. *Variable-rate transactions.* The limitation on interest rate increases does not apply to rate increases resulting from changes in accordance with the legal obligation in a variable-rate transaction, even if the increase occurs after default by the consumer.

32(d)(5) Rebates

1. *Calculation of refunds.* The limitation applies only to refunds of precomputed (such as add-on) interest and not to any other charges that are considered finance charges under §1026.4 (for example, points and fees paid at closing). The calculation of the refund of interest includes odd-days interest, whether paid at or after consummation.

32(d)(8) Acceleration of debt.

Paragraph 32(d)(8)(i).

1. *Fraud or material misrepresentation.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance if there has been fraud or material misrepresentation by the consumer in connection with the loan or open-end credit agreement. What constitutes fraud or misrepresentation is determined by applicable State law and may include acts of omission as well as overt acts, as long as any necessary intent on the part of the consumer exists.

Paragraph 32(d)(8)(ii)

1. *Failure to meet repayment terms.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance when the consumer fails to meet the repayment terms resulting in a default in payment under the agreement; a creditor may do so, however, only if the consumer actually fails to make payments resulting in a default in the agreement. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under §1026.32(d)(8)(ii) if the consumer fails to meet the repayment terms resulting in a default of the agreement. Section 1026.32(d)(8)(ii) does not override any State or other law that requires a creditor to notify a consumer of a right to cure, or otherwise places a duty on the creditor before it can terminate a loan or open-end credit agreement and accelerate the balance.

Paragraph 32(d)(8)(iii)

1. *Impairment of security.* A creditor may terminate a loan or open-end credit agreement and accelerate the balance if the consumer's action or inaction adversely affects

the creditor's security for the loan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate and accelerate.

2. *Examples.* i. A creditor may terminate and accelerate, for example, if:

A. The consumer transfers title to the property or sells the property without the permission of the creditor.

B. The consumer fails to maintain required insurance on the dwelling.

C. The consumer fails to pay taxes on the property.

D. The consumer permits the filing of a lien senior to that held by the creditor.

E. The sole consumer obligated on the credit dies.

F. The property is taken through eminent domain.

G. A prior lienholder forecloses.

ii. By contrast, the filing of a judgment against the consumer would be cause for termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely and materially affected in violation of the loan or open-end credit agreement. If the consumer commits waste or otherwise destructively uses or fails to maintain the property, including demolishing or removing structures from the property, such that the action adversely affects the security in a material way, the loan or open-end credit agreement may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. If one of two consumers obligated on a loan dies, the creditor may terminate the loan and accelerate the balance if the security is adversely affected. If the consumer moves out of the dwelling that secures the loan and that action adversely affects the security in a material way, the creditor may terminate a loan or open-end credit agreement and accelerate the balance.

Section 1026.33—Requirements for Reverse Mortgages

33(a) Definition

1. *Nonrecourse transaction.* A nonrecourse reverse mortgage transaction limits the homeowner's liability to the proceeds of the sale of the home (or any lesser amount specified in the credit obligation). If a transaction structured as a closed-end reverse mortgage transaction allows recourse against the consumer, and the annual percentage rate or the points and fees exceed those specified under §1026.32(a)(1), the transaction is subject to all the requirements of §1026.32, including the limitations concerning balloon payments and negative amortization.

Paragraph 33(a)(2)

1. *Default.* Default is not defined by the statute or regulation, but rather by the legal obligation between the parties and state or other law.

2. *Definite term or maturity date.* To meet the definition of a reverse mortgage transaction, a creditor cannot require any principal, interest, or shared appreciation or equity to be due and payable (other than in the case of default) until after the consumer's death, transfer of the dwelling, or the consumer ceases to occupy the dwelling as a principal dwelling. Some state laws require legal obligations secured by a mortgage to specify a definite maturity date or term of repayment in the instrument. An obligation may state a definite maturity date or term of repayment and still meet the definition of a reverse-mortgage transaction if the maturity date or term of repayment used would not operate to cause maturity prior to the occurrence of any of the maturity events recognized in the regulation. For example, some reverse mortgage programs specify that the final maturity date is the borrower's 150th birthday; other programs include a shorter term but provide that the term is automatically extended for consecutive periods if none of the other maturity events has yet occurred. These programs would be permissible.

33(c) Projected Total Cost of Credit

33(c)(1) Costs to Consumer

1. *Costs and charges to consumer—relation to finance charge.* All costs and charges to the consumer that are incurred in a reverse mortgage transaction are included in the projected total cost of credit, and thus in the total annual loan cost rates, whether or not the cost or charge is a finance charge under §1026.4.

2. *Annuity costs.* As part of the credit transaction, some creditors require or permit a consumer to purchase an annuity that immediately—or at some future time—supplements or replaces the creditor's payments. The amount paid by the consumer for the annuity is a cost to the consumer under this section, regardless of whether the annuity is purchased through the creditor or a third party, or whether the purchase is mandatory or voluntary. For example, this includes the costs of an annuity that a creditor offers, arranges, assists the consumer in purchasing, or that the creditor is aware the consumer is purchasing as a part of the transaction.

3. *Disposition costs excluded.* Disposition costs incurred in connection with the sale or transfer of the property subject to the reverse mortgage are not included in the costs to the consumer under this paragraph. (However, see the definition of Val_nin appendix K

to the regulation to determine the effect certain disposition costs may have on the total annual loan cost rates.)

Paragraph 33(c)(2) Payments to Consumer

1. *Payments upon a specified event.* The projected total cost of credit should not reflect contingent payments in which a credit to the outstanding loan balance or a payment to the consumer's estate is made upon the occurrence of an event (for example, a "death benefit" payable if the consumer's death occurs within a certain period of time). Thus, the table of total annual loan cost rates required under §1026.33(b)(2) would not reflect such payments. At its option, however, a creditor may put an asterisk, footnote, or similar type of notation in the table next to the applicable total annual loan cost rate, and state in the body of the note, apart from the table, the assumption upon which the total annual loan cost is made and any different rate that would apply if the contingent benefit were paid.

33(c)(3) Additional Creditor Compensation

1. *Shared appreciation or equity.* Any shared appreciation or equity that the creditor is entitled to receive pursuant to the legal obligation must be included in the total cost of a reverse mortgage loan. For example, if a creditor agrees to a reduced interest rate on the transaction in exchange for a portion of the appreciation or equity that may be realized when the dwelling is sold, that portion is included in the projected total cost of credit.

33(c)(4) Limitations on Consumer Liability

1. *In general.* Creditors must include any limitation on the consumer's liability (such as a nonrecourse limit or an equity conservation agreement) in the projected total cost of credit. These limits and agreements protect a portion of the equity in the dwelling for the consumer or the consumer's estate. For example, the following are limitations on the consumer's liability that must be included in the projected total cost of credit:

i. A limit on the consumer's liability to a certain percentage of the projected value of the home.

ii. A limit on the consumer's liability to the net proceeds from the sale of the property subject to the reverse mortgage.

2. *Uniform assumption for "net proceeds" recourse limitations.* If the legal obligation between the parties does not specify a percentage for the "net proceeds" liability of the consumer, for purposes of the disclosures required by §1026.33, a creditor must assume that the costs associated with selling the property will equal 7 percent of the projected sale price (see the definition of the Val_n symbol under appendix K(b)(6)).

Section 1026.34—Prohibited Acts or Practices in Connection With High-Cost Mortgages

34(a) Prohibited Acts or Practices for High-Cost Mortgages

34(a)(1) Home-Improvement Contracts

Paragraph 34(a)(1)(i)

1. *Joint payees.* If a creditor pays a contractor with an instrument jointly payable to the contractor and the consumer, the instrument must name as payee each consumer who is primarily obligated on the note.

34(a)(2) Notice to Assignee

1. *Subsequent sellers or assignors.* Any person, whether or not the original creditor, that sells or assigns a mortgage subject to §1026.32 must furnish the notice of potential liability to the purchaser or assignee.

2. *Format.* While the notice of potential liability need not be in any particular format, the notice must be prominent. Placing it on the face of the note, such as with a stamp, is one means of satisfying the prominence requirement.

3. *Assignee liability.* Pursuant to section 131(d) of the Act, the Act's general holder-in-due course protections do not apply to purchasers and assignees of loans covered by §1026.32. For such loans, a purchaser's or other assignee's liability for all claims and defenses that the consumer could assert against the creditor is not limited to violations of the Act.

34(a)(3) Refinancings Within One-Year Period

1. *In the borrower's interest.* The determination of whether or not a refinancing covered by §1026.34(a)(3) is in the borrower's interest is based on the totality of the circumstances, at the time the credit is extended. A written statement by the borrower that "this loan is in my interest" alone does not meet this standard.

i. A refinancing would be in the borrower's interest if needed to meet the borrower's "bona fide personal financial emergency" (see generally §1026.23(e) and §1026.31(c)(1)(iii)).

ii. In connection with a refinancing that provides additional funds to the borrower, in determining whether a loan is in the borrower's interest consideration should be given to whether the loan fees and charges are commensurate with the amount of new funds advanced, and whether the real estate-related charges are bona fide and reasonable in amount (see generally §1026.4(c)(7)).

2. *Application of the one-year refinancing prohibition to creditors and assignees.* The prohibition in §1026.34(a)(3) applies where an extension of credit subject to §1026.32 is refinanced into another loan subject to §1026.32.

The prohibition is illustrated by the following examples. Assume that Creditor A makes a loan subject to §1026.32 on January 15, 2003, secured by a first lien; this loan is assigned to Creditor B on February 15, 2003:

i. Creditor A is prohibited from refinancing the January 2003 loan (or any other loan subject to §1026.32 to the same borrower) into a loan subject to §1026.32, until January 15, 2004. Creditor B is restricted until January 15, 2004, or such date prior to January 15, 2004 that Creditor B ceases to hold or service the loan. During the prohibition period, Creditors A and B may make a subordinate lien loan that does not refinance a loan subject to §1026.32. Assume that on April 1, 2003, Creditor A makes but does not assign a second-lien loan subject to §1026.32. In that case, Creditor A would be prohibited from refinancing either the first-lien or second-lien loans (or any other loans to that borrower subject to §1026.32) into another loan subject to §1026.32 until April 1, 2004.

ii. The loan made by Creditor A on January 15, 2003 (and assigned to Creditor B) may be refinanced by Creditor C at any time. If Creditor C refinances this loan on March 1, 2003 into a new loan subject to §1026.32, Creditor A is prohibited from refinancing the loan made by Creditor C (or any other loan subject to §1026.32 to the same borrower) into another loan subject to §1026.32 until January 15, 2004. Creditor C is similarly prohibited from refinancing any loan subject to §1026.32 to that borrower into another until March 1, 2004. (The limitations of §1026.34(a)(3) no longer apply to Creditor B after Creditor C refinanced the January 2003 loan and Creditor B ceased to hold or service the loan.)

Paragraph 34(a)(4) Repayment Ability for High-Cost Mortgages

1. *Application of repayment ability rule.* The §1026.34(a)(4) prohibition against making loans without regard to consumers' repayment ability applies to open-end, high-cost mortgages. The §1026.43 repayment ability provisions apply to closed-end, high-cost mortgages. Accordingly, in connection with a closed-end, high-cost mortgage, §1026.34(a)(4) requires a creditor to comply with the repayment ability requirements set forth in §1026.43.

2. *General prohibition.* Section 1026.34(a)(4) prohibits a creditor from extending credit under a high-cost, open-end credit plan based on the value of the consumer's collateral without regard to the consumer's repayment ability as of account opening, including the consumer's current and reasonably expected income, employment, assets other than the collateral, current obligations, and property tax and insurance obligations. A creditor may base its determination of repayment ability on current or reasonably expected income from employment or other sources, on assets other than the collateral, or both.

3. *Other dwelling-secured obligations.* For purposes of §1026.34(a)(4), current obligations include another credit obligation of which the creditor has knowledge undertaken prior to or at account opening and secured by the same dwelling that secures the high-cost mortgage transaction.

4. *Discounted introductory rates and non-amortizing payments.* A credit agreement may determine a consumer's initial payments using a temporarily discounted interest rate or permit the consumer to make initial payments that are non-amortizing. In such cases the creditor may determine repayment ability using the assumptions provided in §1026.34(a)(4)(iv).

5. *Repayment ability as of account opening.* Section 1026.34(a)(4) prohibits a creditor from disregarding repayment ability based on the facts and circumstances known to the creditor as of account opening. In general, a creditor does not violate this provision if a consumer defaults because of a significant reduction in income (for example, a job loss) or a significant obligation (for example, an obligation arising from a major medical expense) that occurs after account opening. However, if a creditor has knowledge as of account opening of reductions in income (for example, if a consumer's written application states that the consumer plans to retire within twelve months without obtaining new employment, or states that the consumer will transition from full-time to part-time employment), the creditor must consider that information.

6. *Income, assets, and employment.* Any current or reasonably expected assets or income may be considered by the creditor, except the collateral itself. For example, a creditor may use information about current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income could include interest or dividends; retirement benefits; public assistance; and alimony, child support, or separate maintenance payments. A creditor may also take into account assets such as savings accounts or investments that the consumer can or will be able to use.

7. *Interaction with Regulation B.* Section 1026.34(a)(4) does not require or permit the creditor to make inquiries or verifications that would be prohibited by Regulation B, 12 CFR part 1002.

34(a)(4)(i) Mortgage-Related Obligations

1. *Mortgage-related obligations.* A creditor must include in its repayment ability analysis the expected property taxes and premiums for mortgage-related insurance required by the creditor as set forth in

§1026.35(b), as well as similar mortgage-related expenses. Similar mortgage-related expenses include homeowners' association dues and condominium or cooperative fees.

34(a)(4)(ii) Verification of Repayment Ability

1. *Income and assets relied on.* A creditor must verify the income and assets the creditor relies on to evaluate the consumer's repayment ability. For example, if a consumer earns a salary and also states that he or she is paid an annual bonus, but the creditor only relies on the applicant's salary to evaluate repayment ability, the creditor need only verify the salary.

2. *Income and assets—co-applicant.* If two persons jointly apply for credit and both list income or assets on the application, the creditor must verify repayment ability with respect to both applicants unless the creditor relies only on the income or assets of one of the applicants in determining repayment ability.

3. *Expected income.* If a creditor relies on expected income, the expectation must be reasonable and it must be verified with third-party documents that provide reasonably reliable evidence of the consumer's expected income. For example, if the creditor relies on an expectation that a consumer will receive an annual bonus, the creditor may verify the basis for that expectation with documents that show the consumer's past annual bonuses and the expected bonus must bear a reasonable relationship to past bonuses. Similarly, if the creditor relies on a consumer's expected salary following the consumer's receipt of an educational degree, the creditor may verify that expectation with a written statement from an employer indicating that the consumer will be employed upon graduation at a specified salary.

Paragraph 34(a)(4)(ii)(A)

1. *Internal Revenue Service (IRS) Form W–2.* A creditor may verify a consumer's income using a consumer's IRS Form W–2 (or any subsequent revisions or similar IRS Forms used for reporting wages and tax withholding). The creditor may also use an electronic retrieval service for obtaining the consumer's W–2 information.

2. *Tax returns.* A creditor may verify a consumer's income or assets using the consumer's tax return. A creditor may also use IRS Form 4506 ''Request for Copy of Tax Return,'' Form 4506–T ''Request for Transcript of Tax Return,'' or Form 8821 ''Tax Information Authorization'' (or any subsequent revisions or similar IRS Forms appropriate for obtaining tax return information directly from the IRS) to verify the consumer's income or assets. The creditor may also use an electronic retrieval service for obtaining tax return information.

3. *Other third-party documents that provide reasonably reliable evidence of consumer's income or assets.* Creditors may verify income and assets using documents produced by third parties. Creditors may not rely on information provided orally by third parties, but may rely on correspondence from the third party, such as by letter or email. The creditor may rely on any third-party document that provides reasonably reliable evidence of the consumer's income or assets. For example, creditors may verify the consumer's income using receipts from a check-cashing or remittance service, or by obtaining a written statement from the consumer's employer that states the consumer's income.

4. *Information specific to the consumer.* Creditors must verify a consumer's income or assets using information that is specific to the individual consumer. Creditors may use third-party databases that contain individual-specific data about a consumer's income or assets, such as a third-party database service used by the consumer's employer for the purpose of centralizing income verification requests, so long as the information is reasonably current and accurate. Information about average incomes for the consumer's occupation in the consumer's geographic location or information about average incomes paid by the consumer's employer, however, would not be specific to the individual consumer.

5. *Duplicative collection of documentation.* A creditor that has made a loan to a consumer and is refinancing or extending new credit to the same consumer need not collect from the consumer a document the creditor previously obtained if the creditor has no information that would reasonably lead the creditor to believe that document has changed since it was initially collected. For example, if the creditor has obtained the consumer's 2006 tax return to make a home purchase loan in May 2007, the creditor may rely on the 2006 tax return if the creditor makes a home equity loan to the same consumer in August 2007. Similarly, if the creditor has obtained the consumer's bank statement for May 2007 in making the first loan, the creditor may rely on that bank statement for that month in making the subsequent loan in August 2007.

Paragraph 34(a)(4)(ii)(B)

1. *In general.* A credit report may be used to verify current obligations. A credit report, however, might not reflect an obligation that a consumer has listed on an application. The creditor is responsible for considering such an obligation, but the creditor is not required to independently verify the obligation. Similarly, a creditor is responsible for considering certain obligations undertaken just before or at account opening and secured by the same dwelling that secures

the transaction (for example, a ''piggy back'' loan), of which the creditor knows, even if not reflected on a credit report. *See* comment 34(a)(4)–3.

34(a)(4)(iii) Presumption of Compliance

1. *In general.* A creditor is presumed to have complied with §1026.34(a)(4) if the creditor follows the three underwriting procedures specified in paragraph 34(a)(4)(iii) for verifying repayment ability, determining the payment obligation, and measuring the relationship of obligations to income. The procedures for verifying repayment ability are required under §1026.34(a)(4)(ii); the other procedures are not required but, if followed along with the required procedures, create a presumption that the creditor has complied with §1026.34(a)(4). The consumer may rebut the presumption with evidence that the creditor nonetheless disregarded repayment ability despite following these procedures. For example, evidence of a very high debt-to-income ratio and a very limited residual income could be sufficient to rebut the presumption, depending on all of the facts and circumstances. If a creditor fails to follow one of the non-required procedures set forth in §1026.34(a)(4)(iii), then the creditor's compliance is determined based on all of the facts and circumstances without there being a presumption of either compliance or violation.

Paragraph 34(a)(4)(iii)(B)

1. *Determination of payment schedule.* To retain a presumption of compliance under §1026.34(a)(4)(iii), a creditor must determine the consumer's ability to pay the principal and interest obligation based on the maximum scheduled payment. In general, a creditor should determine a payment schedule for purposes of §1026.34(a)(4)(iii)(B) based on the guidance in the commentary to §1026.32(c)(3).

Paragraph 34(a)(4)(iii)(C)

1. *''Income'' and ''debt''.* To determine whether to classify particular inflows or obligations as ''income'' or ''debt,'' creditors may look to widely accepted governmental and non-governmental underwriting standards, including, for example, those set forth in the Federal Housing Administration's handbook on Mortgage Credit Analysis for Mortgage Insurance.

34(a)(4)(iv) Exclusions From Presumption of Compliance

1. *In general.* The exclusions from the presumption of compliance should be interpreted consistent with comments 32(d)(1)(i)–1 and 32(d)(2)–1.

2. *Renewable balloon loan.* If a creditor is unconditionally obligated to renew a balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control), the full term resulting from such renewal is the relevant term for purposes of the exclusion of certain balloon-payment loans. See comment 17(c)(1)–11 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.

34(a)(5) Pre-loan counseling.

34(a)(5)(i) Certification of counseling required.

1. *HUD-approved counselor.* For purposes of §1026.34(a)(5), counselors approved by the Secretary of the U.S. Department of Housing and Urban Development are homeownership counselors certified pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)), or as otherwise determined by the Secretary.

2. *State housing finance authority.* For purposes of §1026.34(a)(5), a ''State housing finance authority'' has the same meaning as ''State housing finance agency'' provided in 24 CFR 214.3.

3. *Processing applications.* Prior to receiving certification of counseling, a creditor may not extend a high-cost mortgage, but may engage in other activities, such as processing an application that will result in the extension of a high-cost mortgage (by, for example, ordering an appraisal or title search).

4. *Form of certification.* The written certification of counseling required by §1026.34(a)(5)(i) may be received by mail, email, facsimile, or any other method, so long as the certification is in a retainable form.

5. *Purpose of certification.* Certification of counseling indicates that a consumer has received counseling as required by §1026.34(a)(5), but it does not indicate that a counselor has made a judgment or determination as to the appropriateness of the transaction for the consumer.

34(a)(5)(ii) Timing of counseling.

1. *Disclosures for open-end credit plans.* Section 1026.34(a)(5)(ii) permits receipt of either the disclosure required by section 5(c) of RESPA or the disclosures required under §1026.40 to allow counseling to occur. Pursuant to 12 CFR 1024.7(h), the disclosures required by §1026.40 can be provided for open-end plans in lieu of the usual disclosure required by section 5(c) of RESPA.

2. *Transactions not subject to RESPA or §1026.40.* For closed-end mortgage transactions that are not subject to RESPA, the counseling certification must include a statement that the consumer(s) received counseling on the advisability of the high-cost mortgage based on the terms provided in the disclosures required by §1026.32(c). (Reference to counseling on advisability using the disclosures required by §1026.32(c) is not required for transactions subject to RESPA or §1026.40.) The disclosures required by §1026.32(c) must be furnished to the consumer at least three business days prior to

consummation of the mortgage. The creditor may wish to furnish the disclosures sooner, to provide sufficient time for counseling and certification.

3. *Initial disclosure*. Counseling may occur after receipt of either an initial disclosure required by section 5(c) of RESPA, the disclosures required by §1026.40, or the disclosures required by §1026.32(c), regardless of whether revised versions of such disclosures are subsequently provided to the consumer.

34(a)(5)(iv) Content of certification.

1. *Statement of counseling on advisability*. A statement that a consumer has received counseling on the advisability of the high-cost mortgage means that the consumer has received counseling about key terms of the mortgage transaction, as set out in either the disclosure required by section 5(c) of RESPA or the disclosures provided to the consumer pursuant to §1026.40, or, for closed-end transactions not subject to RESPA, the disclosures required by §1026.32(c); the consumer's budget, including the consumer's income, assets, financial obligations, and expenses; and the affordability of the mortgage transaction for the consumer. Examples of such terms of the mortgage transaction include the initial interest rate, the initial monthly payment, whether the payment may increase, how the minimum periodic payment will be determined, and fees imposed by the creditor, as may be reflected in the applicable disclosure. A statement that a consumer has received counseling on the advisability of the high-cost mortgage does not require the counselor to have made a judgment or determination as to the appropriateness of the mortgage transaction for the consumer.

2. *Statement of verification*. A statement that a counselor has verified that the consumer has received the disclosures required by either §1026.32(c) or by RESPA for the high-cost mortgage means that a counselor has confirmed, orally, in writing, or by some other means, receipt of such disclosures with the consumer.

34(a)(5)(v) Counseling fees.

1. *Financing*. Section 1026.34(a)(5)(v) does not prohibit a creditor from financing the counseling fee as part of the transaction for a high-cost mortgage, if the fee is a bona fide third-party charge as provided by §1026.32(b)(5)(i).

34(a)(5)(vi) Steering prohibited.

1. An example of an action that constitutes steering would be when a creditor repeatedly highlights or otherwise distinguishes the same counselor in the notices the creditor provides to consumers pursuant to §1026.34(a)(5)(vii).

2. Section 1026.34(a)(5)(vi) does not prohibit a creditor from providing a consumer with objective information related to counselors or counseling organizations in response to a consumer's inquiry. An example of an action that would not constitute steering would be when a consumer asks the creditor for information about the fees charged by a counselor, and the creditor responds by providing the consumer information about fees charged by the counselor to other consumers that previously obtained counseling pursuant to §1026.34(a)(5).

34(a)(6) Recommended default.

1. *Facts and circumstances*. Whether a creditor or mortgage broker "recommends or encourages" default for purposes of §1026.34(a)(6) depends on all of the relevant facts and circumstances.

2. *Examples*. i. A creditor or mortgage broker "recommends or encourages" default when the creditor or mortgage broker advises the consumer to stop making payments on an existing loan in a manner that is likely to cause the consumer to default on the existing loan.

ii. When delay of consummation of a high-cost mortgage occurs for reasons outside the control of a creditor or mortgage broker, that creditor or mortgage broker does not "recommend or encourage" default because the creditor or mortgage broker informed a consumer that:

A. The consumer's high-cost mortgage is scheduled to be consummated prior to the due date for the next payment due on the consumer's existing loan, which is intended to be paid by the proceeds of the new high-cost mortgage; and

B. Any delay of consummation of the new high-cost mortgage beyond the payment due date of the existing loan will not relieve the consumer of the obligation to make timely payment on that loan.

34(a)(8) Late fees.

34(a)(8)(i) General.

1. For purposes of §1026.34(a)(8), in connection with an open-end credit plan, the amount of the payment past due is the required minimum periodic payment as provided under the terms of the open-end credit agreement.

34(a)(8)(iii) Multiple late charges assessed on payment subsequently paid.

1. Section 1026.34(a)(8)(iii) prohibits the pyramiding of late fees or charges in connection with a high-cost mortgage payment. For example, assume that a consumer's regular periodic payment of $500 is due on the 1st of each month. On August 25, the consumer makes a $500 payment which was due on August 1, and as a result, a $10 late charge is assessed. On September 1, the consumer makes another $500 payment for the regular periodic payment due on September 1, but does not pay the $10 late charge assessed on the August payment. Under §1026.34(h)(2), it is impermissible to allocate $10 of the consumer's September 1 payment to cover the late charge, such that the September payment becomes delinquent. In short, because the $500 payment made on September 1 is a

full payment for the applicable period and is paid by its due date or within any applicable grace period, no late charge may be imposed on the account in connection with the September payment.

34(a)(8)(iv) Failure to make required payment.

1. Under §1026.34(a)(8)(iv), if a consumer fails to make one or more required payments and then resumes making payments but fails to bring the account current, it is permissible, if permitted by the terms of the loan contract or open-end credit agreement, to apply the consumer's payments first to the past due payment(s) and to impose a late charge on each subsequent required payment until the account is brought current. To illustrate: Assume that a consumer's regular periodic payment of $500 is due on the 1st of each month, or before the expiration of a 15-day grace period. Also assume that the consumer fails to make a timely installment payment by August 1 (or within the applicable grace period), and a $10 late charge therefore is imposed. The consumer resumes making monthly payments on September 1. Under §1026.34(a)(8)(iv), if permitted by the terms of the loan contract, the creditor may apply the $500 payment made on September 1 to satisfy the missed $500 payment that was due on August 1. If the consumer makes no other payment prior to the end of the grace period for the payment that was due on September 1, the creditor may also impose a $10 late fee for the payment that was due on September 1.

34(a)(10) Financing of points and fees.

1. *Points and fees.* For purposes of §1026.34(a)(10), ''points and fees'' means those items that are required to be included in the calculation of points and fees under §1026.32(b)(1) and (2). Thus, for example, in connection with the extension of credit under a high-cost mortgage, a creditor may finance a fee charged by a third-party counselor in connection with the consumer's receipt of pre-loan counseling under §1026.34(a)(5), because, pursuant to §1026.32(b)(1)(i)(D) and (b)(2)(i)(D), such a fee is excluded from the calculation of points and fees as a bona fide third-party charge.

2. *Examples of financing points and fees.* For purposes of §1026.34(a)(10), points and fees are financed if, for example, they are added to the loan balance or financed through a separate note, if the note is payable to the creditor or to an affiliate of the creditor. In the case of an open-end credit plan, a creditor also finances points and fees if the creditor advances funds from the credit line to cover the fees.

34(b) Prohibited acts or practices for dwelling-secured loans; structuring loans to evade high-cost mortgage requirements.

1. *Examples.* i. A creditor structures a transaction in violation of §1026.34(b) if, for example, the creditor structures a loan that would otherwise be a high-cost mortgage as two or more loans, whether made consecutively or at the same time, for example, to divide the loan fees to avoid the points and fees threshold for high-cost mortgages in §1026.32(a)(1)(ii).

ii. A creditor does not structure a transaction in violation of §1026.34(b) when a loan to finance the initial construction of a dwelling may be permanently financed by the same creditor, such as a ''construction-to-permanent'' loan, and the construction phase and the permanent phase are treated as separate transactions. Section 1026.17(c)(6)(ii) 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 each of the two phases as though they were two separate transactions. *See also* comment 17(c)(6)–2.

2. *Amount of credit extended.* Where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit. Thus, in determining the ''total loan amount'' for purposes of applying the triggers under §1026.32, the amount of credit that would have been extended if the loan had been documented as a closed-end loan is a factual determination to be made in each case. Factors to be considered include the amount of money the consumer originally requested, the amount of the first advance or the highest outstanding balance, or the amount of the credit line. The full amount of the credit line is considered only to the extent that it is reasonable to expect that the consumer might use the full amount of credit.

34(b) Prohibited Acts or Practices for Dwelling-Secured Loans; Open-End Credit

1. *Amount of credit extended.* Where a loan is documented as open-end credit but the features and terms or other circumstances demonstrate that it does not meet the definition of open-end credit, the loan is subject to the rules for closed-end credit, including §1026.32 if the rate or fee trigger is met. In applying the triggers under §1026.32, the ''amount financed,'' including the ''principal loan amount'' must be determined. In making the determination, the amount of credit that would have been extended if the loan had been documented as a closed-end loan is a factual determination to be made in each case. Factors to be considered include the amount of money the consumer originally requested, the amount of the first advance or the highest outstanding balance, or the amount of the credit line. The full amount of the credit line is considered only to the extent that it is reasonable to expect that the consumer might use the full amount of credit.

Section 1026.35—Requirements for Higher-Priced Mortgage Loans

35(a) Definitions

Paragraph 35(a)(1).

1. *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.

2. *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.

3. *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.

Paragraph 35(a)(2)

1. *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®.

2. *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.

3. *Additional guidance on determination of average prime offer rates.* The average prime offer rate has the same meaning in § 1026.35 as in Regulation C, 12 CFR part 1003. See 12 CFR 1003.4(a)(12)(ii). Guidance on the average prime offer rate under § 1026.35(a)(2), such as when a transaction's rate is set and determination of the comparable transaction, is provided in the official commentary under Regulation C, the publication entitled ''A Guide to HMDA Reporting: Getting it Right!'', and the relevant ''Frequently Asked Questions'' on Home Mortgage Disclosure Act (HMDA) compliance posted on the FFIEC's Web site at *http://www.ffiec.gov/hmda.*

35(b) Escrow Accounts

1. *Principal dwelling.* 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 manufactured home, boat, or trailer used as the consumer's principal dwelling. *See* the commentary under §§ 1026.2(a)(19) and(24), 1026.15, and 1026.23. Section 1026.35(b)(1) also applies to a higher-priced mortgage loan secured by a first lien on a condominium if it is in fact used as the consumer's principal dwelling. But see § 1026.35(b)(2) for exemptions from the escrow requirement that may apply to such transactions.

35(b)(1) Requirement to escrow for property taxes and insurance

1. *Administration of escrow accounts.* Section 1026.35(b)(1) requires creditors to establish an escrow account for payment of property taxes and premiums for mortgage-related insurance required by the creditor before the consummation of a higher-priced mortgage loan secured by a first lien on a principal dwelling. Section 6 of RESPA, 12 U.S.C. 2605, and Regulation X, 12 CFR 1024.17, address how escrow accounts must be administered.

2. *Optional insurance items.* Section 1026.35(b)(1) does not require that an escrow account be established for premiums for

mortgage-related insurance that the creditor does not require in connection with the credit transaction, such as earthquake insurance or credit life insurance, even if the consumer voluntarily obtains such insurance.

3. *Transactions not 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).

35(b)(2) Exemptions

35(b)(2) Exemptions.

Paragraph 35(b)(2)(i).

1. *Construction-permanent loans.* Under §1026.35(b)(2)(ii)(B), §1026.35 does not apply to a transaction to finance the initial construction of a dwelling. Section 1026.35 may apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor. When a construction loan may be permanently financed by the same creditor, §1026.17(c)(6)(ii) 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 each of the two phases as though they were two separate transactions. *See also* comment 17(c)(6)–2. Section 1026.17(c)(6)(ii) addresses only how a creditor may elect to disclose a construction-permanent transaction. Which disclosure option a creditor elects under §1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to §1026.35. When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine whether the transaction is a higher-priced mortgage loan under §1026.35(a). When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with §1026.22(a)(1) and appendix D to part 1026. This annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine the transaction is a higher-priced mortgage loan under §1026.35(a). If the transaction is determined to be a higher-priced mortgage loan, only the permanent phase is subject to the requirement of §1026.35(b)(1) to establish and maintain an escrow account, and the period for which the escrow account must remain in place under §1026.35(b)(3) is measured from the time the conversion to the permanent phase financing occurs.

Paragraph 35(b)(2)(ii).

1. *Limited exemption.* A creditor is required to escrow for payment of property taxes for all first-lien higher-priced mortgage loans secured by condominium, planned unit development, or similar dwellings or units regardless of whether the creditor escrows for insurance premiums for such dwellings or units.

2. *Planned unit developments.* Planned unit developments (PUDs) are a form of property ownership often used in retirement communities, golf communities, and similar communities made up of homes located within a defined geographical area. PUDs usually have a homeowners' association or some other governing association, analogous to a condominium association and with similar authority and obligations. Thus, as with condominiums, PUDs often have master insurance policies that cover all units in the PUD. Under §1026.35(b)(2)(ii), if a PUD's governing association is obligated to maintain such a master insurance policy, an escrow account required by §1026.35(b)(1) for a transaction secured by a unit in the PUD need not include escrows for insurance. This exemption applies not only to condominiums and PUDs but also to any other type of property ownership arrangement that has a governing association with an obligation to maintain a master insurance policy.

3. *More than one governing association associated with a dwelling.* The limited exemption provided pursuant to §1026.35(b)(2)(ii) applies to each master insurance policy for properties with multiple governing associations, to the extent each governing association has an obligation to maintain a master insurance policy.

Paragraph 35(b)(2)(iii).

1. *Requirements for exemption.* Under §1026.35(b)(2)(iii), except as provided in §1026.35(b)(2)(v), a creditor need not establish an escrow account for taxes and insurance for a higher-priced mortgage loan, provided the following four conditions are satisfied when the higher-priced mortgage loan is consummated:

i. During the preceding calendar year, or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, a creditor extended a first-lien covered transaction, as defined in §1026.43(b)(1), secured by a property located in an area that is either "rural" or "underserved," as set forth in §1026.35(b)(2)(iv).

A. In general, whether the rural-or-underserved test is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question was received before April 1 of the current calendar year, the creditor may instead meet the rural-or-underserved test based on its activity during the next-to-last calendar year. This provides creditors with a grace period if their activity meets the rural-or-underserved test (in §1026.35(b)(2)(iii)(A)) in one calendar year but fails to meet it in the next calendar year.

B. A creditor meets the rural-or-underserved test for any higher-priced mortgage loan consummated during a calendar year if it extended a first-lien covered transaction in the preceding calendar year secured by a property located in a rural-or-underserved area. If the creditor does not meet the rural-or-underserved test in the preceding calendar year, the creditor meets this condition for a higher-priced mortgage loan consummated during the current calendar year only if the application for the loan was received before April 1 of the current calendar year and the creditor extended a first-lien covered transaction during the next-to-last calendar year that is secured by a property located in a rural or underserved area. The following examples are illustrative:

1. Assume that a creditor extended during 2016 a first-lien covered transaction that is secured by a property located in a rural or underserved area. Because the creditor extended a first-lien covered transaction during 2016 that is secured by a property located in a rural or underserved area, the creditor can meet this condition for exemption for any higher-priced mortgage loan consummated during 2017.

2. Assume that a creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area. Assume further that the same creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area. Assume further that the creditor consummates a higher-priced mortgage loan in 2017 for which the application was received in November 2017. Because the creditor did not extend during 2016 a first-lien covered transaction secured by a property that is located in a rural or underserved area, and the application was received on or after April 1, 2017, the creditor does not meet this condition for exemption. However, assume instead that the creditor consummates a higher-priced mortgage loan in 2017 based on an application received in February 2017. The creditor meets this condition for exemption for this loan because the application was received before April 1, 2017, and the creditor extended during 2015 a first-lien covered transaction that is located in a rural or underserved area.

ii. The creditor and its affiliates together extended no more than 2,000 covered transactions, as defined in §1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, during the preceding calendar year or during either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year. For purposes of §1026.35(b)(2)(iii)(B), a transfer of a first-lien covered transaction to ''another person'' includes a transfer by a creditor to its affiliate.

A. In general, whether this condition is satisfied depends on the creditor's activity during the preceding calendar year. However, if the application for the loan in question is received before April 1 of the current calendar year, the creditor may instead meet this condition based on activity during the next-to-last calendar year. This provides creditors with a grace period if their activity falls at or below the threshold in one calendar year but exceeds it in the next calendar year.

B. For example, assume that in 2015 a creditor and its affiliates together extended 1,500 loans that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, and 2,500 such loans in 2016. Because the 2016 transaction activity exceeds the threshold but the 2015 transaction activity does not, the creditor satisfies this condition for exemption for a higher-priced mortgage loan consummated during 2017 if the creditor received the application for the loan before April 1, 2017, but does not satisfy this condition for a higher-priced mortgage loan consummated during 2017 if the application for the loan was received on or after April 1, 2017.

C. For purposes of §1026.35(b)(2)(iii)(B), extensions of first-lien covered transactions, during the applicable time period, by all of a creditor's affiliates, as ''affiliate'' is defined in §1026.32(b)(5), are counted toward the threshold in this section. ''Affiliate'' is defined in §1026.32(b)(5) as ''any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*).'' Under the Bank Holding Company Act, a company has control over a bank or another company if it directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the bank or company; it controls in any manner the election of a majority of the directors or trustees of the bank or company; or the Federal Reserve Board determines, after notice and opportunity for hearing, that the company directly or indirectly exercises a controlling influence over the management or policies of the bank or company. 12 U.S.C. 1841(a)(2).

iii. As of the end of the preceding calendar year, or as of the end of either of the two preceding calendar years if the application for the loan was received before April 1 of the current calendar year, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that are less than the applicable annual asset threshold.

A. For purposes of §1026.35(b)(2)(iii)(C), in addition to the creditor's assets, only the assets of a creditor's ''affiliate'' (as defined by §1026.32(b)(5)) that regularly extended covered transactions (as defined by §1026.43(b)(1)) secured by first liens, are counted toward the applicable annual asset threshold. *See* comment 35(b)(2)(iii)–1.ii.C for discussion of definition of ''affiliate.''

B. Only the assets of a creditor's affiliate that regularly extended first-lien covered transactions during the applicable period are included in calculating the creditor's assets. The meaning of ''regularly extended'' is based on the number of times a person extends consumer credit for purposes of the definition of ''creditor'' in §1026.2(a)(17). Because covered transactions are ''transactions secured by a dwelling,'' consistent with §1026.2(a)(17)(v), an affiliate regularly extended covered transactions if it extended more than five covered transactions in a calendar year. Also consistent with §1026.2(a)(17)(v), because a covered transaction may be a high-cost mortgage subject to §1026.32, an affiliate regularly extends covered transactions if, in any 12-month period, it extends more than one covered transaction that is subject to the requirements of §1026.32 or one or more such transactions through a mortgage broker. Thus, if a creditor's affiliate regularly extended first-lien covered transactions during the preceding calendar year, the creditor's assets as of the end of the preceding calendar year, for purposes of the asset limit, take into account the assets of that affiliate. If the creditor, together with its affiliates that regularly extended first-lien covered transactions, exceeded the asset limit in the preceding calendar year—to be eligible to operate as a small creditor for transactions with applications received before April 1 of the current calendar year—the assets of the creditor's affiliates that regularly extended covered transactions in the year before the preceding calendar year are included in calculating the creditor's assets.

C. If multiple creditors share ownership of a company that regularly extended first-lien covered transactions, the assets of the company count toward the asset limit for a co-owner creditor if the company is an ''affiliate,'' as defined in §1026.32(b)(5), of the co-owner creditor. Assuming the company is not an affiliate of the co-owner creditor by virtue of any other aspect of the definition (such as by the company and co-owner creditor being under common control), the company's assets are included toward the asset limit of the co-owner creditor only if the company is controlled by the co-owner creditor, ''as set forth in the Bank Holding Company Act.'' If the co-owner creditor and the company are affiliates (by virtue of any aspect of the definition), the co-owner creditor counts all of the company's assets toward the asset limit, regardless of the co-owner creditor's ownership share. Further, because the co-owner and the company are mutual affiliates the company also would count all of the co-owner's assets towards its own asset limit. *See* comment 35(b)(2)(iii)–1.ii.C for discussion of the definition of ''affiliate.''

D. A creditor satisfies the criterion in §1026.35(b)(2)(iii)(C) for purposes of any higher-priced mortgage loan consummated during 2016, for example, if the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2015. A creditor that (together with its affiliates that regularly extended first-lien covered transactions) did not meet the applicable asset threshold on December 31, 2015, satisfies this criterion for a higher-priced mortgage loan consummated during 2016 if the application for the loan was received before April 1, 2016, and the creditor (together with its affiliates that regularly extended first-lien covered transactions) had total assets of less than the applicable asset threshold on December 31, 2014.

E. Under §1026.35(b)(2)(iii)(C), the $2,000,000,000 asset threshold adjusts automatically each year based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2022, the asset threshold is $2,336,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2021 has total assets of less than $2,336,000,000 on December 31, 2021, satisfies this criterion for purposes of any loan consummated in 2022 and for purposes of any loan consummated in 2023 for which the application was received before April 1, 2023. For historical purposes:

1. For calendar year 2013, the asset threshold was $2,000,000,000. Creditors that had total assets of less than $2,000,000,000 on December 31, 2012, satisfied this criterion for purposes of the exemption during 2013.

2. For calendar year 2014, the asset threshold was $2,028,000,000. Creditors that had total assets of less than $2,028,000,000 on December 31, 2013, satisfied this criterion for purposes of the exemption during 2014.

3. For calendar year 2015, the asset threshold was $2,060,000,000. Creditors that had total assets of less than $2,060,000,000 on December 31, 2014, satisfied this criterion for purposes of any loan consummated in 2015 and, if the creditor's assets together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2014 were less than that amount, for purposes of any loan consummated in 2016 for which the application was received before April 1, 2016.

4. For calendar year 2016, the asset threshold was $2,052,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2015 had total assets of less than $2,052,000,000 on December 31, 2015, satisfied this criterion for purposes of any loan consummated in 2016 and for purposes of any loan consummated in 2017 for which the application was received before April 1, 2017.

5. For calendar year 2017, the asset threshold was $2,069,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2016 had total assets of less than $2,069,000,000 on December 31, 2016, satisfied this criterion for purposes of any loan consummated in 2017 and for purposes of any loan consummated in 2018 for which the application was received before April 1, 2018.

6. For calendar year 2018, the asset threshold was $2,112,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2017 had total assets of less than $2,112,000,000 on December 31, 2017, satisfied this criterion for purposes of any loan consummated in 2018 and for purposes of any loan consummated in 2019 for which the application was received before April 1, 2019.

7. For calendar year 2019, the asset threshold was $2,167,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2018 had total assets of less than $2,167,000,000 on December 31, 2018, satisfied this criterion for purposes of any loan consummated in 2019 and for purposes of any loan consummated in 2020 for which the application was received before April 1, 2020.

8. For calendar year 2020, the asset threshold was $2,202,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2019 had total assets of less than $2,202,000,000 on December 31, 2019, satisfied this criterion for purposes of any loan consummated in 2020 and for purposes of any loan consummated in 2021 for which the application was received before April 1, 2021.

9. For calendar year 2021, the asset threshold was $2,230,000,000. A creditor that together with the assets of its affiliates that regularly extended first-lien covered transactions during calendar year 2020 had total assets of less than $2,230,000,000 on December 31, 2020, satisfied this criterion for purposes of any loan consummated in 2021 and for purposes of any loan consummated in 2022 for which the application was received before April 1, 2022iv. The creditor and its affiliates do not maintain an escrow account for any mortgage transaction being serviced by the creditor or its affiliate at the time the transaction is consummated, except as provided in §1026.35(b)(2)(iii)(D)(*1*) and (*2*). Thus, the exemption applies, provided the other conditions of §1026.35(b)(2)(iii) (or, if applicable, the conditions for the exemption in §1026.35(b)(2)(vi)) are satisfied, even if the creditor previously maintained escrow accounts for mortgage loans, provided it no longer maintains any such accounts except as provided in §1026.35(b)(2)(iii)(D)(*1*) and (*2*). Once a creditor or its affiliate begins escrowing for loans currently serviced other than those addressed in §1026.35(b)(2)(iii)(D)(*1*) and (*2*), however, the creditor and its affiliate become ineligible for the exemption in §1026.35(b)(2)(iii) and (vi) on higher-priced mortgage loans they make while such escrowing continues. Thus, as long as a creditor (or its affiliate) services and maintains escrow accounts for any mortgage loans, other than as provided in §1026.35(b)(2)(iii)(D)(*1*) and (*2*), the creditor will not be eligible for the exemption for any higher-priced mortgage loan it may make. For purposes of §1026.35(b)(2)(iii) and (vi), a creditor or its affiliate ''maintains'' an escrow account only if it services a mortgage loan for which an escrow account has been established at least through the due date of the second periodic payment under the terms of the legal obligation.

Paragraph 35(b)(2)(iii)(D)(1).

1. *Exception for certain accounts.* Escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before June 17, 2021, are not counted for purposes of §1026.35(b)(2)(iii)(D). For applications received on and after June 17, 2021, creditors, together with their affiliates, that establish new escrow accounts, other than those described in §1026.35(b)(2)(iii)(D)(*2*), do not qualify for the exemptions provided under §1026.35(b)(2)(iii) and (vi). Creditors, together with their affiliates, that continue to maintain escrow accounts established for first-lien higher-priced mortgage loans for which applications were received on or after April 1, 2010, and before June 17, 2021, still qualify for the exemptions provided under §1026.35(b)(2)(iii) and (vi) so long as they do not establish new escrow accounts for transactions for which they received applications on or after June 17, 2021, other than those described in §1026.35(b)(2)(iii)(D)(*2*), and they

otherwise qualify under §1026.35(b)(2)(iii) or (vi).

Paragraph 35(b)(2)(iii)(D)(2).

1. *Exception for post-consummation escrow accounts for distressed consumers.* An escrow account established after consummation for a distressed consumer does not count for purposes of §1026.35(b)(2)(iii)(D). Distressed consumers are consumers who are working with the creditor or servicer to attempt to bring the loan into a current status through a modification, deferral, or other accommodation to the consumer. A creditor, together with its affiliates, that establishes escrow accounts after consummation as a regular business practice, regardless of whether consumers are in distress, does not qualify for the exception described in §1026.35(b)(2)(iii)(D)(*2*).

Paragraph 35(b)(2)(iv).

1. *Requirements for ''rural'' or ''underserved'' status.* An area is considered to be ''rural'' or ''underserved'' during a calendar year for purposes of §1026.35(b)(2)(iii)(A) if it satisfies either the definition for ''rural'' or the definition for ''underserved'' in §1026.35(b)(2)(iv). A creditor's extensions of covered transactions, as defined by §1026.43(b)(1), secured by first liens on properties located in such areas are considered in determining whether the creditor satisfies the condition in §1026.35(b)(2)(iii)(A). *See* comment 35(b)(2)(iii)–1.

i. Under §1026.35(b)(2)(iv)(A), an area is rural during a calendar year if it is: A county that is neither in a metropolitan statistical area nor in a micropolitan statistical area that is adjacent to a metropolitan statistical area; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States. Metropolitan statistical areas and micropolitan statistical areas are defined by the Office of Management and Budget and applied under currently applicable Urban Influence Codes (UICs), established by the United States Department of Agriculture's Economic Research Service (USDA–ERS). For purposes of §1026.35(b)(2)(iv)(A)(*1*), ''adjacent'' has the meaning applied by the USDA–ERS in determining a county's UIC; as so applied, ''adjacent'' entails a county not only being physically contiguous with a metropolitan statistical area but also meeting certain minimum population commuting patterns. A county is a ''rural'' area under §1026.35(b)(2)(iv)(A)(*1*) if the USDA–ERS categorizes the county under UIC 4, 6, 7, 8, 9, 10, 11, or 12. Descriptions of UICs are available on the USDA–ERS website at *http://www.ers.usda.gov/data-products/urban-influence-codes/documentation.aspx.* A county for which there is no currently applicable UIC (because the county has been created since the USDA–ERS last categorized counties) is a rural area only if all counties from which the new county's land was taken are themselves rural under currently applicable UICs.

ii. Under §1026.35(b)(2)(iv)(B), an area is underserved during a calendar year if, according to Home Mortgage Disclosure Act (HMDA) data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions, as defined in §1026.43(b)(1), secured by first liens, five or more times on properties in the county. Specifically, a county is an ''underserved'' area if, in the applicable calendar year's public HMDA aggregate dataset, no more than two creditors have reported five or more first-lien covered transactions, with HMDA geocoding that places the properties in that county.

iii. A. Each calendar year, the Bureau applies the ''underserved'' area test and the ''rural'' area test to each county in the United States. If a county satisfies either test, the Bureau will include the county on a list of counties that are rural or underserved as defined by §1026.35(b)(2)(iv)(A)(*1*) or §1026.35(b)(2)(iv)(B) for a particular calendar year, even if the county contains census blocks that are designated by the Census Bureau as urban. To facilitate compliance with appraisal requirements in §1026.35(c), the Bureau also creates a list of those counties that are rural under the Bureau's definition without regard to whether the counties are underserved. To the extent that U.S. territories are treated by the Census Bureau as counties and are neither metropolitan statistical areas nor micropolitan statistical areas adjacent to metropolitan statistical areas, such territories will be included on these lists as rural areas in their entireties. The Bureau will post on its public website the applicable lists for each calendar year by the end of that year to assist creditors in ascertaining the availability to them of the exemption during the following year. Any county that the Bureau includes on these lists of counties that are rural or underserved under the Bureau's definitions for a particular year is deemed to qualify as a rural or underserved area for that calendar year for purposes of §1026.35(b)(2)(iv), even if the county contains census blocks that are designated by the Census Bureau as urban. A property located in such a listed county is deemed to be located in a rural or underserved area, even if the census block in which the property is located is designated as urban.

B. A property is deemed to be in a rural or underserved area according to the definitions in §1026.35(b)(2)(iv) during a particular calendar year if it is identified as such by an automated tool provided on the Bureau's public website. A printout or electronic copy from the automated tool provided on the Bureau's public website designating a particular property as being in a rural or underserved area may be used as "evidence of compliance" that a property is in a rural or underserved area, as defined in §1026.35(b)(2)(iv)(A) and (B), for purposes of the record retention requirements in §1026.25.

C. The U.S. Census Bureau may provide on its public website an automated address search tool that specifically indicates if a property is located in an urban area for purposes of the Census Bureau's most recent delineation of urban areas. For any calendar year that began after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is deemed to be in a rural area if the search results provided for the property by any such automated address search tool available on the Census Bureau's public website do not designate the property as being in an urban area. A printout or electronic copy from such an automated address search tool available on the Census Bureau's public website designating a particular property as not being in an urban area may be used as "evidence of compliance" that the property is in a rural area, as defined in §1026.35(b)(2)(iv)(A), for purposes of the record retention requirements in §1026.25.

D. For a given calendar year, a property qualifies for a safe harbor if any of the enumerated safe harbors affirms that the property is in a rural or underserved area or not in an urban area. For example, the Census Bureau's automated address search tool may indicate a property is in an urban area, but the Bureau's rural or underserved counties list indicates the property is in a rural or underserved county. The property in this example is in a rural or underserved area because it qualifies under the safe harbor for the rural or underserved counties list. The lists of counties posted on the Bureau's public website, the automated tool on its public website, and the automated address search tool available on the Census Bureau's public website, are not the exclusive means by which a creditor can demonstrate that a property is in a rural or underserved area as defined in §1026.35(b)(2)(iv)(A) and (B). However, creditors are required to retain "evidence of compliance" in accordance with §1026.25, including determinations of whether a property is in a rural or underserved area as defined in §1026.35(b)(2)(iv)(A) and (B).

2. *Examples.* i. An area is considered "rural" for a given calendar year based on the most recent available UIC designations by the USDA–ERS and the most recent available delineations of urban areas by the U.S. Census Bureau that are available at the beginning of the calendar year. These designations and delineations are updated by the USDA–ERS and the U.S. Census Bureau respectively once every ten years. As an example, assume a creditor makes first-lien covered transactions in Census Block X that is located in County Y during calendar year 2017. As of January 1, 2017, the most recent UIC designations were published in the second quarter of 2013, and the most recent delineation of urban areas was announced in the FEDERAL REGISTER in 2012, *see* U.S. Census Bureau, *Qualifying Urban Areas for the 2010 Census*, 77 FR 18652 (Mar. 27, 2012). To determine whether County Y is rural under the Bureau's definition during calendar year 2017, the creditor can use USDA–ERS's 2013 UIC designations. If County Y is not rural, the creditor can use the U.S. Census Bureau's 2012 delineation of urban areas to determine whether Census Block X is rural and is therefore a "rural" area for purposes of §1026.35(b)(2)(iv)(A).

ii. A county is considered an "underserved" area for a given calendar year based on the most recent available HMDA data. For example, assume a creditor makes first-lien covered transactions in County Y during calendar year 2016, and the most recent HMDA data are for calendar year 2015, published in the third quarter of 2016. The creditor will use the 2015 HMDA data to determine "underserved" area status for County Y in calendar year 2016 for the purposes of qualifying for the "rural or underserved" exemption for any higher-priced mortgage loans consummated in calendar year 2017 or for any higher-priced mortgage loan consummated during 2018 for which the application was received before April 1, 2018.

Paragraph 35(b)(2)(v).

1. *Forward commitments.* A creditor may make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the loan is consummated. Such an agreement is sometimes known as a "forward commitment." Even if a creditor is otherwise eligible for an exemption in §1026.35(b)(2)(iii) or §1026.35(b)(2)(vi), a first-lien higher-priced mortgage loan that will be acquired by a purchaser pursuant to a forward commitment is subject to the requirement to establish an escrow account under §1026.35(b)(1) unless the purchaser is also eligible for an exemption in §1026.35(b)(2)(iii) or §1026.35(b)(2)(vi), or the transaction is otherwise exempt under §1026.35(b)(2). The escrow requirement applies to any such transaction, whether the forward commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of mortgage obligations with certain prescribed criteria that the transaction meets. For example, assume a creditor that qualifies for an exemption in §1026.35(b)(2)(iii) or §1026.35(b)(2)(vi) makes a higher-priced mortgage loan that meets the purchase criteria of an investor with which the creditor has an agreement to sell such mortgage obligations

after consummation. If the investor is ineligible for an exemption in §1026.35(b)(2)(iii) or §1026.35(b)(2)(vi), an escrow account must be established for the transaction before consummation in accordance with §1026.35(b)(1) unless the transaction is otherwise exempt (such as a reverse mortgage or home equity line of credit).

Paragraph 35(b)(2)(vi).

1. For guidance on applying the grace periods for determining asset size or transaction thresholds under §1026.35(b)(2)(vi)(A), (B) and (C), the rural or underserved requirement, or other aspects of the exemption in §1026.35(b)(2)(vi) not specifically discussed in the commentary to §1026.35(b)(2)(vi), an insured depository institution or insured credit union may refer to the commentary to §1026.35(b)(2)(iii), while allowing for differences between the features of the two exemptions.

Paragraph 35(b)(2)(vi)(A).

1. The asset threshold in §1026.35(b)(2)(vi)(A) will adjust automatically each year, based on the year-to-year change in the average of the Consumer Price Index for Urban Wage Earners and Clerical Workers, not seasonally adjusted, for each 12-month period ending in November, with rounding to the nearest million dollars. Unlike the asset threshold in §1026.35(b)(2)(iii) and the other thresholds in §1026.35(b)(2)(vi), affiliates are not considered in calculating compliance with this threshold. The Bureau will publish notice of the asset threshold each year by amending this comment. For calendar year 2022, the asset threshold is $10,473,000,000. A creditor that is an insured depository institution or insured credit union that during calendar year 2021 had assets of $10,473,000,000 or less on December 31, 2021, satisfies this criterion for purposes of any loan consummated in 2022 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2023 for which the application was received before April 1, 2023. For historical purposes:

1. For calendar year 2021, the asset threshold was $10,000,000,000. Creditors that had total assets of 10,000,000,000 or less on December 31, 2020, satisfied this criterion for purposes of any loan consummated in 2021 and for purposes of any loan secured by a first lien on a principal dwelling of a consumer consummated in 2022 for which the application was received before April 1, 2022.

Paragraph 35(b)(2)(vi)(B).

1. The transaction threshold in §1026.35(b)(2)(vi)(B) differs from the transaction threshold in §1026.35(b)(2)(iii)(B) in two ways. First, the threshold in §1026.35(b)(2)(vi)(B) is 1,000 loans secured by first liens on a principal dwelling, while the threshold in §1026.35(b)(2)(iii)(B) is 2,000 loans secured by first liens on a dwelling. Second, all loans made by the creditor and its affiliates secured by a first lien on a principal dwelling count toward the 1,000-loan threshold in §1026.35(b)(2)(vi)(B), whether or not such loans are held in portfolio. By contrast, under §1026.35(b)(2)(iii)(B), only loans secured by first liens on a dwelling that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, are counted toward the 2,000-loan threshold.

35(b)(3) Cancellation.

1. *Termination of underlying debt obligation.* Section 1026.35(b)(3)(i) provides that, in general, an escrow account required by §1026.35(b)(1) may not be cancelled until the underlying debt obligation is terminated or the consumer requests cancellation at least five years after consummation. Methods by which an underlying debt obligation may be terminated include, among other things, repayment, refinancing, rescission, and foreclosure.

2. *Minimum durations.* Section 1026.35(b)(3) establishes minimum durations for which escrow accounts established pursuant to §1026.35(b)(1) must be maintained. This requirement does not affect a creditor's right or obligation, pursuant to the terms of the legal obligation or applicable law, to offer or require an escrow account thereafter.

3. *Less than eighty percent unpaid principal balance.* The term ''original value'' in §1026.35(b)(3)(ii)(A) means the lesser of the sales price reflected in the sales contract for the property, if any, or the appraised value of the property at the time the transaction was consummated. In determining whether the unpaid principal balance has reached less than 80 percent of the original value of the property securing the underlying debt, the creditor or servicer shall count any subordinate lien of which it has reason to know. If the consumer certifies in writing that the equity in the property securing the underlying debt obligation is unencumbered by a subordinate lien, the creditor or servicer may rely upon the certification in making its determination unless it has actual knowledge to the contrary.

35(c)—Appraisals

35(c)(1) Definitions

35(c)(1)(i) Certified or Licensed Appraiser

1. *USPAP.* The Uniform Standards of Professional Appraisal Practice (USPAP) are established by the Appraisal Standards Board of the Appraisal Foundation (as defined in 12 U.S.C. 3350(9)). Under §1026.35(c)(1)(i), the relevant USPAP standards are those found in the edition of USPAP and that are in effect at the time the appraiser signs the appraiser's certification.

2. *Appraiser's certification.* The appraiser's certification refers to the certification that

must be signed by the appraiser for each appraisal assignment. This requirement is specified in USPAP Standards Rule 2–3.

3. *FIRREA title XI and implementing regulations.* The relevant regulations are those prescribed under section 1110 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), as amended (12 U.S.C. 3339), that relate to an appraiser's development and reporting of the appraisal in effect at the time the appraiser signs the appraiser's certification. Paragraph (3) of FIRREA section 1110 (12 U.S.C. 3339(3)), which relates to the review of appraisals, is not relevant for determining whether an appraiser is a certified or licensed appraiser under § 1026.35(c)(1)(i).

35(c)(2) Exemptions

1. *Compliance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).* Section 1026.35(c)(2) provides exemptions solely from the requirements of section 1026.35(c)(3) through (6). Institutions subject to the requirements of FIRREA and its implementing regulations that make a loan qualifying for an exemption under section 1026.35(c)(2) must still comply with appraisal and evaluation requirements under FIRREA and its implementing regulations.

Paragraph 35(c)(2)(i)

1. *Qualified mortgage criteria.* Under § 1026.35(c)(2)(i), a loan is exempt from the appraisal requirements of § 1026.35(c) if either:

i. The loan is—(1) subject to the Bureau's ability-to-repay requirements in § 1026.43 as a "covered transaction" (defined in § 1026.43(b)(1)) and (2) a qualified mortgage pursuant to the Bureau's rules or, for loans insured, guaranteed, or administered by the U.S. Department of Housing and Urban Development (HUD), U.S. Department of Veterans Affairs (VA), U.S. Department of Agriculture (USDA), or Rural Housing Service (RHS), a qualified mortgage pursuant to applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's definition of a qualified mortgage applies to those loans); or

ii. The loan is—(1) not subject to the Bureau's ability-to-repay requirements in § 1026.43 as a "covered transaction" (defined in § 1026.43(b)(1)), but (2) meets the criteria for a qualified mortgage in the Bureau's rules or, for loans insured, guaranteed, or administered by HUD, VA, USDA, or RHS, meets the criteria for a qualified mortgage in the applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). To explain further, loans enumerated in § 1026.43(a) are not "covered transactions" under the Bureau's ability-to-repay requirements in § 1026.43, and thus cannot be qualified mortgages (entitled to a rebuttable presumption or safe harbor of compliance with the ability-to-repay requirements of § 1026.43, *see, e.g.*, § 1026.43(e)(1)). These include an extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5, or pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008. *See* § 1026.43(a)(3)(iv) and (vi). They also include extensions of credit made by a creditor identified in § 1026.43(a)(3)(v). However, these loans are eligible for the exemption in § 1026.35(c)(2)(i) if they meet the Bureau's qualified mortgage criteria in § 1026.43(e)(2), (4), (5), or (6) or § 1026.43(f) (including limits on when loans must be consummated) or, for loans that are insured, guaranteed, or administered by HUD, VA, USDA, or RHS, in applicable rules prescribed by those agencies (but only once such rules are in effect; otherwise, the Bureau's criteria for a qualified mortgage applies to those loans). For example, assume that HUD has prescribed rules to define loans insured under its programs that are qualified mortgages and those rules are in effect. Assume further that a creditor designated as a Community Development Financial Institution, as defined under 12 CFR 1805.104(h), originates a loan insured by the Federal Housing Administration, which is a part of HUD. The loan is not a "covered transaction" and thus is not a qualified mortgage. *See* § 1026.43(a)(3)(v)(A) and (b)(1). Nonetheless, the transaction is eligible for an exemption from the appraisal requirements of § 1026.35(c) if it meets the qualified mortgage criteria in HUD's rules. Nothing in § 1026.35(c)(2)(i) alters the definition of a qualified mortgage under regulations of the Bureau, HUD, VA, USDA, or RHS.

Paragraph 35(c)(2)(ii)

1. *Threshold amount.* For purposes of § 1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated in comment 35(c)(2)(ii)–3 for that period. The threshold amount is adjusted effective January 1 of each year by any annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI–W) that was in effect on the preceding June 1. Comment 35(c)(2)(ii)–3 will be amended to provide the threshold amount for the upcoming year after the annual percentage change in the CPI–W that was in effect on June 1 becomes available. Any increase in the threshold amount will be rounded to the nearest $100 increment. For example, if the annual percentage increase in the CPI–W would result in a $950 increase in the threshold amount, the threshold amount will be increased by $1,000. However, if the annual percentage increase in the CPI–

W would result in a $949 increase in the threshold amount, the threshold amount will be increased by $900.

2. *No increase in the CPI–W.* If the CPI–W in effect on June 1 does not increase from the CPI–W in effect on June 1 of the previous year, the threshold amount effective the following January 1 through December 31 will not change from the previous year. When this occurs, for the years that follow, the threshold is calculated based on the annual percentage change in the CPI–W applied to the dollar amount that would have resulted, after rounding, if decreases and any subsequent increases in the CPI–W had been taken into account.

i. *Net increases.* If the resulting amount calculated, after rounding, is greater than the current threshold, then the threshold effective January 1 the following year will increase accordingly.

ii. *Net decreases.* If the resulting amount calculated, after rounding, is equal to or less than the current threshold, then the threshold effective January 1 the following year will not change, but future increases will be calculated based on the amount that would have resulted.

3. *Threshold.* For purposes of §1026.35(c)(2)(ii), the threshold amount in effect during a particular period is the amount stated below for that period.

i. From January 18, 2014, through December 31, 2014, the threshold amount is $25,000.

ii. From January 1, 2015, through December 31, 2015, the threshold amount is $25,500.

iii. From January 1, 2016, through December 31, 2016, the threshold amount is $25,500.

iv. From January 1, 2017, through December 31, 2017, the threshold amount is $25,500.

v. From January 1, 2018, through December 31, 2018, the threshold amount is $26,000.

vi. From January 1, 2019, through December 31, 2019, the threshold amount is $26,700.

vii. From January 1, 2020, through December 31, 2020, the threshold amount is $27,200.

viii. From January 1, 2021, through December 31, 2021, the threshold amount is $27,200.

ix. From January 1, 2022, through December 31, 2022, the threshold amount is $28,500.

4. *Qualifying for exemption—in general.* A transaction is exempt under §1026.35(c)(2)(ii) if the creditor makes an extension of credit at consummation that is equal to or below the threshold amount in effect at the time of consummation.

5. *Qualifying for exemption—subsequent changes.* A transaction does not meet the condition for an exemption under §1026.35(c)(2)(ii) merely because it is used to satisfy and replace an existing exempt loan, unless the amount of the new extension of credit is equal to or less than the applicable threshold amount. For example, assume a closed-end loan that qualified for a §1026.35(c)(2)(ii) exemption at consummation in year one is refinanced in year ten and that the new loan amount is greater than the threshold amount in effect in year ten. In these circumstances, the creditor must comply with all of the applicable requirements of §1026.35(c) with respect to the year ten transaction if the original loan is satisfied and replaced by the new loan, unless another exemption from the requirements of §1026.35(c) applies. *See* §1026.35(c)(2) and (c)(4)(vii).

Paragraph 35(c)(2)(iii)

1. *Secured by a mobile home.* For purposes of the exemption in §1026.35(c)(2)(iii), a mobile home does not include a manufactured home, as defined in §1026.35(c)(1)(ii).

Paragraph 35(c)(2)(iv)

1. *Construction-to-permanent loans.* Section 1026.35(c) does not apply to a transaction to finance the initial construction of a dwelling. This exclusion applies to a construction-only loan as well as to the construction phase of a construction-to-permanent loan. Section 1026.35(c) does apply, however, to permanent financing that replaces a construction loan, whether the permanent financing is extended by the same or a different creditor, unless the permanent financing is otherwise exempt from the requirements of §1026.35(c). *See* §1026.35(c)(2). When a construction loan may be permanently financed by the same creditor, the general disclosure requirements for closed-end credit (§1026.17) provide that the creditor may give either one combined disclosure for both the construction financing and the permanent financing, or a separate set of disclosures for each of the two phases as though they were two separate transactions. *See* §1026.17(c)(6)(ii) and comment 17(c)(6)–2. Section 1026.17(c)(6)(ii) addresses only how a creditor may elect to disclose a construction-to-permanent transaction. Which disclosure option a creditor elects under §1026.17(c)(6)(ii) does not affect the determination of whether the permanent phase of the transaction is subject to §1026.35(c). When the creditor discloses the two phases as separate transactions, the annual percentage rate for the permanent phase must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under §1026.35(c). When the creditor discloses the two phases as a single transaction, a single annual percentage rate, reflecting the appropriate charges from both phases, must be calculated for the transaction in accordance with §1026.35 and appendix D to part 1026. The annual percentage rate must be compared to the average prime offer rate for a transaction that is comparable to the permanent financing to determine coverage under §1026.35(c). If the transaction is determined to be a higher-priced mortgage loan not otherwise exempt under §1026.35(c)(2), only the

permanent phase is subject to the requirements of §1026.35(c).

2. *Financing initial construction*. The exemption for construction loans in §1026.35(c)(2)(iv) applies to temporary financing of the construction of a dwelling that will be replaced by permanent financing once construction is complete. The exemption does not apply, for example, to loans to finance the purchase of manufactured homes that have not been or are in the process of being built when the financing obtained by the consumer at that time is permanent. *See* §1026.35(c)(2)(viii).

Paragraph 35(c)(2)(vii)(A)(*1*)

1. *Same credit risk holder*. The requirement that the holder of the credit risk on the existing obligation and the refinancing be the same applies to situations in which an entity bears the financial responsibility for the default of a loan by either holding the loan in its portfolio or guaranteeing payments of principal and any interest to investors in a mortgage-backed security in which the loan is pooled. *See* §1026.35(c)(1)(ii) (defining ''credit risk''). For example, a credit risk holder could be a bank that bears the credit risk on the existing obligation by holding the loan in the bank's portfolio. Another example of a credit risk holder would be a government-sponsored enterprise that bears the risk of default on a loan by guaranteeing the payment of principal and any interest on a loan to investors in a mortgage-backed security. The holder of credit risk under §1026.35(c)(2)(vii)(A)(*1*) does not mean individual investors in a mortgage-backed security or providers of private mortgage insurance.

2. *Same credit risk holder—illustrations*.

Illustrations of the credit risk holder of the existing obligation continuing to be the credit risk holder of the refinancing include, but are not limited to, the following:

i. The existing obligation is held in the portfolio of a bank, thus the bank holds the credit risk. The bank arranges to refinance the loan and also will hold the refinancing in its portfolio. If the refinancing otherwise meets the requirements for an exemption under §1026.35(c)(2)(vii), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the bank arranged to refinance the loan directly or indirectly, such as through the servicer or subservicer on the existing obligation.

ii. The existing obligation is held in the portfolio of a government-sponsored enterprise (GSE), thus the GSE holds the credit risk. The existing obligation is then refinanced by the servicer of the loan and immediately transferred to the GSE. The GSE pools the refinancing in a mortgage-backed security guaranteed by the GSE, thus the GSE holds the credit risk on the refinance loan. If the refinance transaction otherwise meets the requirements for an exemption under §1026.35(c)(2)(vii), the transaction will qualify for the exemption because the credit risk holder is the same for the existing obligation and the refinance transaction. In this case, the exemption would apply regardless of whether the existing obligation was refinanced by the servicer or subservicer on the existing obligation (acting as a ''creditor'' under §1026.2(a)(17)) or by a different creditor.

3. *Forward commitments*. A creditor may make a mortgage loan that will be sold or otherwise transferred pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a ''forward commitment.'' A refinance loan does not satisfy the requirement of §1026.35(c)(2)(vii)(A)(*1*) if the loan will be acquired pursuant to a forward commitment, such that the credit risk on the refinance loan will transfer to a person who did not hold the credit risk on the existing obligation.

Paragraph 35(c)(2)(vii)(B)

1. *Regular periodic payments*. Under §1026.35(c)(2)(vii)(B), the regular periodic payments on the refinance loan must not: result in an increase of the principal balance (negative amortization); allow the consumer to defer repayment of principal (*see* comment 43(e)(2)(i)–2); or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term ''substantially equal,'' see comment 43(c)(5)(i)–4. In addition, a single-payment transaction is not a refinancing meeting the requirements of §1026.35(c)(2)(vii) because it does not require ''regular periodic payments.''

Paragraph 35(c)(2)(vii)(C)

1. *Permissible use of proceeds*. The exemption for a refinancing under §1026.35(c)(2)(vii) is available only if the proceeds from the refinancing are used exclusively for the existing obligation and amounts attributed solely to the costs of the refinancing. The existing obligation includes the unpaid principal balance of the existing first lien loan, any earned unpaid finance charges, and any other lawful charges related to the existing loan. For guidance on the meaning of refinancing costs, see comment 23(f)–4. If the proceeds of

a refinancing are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not qualify for the exemption for a refinancing under § 1026.35(c)(2)(vii) from the appraisal requirements in § 1026.35(c).

For applications received on or after July 18, 2015

Paragraph 35(c)(2)(viii)(A)

1. *Secured by new manufactured home and land—physical visit of the interior*. A transaction secured by a new manufactured home and land is subject to the requirements of § 1026.35(c)(3) through (6) except for the requirement in § 1026.35(c)(3)(i) that the appraiser conduct a physical inspection of the interior of the property. Thus, for example, a creditor of a loan secured by a new manufactured home and land could comply with § 1026.35(c)(3)(i) by obtaining an appraisal conducted by a state-certified or -licensed appraiser based on plans and specifications for the new manufactured home and an inspection of the land on which the property will be sited, as well as any other information necessary for the appraiser to complete the appraisal assignment in conformity with the Uniform Standards of Professional Appraisal Practice and the requirements of FIRREA and any implementing regulations.

Paragraph 35(c)(2)(viii)(B)

1. *Secured by a manufactured home and not land*. Section 1026.35(c)(2)(viii)(B) applies to a higher-priced mortgage loan secured by a manufactured home and not land, regardless of whether the home is titled as realty by operation of state law.

Paragraph 35(c)(2)(viii)(B)(*2*)

1. *Independent*. A cost service provider from which the creditor obtains a manufactured home unit cost estimate under § 1026.35(c)(2)(viii)(B)(*2*) is ''independent'' if that person is not affiliated with the creditor in the transaction, such as by common corporate ownership, and receives no direct or indirect financial benefits based on whether the transaction is consummated.

2. *Adjustments*. The requirement that the cost estimate be from an independent cost service provider does not prohibit a creditor from providing a cost estimate that reflects adjustments to account for factors such as special features, condition or location. However, the requirement that the estimate be obtained from an independent cost service provider means that any adjustments to the estimate must be based on adjustment factors available as part of the independent cost service used, with associated values that are determined by the independent cost service.

Paragraph 35(c)(2)(viii)(C)(*3*)

1. *Interest in the property*. A person has a direct or indirect in the property if, for example, the person has any ownership or reasonably foreseeable ownership interest in the manufactured home. To illustrate, a person who seeks a loan to purchase the manufactured home to be valued has a reasonably foreseeable ownership interest in the property.

2. *Interest in the transaction*. A person has a direct or indirect interest in the transaction if, for example, the person or an affiliate of that person also serves as a loan officer of the creditor or otherwise arranges the credit transaction, or is the retail dealer of the manufactured home. 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.

3. *Training in valuing manufactured homes*. Training in valuing manufactured homes includes, for example, successfully completing a course in valuing manufactured homes offered by a state or national appraiser association or receiving job training from an employer in the business of valuing manufactured homes.

4. *Manufactured home valuation—example*. A valuation in compliance with § 1026.35(c)(2)(viii)(B)(*3*) would include, for example, an appraisal of the manufactured home in accordance with the appraisal requirements for a manufactured home classified as personal property under the Title I Manufactured Home Loan Insurance Program of the U.S. Department of Housing and Urban Development, pursuant to section 2(b)(10) of the National Housing Act, 12 U.S.C. 1703(b)(10).

35(c)(3) Appraisals Required

35(c)(3)(i) In General

1. *Written appraisal—electronic transmission*. To satisfy the requirement that the appraisal be ''written,'' a creditor may obtain the appraisal in paper form or via electronic transmission.

35(c)(3)(ii) Safe Harbor.

1. *Safe harbor*. A creditor that satisfies the safe harbor conditions in § 1026.35(c)(3)(ii)(A) through (D) complies with the appraisal requirements of § 1026.35(c)(3)(i). A creditor that does not satisfy the safe harbor conditions in § 1026.35(c)(3)(ii)(A) through (D) does not necessarily violate the appraisal requirements of § 1026.35(c)(3)(i).

2. *Appraiser's certification*. For purposes of § 1026.35(c)(3)(ii), the appraiser's certification refers to the certification specified in item 9 of appendix N. *See also* comment 35(c)(1)(i)–2.

Paragraph 35(c)(3)(ii)(C)

1. *Confirming elements in the appraisal.* To confirm that the elements in appendix N to this part are included in the written appraisal, a creditor need not look beyond the face of the written appraisal and the appraiser's certification.

35(c)(4) Additional Appraisal for Certain Higher-Priced Mortgage Loans

1. *Acquisition.* For purposes of §1026.35(c)(4), the terms "acquisition" and "acquire" refer to the acquisition of legal title to the property pursuant to applicable State law, including by purchase.

35(c)(4)(i) In General

1. *Appraisal from a previous transaction.* An appraisal that was previously obtained in connection with the seller's acquisition or the financing of the seller's acquisition of the property does not satisfy the requirements to obtain two written appraisals under §1026.35(c)(4)(i).

2. *90-day, 180-day calculation.* The time periods described in §1026.35(c)(4)(i)(A) and (B) are calculated by counting the day after the date on which the seller acquired the property, up to and including the date of the consumer's agreement to acquire the property that secures the transaction. For example, assume that the creditor determines that date of the consumer's acquisition agreement is October 15, 2012, and that the seller acquired the property on April 17, 2012. The first day to be counted in the 180-day calculation would be April 18, 2012, and the last day would be October 15, 2012. In this case, the number of days from April 17 would be 181, so an additional appraisal is not required.

3. *Date seller acquired the property.* For purposes of §1026.35(c)(4)(i)(A) and (B), the date on which the seller acquired the property is the date on which the seller became the legal owner of the property pursuant to applicable State law.

4. *Date of the consumer's agreement to acquire the property.* For the date of the consumer's agreement to acquire the property under §1026.35(c)(4)(i)(A) and (B), the creditor should use the date on which the consumer and the seller signed the agreement provided to the creditor by the consumer. The date on which the consumer and the seller signed the agreement might not be the date on which the consumer became contractually obligated under State law to acquire the property. For purposes of §1026.35(c)(4)(i)(A) and (B), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. If the dates on which the consumer and the seller signed the agreement differ, the creditor should use the later of the two dates.

5. *Price at which the seller acquired the property.* The price at which the seller acquired the property refers to the amount paid by the seller to acquire the property. The price at which the seller acquired the property does not include the cost of financing the property.

6. *Price the consumer is obligated to pay to acquire the property.* The price the consumer is obligated to pay to acquire the property is the price indicated on the consumer's agreement with the seller to acquire the property. The price the consumer is obligated to pay to acquire the property from the seller does not include the cost of financing the property. For purposes of §1026.35(c)(4)(i)(A) and (B), a creditor is not obligated to determine whether and to what extent the agreement is legally binding on both parties. *See also* comment 35(c)(4)(i)–4.

35(c)(4)(ii) Different Certified or Licensed Appraisers

1. *Independent appraisers.* The requirements that a creditor obtain two separate appraisals under §1026.35(c)(4)(i), and that each appraisal be conducted by a different licensed or certified appraiser under §1026.35(c)(4)(ii), indicate that the two appraisals must be conducted independently of each other. If the two certified or licensed appraisers are affiliated, such as by being employed by the same appraisal firm, then whether they have conducted the appraisal independently of each other must be determined based on the facts and circumstances of the particular case known to the creditor.

35(c)(4)(iii) Relationship to General Appraisal Requirements

1. *Safe harbor.* When a creditor is required to obtain an additional appraisal under §1026(c)(4)(i), the creditor must comply with the requirements of both §1026.35(c)(3)(i) and §1026.35(c)(4)(ii) through (v) for that appraisal. The creditor complies with the requirements of §1026.35(c)(3)(i) for the additional appraisal if the creditor meets the safe harbor conditions in §1026.35(c)(3)(ii) for that appraisal.

35(c)(4)(iv) Required Analysis in the Additional Appraisal

1. *Determining acquisition dates and prices used in the analysis of the additional appraisal.* For guidance on identifying the date on which the seller acquired the property, see comment 35(c)(4)(i)–3. For guidance on identifying the date of the consumer's agreement to acquire the property, see comment 35(c)(4)(i)–4. For guidance on identifying the price at which the seller acquired the property, see comment 35(c)(4)(i)–5. For guidance on identifying the price the consumer is obligated to pay to acquire the property, see comment 35(c)(4)(i)–6.

35(c)(4)(v) No Charge for Additional Appraisal

1. *Fees and mark-ups.* The creditor is prohibited from charging the consumer for the performance of one of the two appraisals required under §1026.35(c)(4)(i), including by imposing a fee specifically for that appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

35(c)(4)(vi) Creditor's Determination of Prior Sale Date and Price

35(c)(4)(vi)(A) In General

1. *Estimated sales price.* If a written source document describes the seller's acquisition price in a manner that indicates that the price described is an estimated or assumed amount and not the actual price, the creditor should look at an alternative document to satisfy the reasonable diligence standard in determining the price at which the seller acquired the property.

2. *Reasonable diligence—oral statements insufficient.* Reliance on oral statements of interested parties, such as the consumer, seller, or mortgage broker, does not constitute reasonable diligence under §1026.35(c)(4)(vi)(A).

3. *Lack of information and conflicting information—two appraisals required.* If a creditor is unable to demonstrate that the requirement to obtain two appraisals under §1026.35(c)(4)(i) does not apply, the creditor must obtain two written appraisals before extending a higher-priced mortgage loan subject to the requirements of §1026.35(c). *See also* comment 35(c)(4)(vi)(B)–1. For example:

i. Assume a creditor orders and reviews the results of a title search, which shows that a prior sale occurred between 91 and 180 days ago, but not the price paid in that sale. Thus, based on the title search, the creditor would not be able to determine whether the price the consumer is obligated to pay under the consumer's acquisition agreement is more than 20 percent higher than the seller's acquisition price, pursuant to §1026.35(c)(4)(i)(B). Before extending a higher-priced mortgage loan subject to the appraisal requirements of §1026.35(c), the creditor must either: (1) Perform additional diligence to ascertain the seller's acquisition price and, based on this information, determine whether two written appraisals are required; or (2) obtain two written appraisals in compliance with §1026.35(c)(4). *See also* comment 35(c)(4)(vi)(B)–1.

ii. Assume a creditor reviews the results of a title search indicating that the last recorded purchase was more than 180 days before the consumer's agreement to acquire the property. Assume also that the creditor subsequently receives a written appraisal indicating that the seller acquired the property between 91 and 180 days before the consumer's agreement to acquire the property. In this case, unless one of these sources is clearly wrong on its face, the creditor would not be able to determine whether the seller acquired the property within 180 days of the date of the consumer's agreement to acquire the property from the seller, pursuant to §1026.35(c)(4)(i)(B). Before extending a higher-priced mortgage loan subject to the appraisal requirements of §1026.35(c), the creditor must either: perform additional diligence to ascertain the seller's acquisition date and, based on this information, determine whether two written appraisals are required; or obtain two written appraisals in compliance with §1026.35(c)(4). *See also* comment 35(c)(4)(vi)(B)–1.

35(c)(4)(vi)(B) Inability To Determine Prior Sales Date or Price—Modified Requirements for Additional Appraisal

1. *Required analysis.* In general, the additional appraisal required under §1026.35(c)(4)(i) should include an analysis of the factors listed in §1026.35(c)(4)(iv)(A) through (C). However, if, following reasonable diligence, a creditor cannot determine whether the conditions in §1026.35(c)(4)(i)(A) or (B) are present due to a lack of information or conflicting information, the required additional appraisal must include the analyses required under §1026.35(c)(4)(iv)(A) through (C) only to the extent that the information necessary to perform the analyses is known. For example, assume that a creditor is able, following reasonable diligence, to determine that the date on which the seller acquired the property occurred between 91 and 180 days prior to the date of the consumer's agreement to acquire the property. However, the creditor is unable, following reasonable diligence, to determine the price at which the seller acquired the property. In this case, the creditor is required to obtain an additional written appraisal that includes an analysis under §1026.35(c)(4)(iv)(B) and (c)(4)(iv)(C) of the changes in market conditions 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. However, the creditor is not required to obtain an additional written appraisal that includes analysis under §1026.35(c)(4)(iv)(A) 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.

35(c)(4)(vii) Exemptions From the Additional Appraisal Requirement

Paragraph 35(c)(4)(vii)(C)

1. *Non-profit entity*. For purposes of §1026.35(c)(4)(vii)(C), a ''non-profit entity'' is a person with a tax exemption ruling or determination letter from the Internal Revenue Service under section 501(c)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(3)).

Paragraph 35(c)(4)(vii)(H)

1. *Bureau table of rural counties*. The Bureau publishes on its Web site a table of rural counties under §1026.35(c)(4)(vii)(H) for each calendar year by the end of that calendar year. *See* comment 35(b)(2)(iv)–1. A property securing an HPML subject to §1026.35(c) is in a rural county under §1026.35(c)(4)(vii)(H) if the county in which the property is located is on the table of rural counties most recently published by the Bureau. For example, for a transaction occurring in 2015, assume that the Bureau most recently published a table of rural counties at the end of 2014. The property securing the transaction would be located in a rural county for purposes of §1026.35(c)(4)(vii)(H) if the county is on the table of rural counties published by the Bureau at the end of 2014.

35(c)(5) Required Disclosure

35(c)(5)(i) In General

1. *Multiple applicants*. When two or more consumers apply for a loan subject to this section, the creditor is required to give the disclosure to only one of the consumers.

2. *Appraisal independence requirements not affected*. Nothing in the text of the consumer notice required by §1026.35(c)(5)(i) should be construed to affect, modify, limit, or supersede the operation of any legal, regulatory, or other requirements or standards relating to independence in the conduct of appraisers or restrictions on the use of borrower-ordered appraisals by creditors.

35(c)(6) Copy of Appraisals

35(c)(6)(i) In General

1. *Multiple applicants*. When two or more consumers apply for a loan subject to this section, the creditor is required to give the copy of each required appraisal to only one of the consumers.

35(c)(6)(ii) Timing

1. *''Provide.''* For purposes of the requirement to provide a copy of the appraisal within a specified time under §1026.35(c)(6)(ii), ''provide'' means ''deliver.'' Delivery occurs three business days after mailing or delivering the copies to the last-known address of the applicant, or when evidence indicates actual receipt by the applicant (which, in the case of electronic receipt, must be based upon consent that complies with the E-Sign Act), whichever is earlier.

2. *No waiver*. Regulation B, 12 CFR 1002.14(a)(1), allowing the consumer to waive the requirement that the appraisal copy be provided three business days before consummation, does not apply to higher-priced mortgage loans subject to §1026.35(c). A consumer of a higher-priced mortgage loan subject to §1026.35(c) may not waive the timing requirement to receive a copy of the appraisal under §1026.35(c)(6)(i).

35(c)(6)(iv) No Charge for Copy Of Appraisal

1. *Fees and mark-ups*. The creditor is prohibited from charging the consumer for any copy of an appraisal required to be provided under §1026.35(c)(6)(i), including by imposing a fee specifically for a required copy of an appraisal or by marking up the interest rate or any other fees payable by the consumer in connection with the higher-priced mortgage loan.

35(e) Rules for Higher-Priced Mortgage Loans

Paragraph 35(e)(2)(ii)(C)

1. *Payment change*. Section 1026.35(e)(2) provides that a loan subject to this section may not have a penalty described by §1026.32(d)(6) unless certain conditions are met. Section 1026.35(e)(2)(ii)(C) lists as a condition that the amount of the periodic payment of principal or interest or both may not change during the four-year period following consummation. For examples showing whether a prepayment penalty is permitted or prohibited in connection with particular payment changes, see comment 32(d)(7)(iv)–1. Those examples, however, include a condition that §1026.35(e)(2) does not include: The condition that, at consummation, the consumer's total monthly debt payments may not exceed 50 percent of the consumer's monthly gross income. For guidance about circumstances in which payment changes are not considered payment changes for purposes of this section, see comment 32(d)(7)(iv)–2.

2. *Negative amortization*. Section 1026.32(d)(2) provides that a loan described in §1026.32(a) may not have a payment schedule with regular periodic payments that cause the principal balance to increase. Therefore, the commentary to §1026.32(d)(7)(iv) does not include examples of payment changes in connection with negative amortization. The following examples show whether, under §1026.35(e)(2), prepayment penalties are permitted or prohibited in connection with particular payment changes, when a loan agreement permits negative amortization:

i. Initial payments for a variable-rate transaction consummated on January 1, 2010, are $1,000 per month and the loan agreement permits negative amortization to occur. Under the loan agreement, the first date that a scheduled payment in a different amount may be due is January 1, 2014, and the creditor does not have the right to change scheduled payments prior to that date even if negative amortization occurs. A prepayment penalty is permitted with this mortgage transaction provided that the other § 1026.35(e)(2) conditions are met, that is: Provided that the prepayment penalty is permitted by other applicable law, the penalty expires on or before December 31, 2011, and the penalty will not apply if the source of the prepayment funds is a refinancing by the creditor or its affiliate.

ii. Initial payments for a variable-rate transaction consummated on January 1, 2010 are $1,000 per month and the loan agreement permits negative amortization to occur. Under the loan agreement, the first date that a scheduled payment in a different amount may be due is January 1, 2014, but the creditor has the right to change scheduled payments prior to that date if negative amortization occurs. A prepayment penalty is prohibited with this mortgage transaction because the payment may change within the four-year period following consummation.

Section 1026.36—Prohibited Acts or Practices and Certain Requirements for Credit Secured by a Dwelling

36(a) Definitions

1. *Meaning of loan originator.* i. *General.* A. 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.

B. 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.

C. 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).

D. 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.)

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

ii. *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, by 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 transaction in its own name but does not fund the transaction from its own resources and assigns the transaction after consummation to the person providing the funds, 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.

iii. *Servicing.* A loan servicer or a loan servicer's employees, agents, or contractors that otherwise meet the definition of ''loan originator'' are excluded from the definition when modifying or offering to modify an existing loan on behalf of the current owner or holder of the loan (including an assignee or the servicer, if applicable). Other than §1026.36(c), §1026.36 applies to extensions of consumer credit. Thus, other than §1026.36(c), §1026.36 does not apply if a person renegotiates, modifies, replaces, or subordinates an existing obligation or its terms, unless the transaction constitutes a refinancing under §1026.20(a) or obligates a different consumer on the existing debt.

iv. *Real estate brokerage.* The definition of ''loan originator'' does not include a person that performs only real estate brokerage activities (*e.g.*, does not perform mortgage broker or consumer credit referral activities or extend consumer credit) if the person is licensed or registered under applicable State law governing real estate brokerage, unless such person is paid by a loan originator or a creditor for a particular consumer credit transaction subject to §1026.36. Such a person is not paid by a loan originator or a creditor if the person is paid by a loan originator or creditor on behalf of a buyer or seller solely for performing real estate brokerage activities. Such a person is not paid for a particular consumer credit transaction subject to §1026.36 if the person is paid compensation by a loan originator or creditor, or affiliate of the loan originator or creditor, solely for performing real estate brokerage activities in connection with a property owned by that loan originator or creditor.

v. *Third-party advisors.* The definition of ''loan originator'' does not include bona fide third-party advisors such as accountants, attorneys, registered financial advisors, housing counselors, or others who do not receive compensation for engaging in loan origination activities. Advisory activity not constituting loan originator activity would include, for example, licensed accountants advising clients on tax implications of credit terms, registered financial advisors advising clients on potential effects of credit terms on client finances, HUD-approved housing counselors assisting consumers with understanding the credit origination process and various credit terms or collecting and organizing documents to support a credit application, or a licensed attorney assisting clients with consummating a real property transaction or with divorce, trust, or estate planning matters. Such a person, however, who advises a consumer on credit terms offered by either the person or the person's employer, or who receives compensation or other monetary gain, directly or indirectly, from the loan originator or creditor on whose credit offer the person advises a consumer, generally would be a loan originator. A referral by such a person does not make the person a loan originator, however, where the person neither receives nor expects any compensation from a loan originator or creditor for referring the consumer. HUD-approved housing counselors who simply assist a consumer in obtaining or applying to obtain consumer credit from a loan originator or creditor are not loan originators if the compensation is not contingent on referrals or on engaging in additional loan origination activities and either of two alternative conditions is satisfied: The first alternative condition is that the compensation is expressly permitted by applicable local, State, or Federal law that requires counseling and the counseling performed complies with such law (for example, §1026.34(a)(5) and §1026.36(k)). The second alternative condition is that the compensation is a fixed sum received from a creditor, loan originator, or the affiliate of a loan originator or a creditor as a result of agreements between creditors or loan originators and local, State, or Federal agencies. However, HUD-approved housing counselors are loan originators if, for example, they receive compensation that is contingent on referrals or on engaging in loan originator activity other than assisting a consumer in obtaining or applying to obtain consumer credit from a loan originator or creditor.

2. *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.

3. *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.

4. *Managers, administrative and clerical staff*. For purposes of §1026.36, managers, administrative and clerical staff, and similar individuals who are employed by (or contractor or agent of) a creditor or loan originator organization and take an application, offer, arrange, assist a consumer in obtaining or applying to obtain, negotiate, or otherwise obtain or make a particular extension of credit for another person are loan originators. The following examples describe activities that, in the absence of any other activities, do not render a manager, administrative or clerical staff member, or similar employee a loan originator:

i. *Application-related administrative and clerical tasks*. The definition of loan originator does not include a loan originator's or creditor's employee who provides a credit application form from the entity for which the person works to the consumer for the consumer to complete or, without assisting the consumer in completing the credit application, processing or analyzing the information, or discussing particular credit terms that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics, delivers the credit application from a consumer to a loan originator or creditor. A person does not assist the consumer in completing the application if the person explains to the consumer filling out the application the contents of the application or where particular consumer information is to be provided, or generally describes the credit application process to a consumer without discussing particular credit terms that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics.

ii. *Responding to consumer inquiries and providing general information*. The definition of loan originator does not include persons who:

A. Provide general explanations, information, or descriptions in response to consumer queries, such as explaining credit terminology or lending policies or who confirm written offer terms already transmitted to the consumer;

B. As employees of a creditor or loan originator, provide loan originator or creditor contact information of the loan originator or creditor entity for which he or she works, or of a person who works for that the same entity to a consumer, provided that the person does not discuss particular credit terms that are or may be available from a creditor or loan originator to that consumer selected based on the consumer's financial characteristics and does not direct the consumer, based on his or her assessment of the consumer's financial characteristics, to a particular loan originator or particular creditor seeking to originate credit transactions to consumers with those financial characteristics;

C. Describe other product-related services (for example, persons who describe optional monthly payment methods via telephone or via automatic account withdrawals, the availability and features of online account access, the availability of 24-hour customer support, or free mobile applications to access account information); or

D. Explain or describe the steps that a consumer would need to take to obtain an offer of credit, including providing general guidance on qualifications or criteria that would need to be met that is not specific to that consumer's circumstances.

iii. *Loan processing*. The definition of loan originator does not include persons who, acting on behalf of a loan originator or a creditor:

A. Compile and assemble credit application packages and supporting documentation;

B. Verify information provided by the consumer in a credit application such as by asking the consumer for supporting documentation or the consumer's authorization for the person to obtain supporting documentation from other persons;

C. Coordinate consummation of the credit transaction or other aspects of the credit transaction process, including by communicating with a consumer about process deadlines and documents needed at consummation, provided that any communication that includes a discussion about credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics only confirms credit terms already agreed to by the consumer;

D. Provide a consumer with information unrelated to credit terms, such as the best days of the month for scheduling consummation; or

E. Communicate on behalf of a loan originator that a written credit offer has been sent to a consumer without providing any details of that offer.

iv. *Underwriting, credit approval, and credit pricing.* The definition of loan originator does not include persons who:

A. Receive and evaluate a consumer's information to make underwriting decisions on whether a consumer qualifies for an extension of credit and communicate decisions to a loan originator or creditor, provided that only a loan originator communicates such underwriting decisions to the consumer;

B. Approve particular credit terms or set particular credit terms available from a creditor to that consumer selected based on the consumer's financial characteristics in offer or counter-offer situations, provided that only a loan originator communicates to or with the consumer regarding these credit terms, an offer, or provides or engages in negotiation, a counter-offer, or approval conditions; or

C. Establish credit pricing that the creditor offers generally to the public, via advertisements or other marketing or via other persons that are loan originators.

v. *Producing managers.* Managers that work for creditors or loan originator organizations sometimes engage themselves in loan origination activities, as set forth in the definition of loan originator in §1026.36(a)(1)(i) (such managers are sometimes referred to as "producing managers"). The definition of loan originator includes persons, including managers, who are employed by a creditor or loan originator organization and take an application, offer, arrange, assist a consumer with obtaining or applying to obtain, negotiate, or otherwise obtain or make a particular extension of credit for another person, even if such persons are also employed by the creditor or loan originator organization to perform duties that are not loan origination activities. Thus, such producing managers are loan originators.

5. *Compensation.* i. *General.* For purposes of §1026.36, 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.

ii. *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, including §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.

iii. *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. *See* comment 36(a)–5.v.

iv. *Amounts for charges for services that are not loan origination activities.*

1. A payment received by a loan originator organization for bona fide and reasonable charges for services it performs that are not loan origination activities;

2. A payment received by an affiliate of a loan originator organization for bona fide and reasonable charges for services it performs that are not loan origination activities; or

3. A payment received by a loan originator organization for bona fide and reasonable charges for services that are not loan origination activities where those amounts are not retained by the loan originator but are paid to the creditor, its affiliate, or the affiliate of the loan originator organization. *See* comment 36(a)–5.v.

B. Compensation includes any salaries, commissions, and any financial or similar incentive to an individual loan originator, regardless of whether it is labeled as payment for services that are not loan origination activities.

C. Loan origination activities for purposes of this comment means activities described in §1026.36(a)(1)(i) (*e.g.*, taking an application, offering, arranging, negotiating, or otherwise obtaining an extension of consumer credit for another person) that would make a person performing those activities for compensation a loan originator as defined in §1026.36(a)(1)(i).

v. *Amounts that exceed the actual charge for a service.* In some cases, amounts received by the loan originator organization for payment for third-party charges described in comment 36(a)–5.iii or payment for services to the creditor, its affiliates, or the affiliates of the loan originator organization described in comment 36(a)–5.iv.A.*3* may exceed the actual charge because, for example, the loan originator organization cannot determine with accuracy what the actual charge will be when it is imposed and instead uses average charge pricing (in accordance with the Real Estate Settlement Procedures Act). In such a case, the difference retained by the loan originator organization is not compensation if the charge imposed on the consumer or collected from a person other than the consumer was bona fide and reasonable and also complies with State and other applicable law. On the other hand, if the loan originator organization marks up the charge (a practice known as ''upcharging''), and the originator retains the difference between the actual charge and the marked-up charge, the amount retained is compensation for purposes of §1026.36, including §1026.36(d) and (e). For example:

A. Assume a loan originator organization receives compensation directly from either a consumer or a creditor. Further assume the loan originator organization uses average charge pricing in accordance with the Real Estate Settlement Procedures Act and, based on its past average cost for credit reports, charges the consumer $25 for a credit report provided by a third party. Under the loan originator organization's agreement with the consumer reporting agency, the cost of the credit report is to be paid in a month-end bill and will vary between $15 and $35 depending on how many credit reports the originator obtains that month. Assume the $25 for the credit report is paid by the consumer or is paid by the creditor with proceeds from a rebate. At the end of the month, the cost for the credit report is determined to be $15 for this consumer's transaction, based on the loan originator organization's credit report volume that month. In this case, the $10 difference between the $25 credit report fee imposed on the consumer and the actual $15 cost for the credit report is not compensation for purposes of §1026.36, even though the $10 is retained by the loan originator organization.

B. Using the same example as in comment 36(a)–5.v.A, the $10 difference would be compensation for purposes of §1026.36 if the price for a credit report varies between $10 and $15.

vi. *Returns on equity interests and dividends on equity holdings.* The term ''compensation'' for purposes of §1026.36(d) and (e) also includes, for example, awards of stock, stock options and equity interests. Thus, the awarding of stock, stock options, or equity interests to loan originators is subject to the restrictions in §1026.36(d) and (e). For example, a person may not award additional stock or a preferable type of equity interest to a loan originator based on the terms of a consumer credit transaction subject to §1026.36 originated by that loan originator. However, bona fide returns or dividends paid on stock or other equity holdings, including those paid to owners or shareholders of a loan originator organization who own such stock or equity interests, are not compensation for purposes of §1026.36(d) and (e). Bona fide returns or dividends are those returns and dividends that are paid pursuant to documented ownership or equity interests and that are not functionally equivalent to compensation. Ownership and equity interests must be bona fide. Bona fide ownership and equity interests are allocated according to a loan originator's respective capital contribution where the allocation is not a mere subterfuge for the payment of compensation based on terms of a transaction. Ownership and equity interests also are not bona fide if the formation or maintenance of the business from which returns or dividends are paid is a mere subterfuge for the payment of compensation based on the terms of a transaction. For example, assume that three individual loan originators form a loan originator organization that is a limited liability company (LLC). The three individual loan originators are members of the LLC, and the LLC agreement governing the loan originator organization's structure calls for regular distributions based on the members' respective equity interests. If the members' respective equity interests are allocated based on the members' terms of transactions, rather than according to their respective capital contributions, then distributions based on such equity interests are not bona fide and, thus, are compensation for purposes of §1026.36(d) and (e).

36(a)(1)(i)(B) Employee of a retailer of manufactured homes.

1. The definition of loan originator does not include an employee of a manufactured home retailer that ''assists'' a consumer in obtaining or applying for consumer credit as defined in comment 36(a)–1.i.A.*3*, provided the employee does not advise the consumer on specific credit terms, or otherwise engage in loan originator activity as defined in §1026.36(a)(1). The following examples describe activities that, in the absence of other activities, do not define a manufactured home retailer employee as a loan originator:

i. Generally describing the credit application process to a consumer without advising on credit terms available from a creditor.

ii. Preparing residential mortgage loan packages, which means compiling and processing loan application materials and supporting documentation, and providing general application instructions to consumers so consumers can complete an application, without interacting or communicating with the consumer regarding transaction terms, but not filling out a consumer's application, inputting the information into an online application or other automated system, or taking information from the consumer over the phone to complete the application.

iii. Collecting information on behalf of the consumer with regard to a residential mortgage loan. Collecting information ''on behalf of the consumer'' would include gathering information or supporting documentation from third parties on behalf of the consumer to provide to the consumer, for the consumer then to provide in the application or for the consumer to submit to the loan originator or creditor.

iv. Providing or making available general information about creditors or loan originators that may offer financing for manufactured homes in the consumer's general area, when doing so does not otherwise amount to ''referring'' as defined in comment 36(a)–1.i.A.*1*. This includes making available, in a neutral manner, general brochures or information about the different creditors or loan originators that may offer financing to a consumer, but does not include recommending a particular creditor or loan originator or otherwise influencing the consumer's decision.

36(a)(4) Seller Financers; Three Properties

1. *Reasonable ability to repay safe harbors.* A person in good faith determines that the consumer to whom the person extends seller financing has a reasonable ability to repay the obligation if the person complies with §1026.43(c) of this part or complies with the alternative criteria discussed in this comment. If the consumer intends to make payments from income, the person considers evidence of the consumer's current or reasonably expected income. If the consumer intends to make payments with income from employment, the person considers the consumer's earnings, which may be reflected in payroll statements or earnings statements, IRS Form W–2s or similar IRS forms used for reporting wages or tax withholding, or military Leave and Earnings Statements. If the consumer intends to make payments from other income, the person considers the consumer's income from sources such as a Federal, State, or local government agency providing benefits and entitlements. If the consumer intends to make payments from income earned from assets, the person considers the relevant assets, such as funds held in accounts with financial institutions, equity ownership interests, or rental property. However, the value of the dwelling that secures the financing does not constitute evidence of the consumer's ability to repay. In considering these and other potential sources of income to determine in good faith that the consumer has a reasonable ability to repay the obligation, the person making that determination may rely on copies of tax returns the consumer filed with the Internal Revenue Service or a State taxing authority.

2. *Adjustable rate safe harbors.* i. *Annual rate increase.* An annual rate increase of two percentage points or less is reasonable.

ii. *Lifetime increase.* A lifetime limitation of an increase of six percentage points or less, subject to a minimum floor of the person's choosing and maximum ceiling that does not exceed the usury limit applicable to the transaction, is reasonable.

36(a)(5) Seller Financers; One Property

1. *Adjustable rate safe harbors.* For a discussion of reasonable annual and lifetime interest rate increases, see comment 36(a)(4)–2.

36(b) Scope.

1. *Scope of coverage.* Section 1026.36(c)(1) and (c)(2) applies to closed-end consumer credit transactions secured by a consumer's principal dwelling. Section 1026.36(c)(3) applies to a consumer credit transaction, including home equity lines of credit under §1026.40, secured by a consumer's dwelling. Paragraphs (h) and (i) of §1026.36 apply to home equity lines of credit under §1026.40 secured by a consumer's principal dwelling. Paragraphs (d), (e), (f), (g), (h), and (i) of §1026.36 apply to closed-end consumer credit transactions secured by a dwelling. Closed-end consumer credit transactions include transactions secured by first or subordinate liens, and reverse mortgages that are not home equity lines of credit under §1026.40. See §1026.36(b) for additional restrictions on the scope of §1026.36, and §§1026.1(c) and 1026.3(a) and corresponding commentary for further discussion of extensions of credit subject to Regulation Z.

36(c) Servicing Practices

Paragraph 36(c)(1)(i)

1. *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.

2. *Method of crediting periodic payments.* The method by which periodic payments shall be credited is based on the legal obligation between the creditor and consumer, subject to applicable law.

3. *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.

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

5. *Permanent loan modifications.* If a loan contract has been permanently modified, a periodic payment under §1026.36(c)(1)(i) is an amount sufficient to cover principal, interest, and escrow (if applicable) for a given billing cycle under the modified loan contract.

Paragraph 36(c)(1)(ii).

1. *Handling of partial payments.* If a servicer receives a partial payment from a consumer, to the extent not prohibited by applicable law or the legal obligation between the parties, the servicer may take any of the following actions:

i. Credit the partial payment upon receipt.

ii. Return the partial payment to the consumer.

iii. Hold the payment in a suspense or unapplied funds account. If the payment is held in a suspense or unapplied funds account, this fact must be reflected on future periodic statements, in accordance with §1026.41(d)(3). When sufficient funds accumulate to cover a periodic payment, as defined in §1026.36(c)(1)(i), they must be treated as a periodic payment received in accordance with §1026.36(c)(1)(i).

Paragraph 36(c)(1)(iii).

1. *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.

2. *Payment requirements—Limitations.* Requirements for making payments must be reasonable; it should not be difficult for most consumers and potential successors in interest 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.

3. *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).

1. *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).

1. *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.

2. *Payment requirements.* The creditor, assignee or servicer may specify reasonable requirements for making payoff requests, such as requiring requests to be directed to a mailing address, email 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 timeframe for responding to the request would be reasonable.

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

36(d) Prohibited Payments to Loan Originators

1. *Persons covered.* Section 1026.36(d) prohibits any person (including a 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).

2. *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

1. *Compensation that is "based on" a term of a transaction.* i. *Objective facts and circumstances.* 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.

ii. *Single or multiple transactions.* The prohibition on payment and receipt of compensation under §1026.36(d)(1)(i) encompasses compensation that directly or indirectly is based on the terms of a single transaction of a single individual loan originator, the terms of multiple transactions by that single individual loan originator, or the terms of multiple transactions by multiple individual loan originators. Compensation to an individual loan originator that is based upon profits determined with reference to a mortgage-related business is considered compensation that is based on the terms of multiple transactions by multiple individual loan originators. For clarification about the exceptions permitting compensation based upon profits determined with reference to mortgage-related business pursuant to either a designated tax-advantaged plan or a non-deferred profits-based compensation plan, see comment 36(d)(1)–3. For clarification about "mortgage-related business," see comments 36(d)(1)–3.v.B and –3.v.E.

A. Assume that a creditor pays a bonus to an individual loan originator out of a bonus pool established with reference to the creditor's profits and the profits are determined with reference to the creditor's revenue from origination of closed-end consumer credit transactions secured by a dwelling. In such instance, the bonus is considered compensation that is based on the terms of multiple transactions by multiple individual loan originators. Therefore, the bonus is prohibited under §1026.36(d)(1)(i), unless it is otherwise permitted under §1026.36(d)(1)(iv).

B. Assume that an individual loan originator's employment contract with a creditor guarantees a quarterly bonus in a specified amount conditioned upon the individual loan originator meeting certain performance benchmarks (e.g., volume of originations monthly). A bonus paid following the satisfaction of those contractual conditions is not directly or indirectly based on the terms of a transaction by an individual loan originator, the terms of multiple transactions by that individual loan originator, or the terms of multiple transactions by multiple individual loan originators under §1026.36(d)(1)(i) as clarified by this comment 36(d)(1)–1.ii, because the creditor is obligated to pay the bonus, in the specified amount, regardless of the terms of transactions of the individual loan originator or multiple individual loan originators and the effect of those terms of multiple transactions on the creditor's profits. Because this type of bonus is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators, as described in §1026.36(d)(1)(i) (as clarified by this comment 36(d)(1)–1.ii), it is not subject to the 10-percent total compensation limit described in §1026.36(d)(1)(iv)(B)(*1*).

iii. *Transaction term defined.* A "term of a transaction" under §1026.36(d)(1)(ii) is any right or obligation of any of the parties to a credit transaction. A "credit transaction" is the operative acts (*e.g.,* the consumer's purchase of certain goods or services essential to the transaction) and written and oral agreements that, together, create the consumer's right to defer payment of debt or to incur debt and defer its payment. For the purposes of §1026.36(d)(1)(ii), this definition includes:

A. The rights and obligations, or part of any rights or obligations, memorialized in a promissory note or other credit contract, as well as the security interest created by a mortgage, deed of trust, or other security instrument, and in any document incorporated by reference in the note, contract, or security instrument;

B. The payment of any loan originator or creditor fees or charges for the credit, or for a product or service provided by the loan originator or creditor related to the extension of that credit, imposed on the consumer, including any fees or charges financed through the interest rate; and

C. The payment of any fees or charges imposed on the consumer, including any fees or charges financed through the interest rate, for any product or service required to be obtained or performed as a condition of the extension of credit.

D. The fees and charges described above in paragraphs B and C can only be a term of a transaction if the fees or charges are required to be disclosed in the Good Faith Estimate, the HUD–1, or the HUD–1A (and subsequently in any integrated disclosures promulgated by the Bureau under TILA section 105(b) (15 U.S.C. 1604(b)) and RESPA section 4 (12 U.S.C. 2603) as amended by sections 1098 and 1100A of the Dodd-Frank Act).

2. *Compensation that is or is not based on a term of a transaction or a proxy for a term of a transaction.* Section 1026.36(d)(1) does not prohibit compensating a loan originator differently on different transactions, provided the difference is not based on a term of a transaction or a proxy for a term of a transaction. The rule prohibits compensation to a loan originator for a transaction based on, among other things, that transaction's interest rate, annual percentage rate, collateral type (*e.g.,* condominium, cooperative, detached home, or manufactured housing), or the existence of a prepayment penalty. The rule also prohibits compensation to a loan originator that is based on any factor that is a proxy for a term of a transaction. Compensation paid to a loan originator organization directly by a consumer in a transaction is not prohibited by §1026.36(d)(1) simply because that compensation itself is a term of the transaction. Nonetheless, that compensation may not be based on any other term of the transaction or a proxy for any other term of the transaction. In addition, in a transaction where a loan originator organization is paid compensation directly by a consumer, compensation paid by the loan originator organization to individual loan originators is not prohibited by §1026.36(d)(1) simply because it is based on the amount of compensation paid directly by the consumer to the loan originator organization but the compensation to the individual loan originator may not be based on any other term of the transaction or proxy for any other term of the transaction.

i. *Permissible methods of compensation.* Compensation based on the following factors is not compensation based on a term of a transaction or a proxy for a term of a transaction:

A. The loan originator's overall dollar volume (*i.e.,* total dollar amount of credit extended or total number of transactions originated), delivered to the creditor. See comment 36(d)(1)–9 discussing variations of compensation based on the amount of credit extended.

B. The long-term performance of the originator's loans.

C. An hourly rate of pay to compensate the originator for the actual number of hours worked.

D. Whether the consumer is an existing customer of the creditor or a new customer.

E. A payment that is fixed in advance for every loan the originator arranges for the creditor (*e.g.,* $600 for every credit transaction arranged for the creditor, or $1,000 for the first 1,000 credit transactions arranged and $500 for each additional credit transaction arranged).

F. The percentage of applications submitted by the loan originator to the creditor that results in consummated transactions.

G. The quality of the loan originator's loan files (*e.g.,* accuracy and completeness of the loan documentation) submitted to the creditor.

ii. *Proxies for terms of a transaction.* If the loan originator's compensation is based in whole or in part on a factor that is a proxy for a term of a transaction, then the loan originator's compensation is based on a term of a transaction. A factor (that is not itself a term of a transaction) is a proxy for a term of a transaction if the factor consistently varies with a term or terms of the transaction over a significant number of transactions, and the loan originator has the ability, directly or indirectly, to add, drop, or change the factor when originating the transaction. For example:

A. Assume a creditor pays a loan originator a higher commission for transactions to be held by the creditor in portfolio than for transactions sold by the creditor into the secondary market. The creditor holds in portfolio only extensions of credit that have a fixed interest rate and a five-year term with a final balloon payment. The creditor sells into the secondary market all other extensions of credit, which typically have a higher fixed interest rate and a 30-year term. Thus, whether an extension of credit is held in portfolio or sold into the secondary market for this creditor consistently varies with the interest rate and whether the credit has a five-year term or a 30-year term (which are terms of the transaction) over a significant number of transactions. Also, the loan originator has the ability to change the factor by, for example, advising the consumer to choose an extension of credit a five-year term. Therefore, under these circumstances, whether or not an extension of credit will be held in portfolio is a proxy for a term of a transaction.

B. Assume a loan originator organization pays loan originators higher commissions for transactions secured by property in State A than in State B. For this loan originator organization, over a significant number of transactions, transactions in State B have substantially lower interest rates than transactions in State A. The loan originator, however, does not have any ability to influence whether the transaction is secured by property located in State A or State B. Under these circumstances, the factor that affects compensation (the location of the property) is not a proxy for a term of a transaction.

iii. *Pooled compensation.* Section 1026.36(d)(1) prohibits the sharing of pooled compensation among loan originators who originate transactions with different terms and are compensated differently. For example, assume that Loan Originator A receives a higher commission than Loan Originator B and that loans originated by Loan Originator A generally have higher interest rates than loans originated by Loan Originator B. Under these circumstances, the two loan originators may not share pooled compensation because each receives compensation based on the terms of the transactions they collectively make.

3. *Interpretation of §1026.36(d)(1)(iii) and (iv).* Subject to certain restrictions, §1026.36(d)(1)(iii) and §1026.36(d)(1)(iv) permit contributions to or benefits under designated tax-advantaged plans and compensation under a non-deferred profits-based compensation plan even if the contributions, benefits, or compensation, respectively, are based on the terms of multiple transactions by multiple individual loan originators.

i. *Designated tax-advantaged plans.* Section 1026.36(d)(1)(iii) permits an individual loan originator to receive, and a person to pay, compensation in the form of contributions to a defined contribution plan or benefits under a defined benefit plan provided the plan is a designated tax-advantaged plan (as defined in §1026.36(d)(1)(iii)), even if contributions to or benefits under such plans are directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. In the case of a designated tax-advantaged plan that is a defined contribution plan, §1026.36(d)(1)(iii) does not permit the contribution to be directly or indirectly based on the terms of that individual loan originator's transactions. A defined contribution plan has the meaning set forth in Internal Revenue Code section 414(i), 26 U.S.C. 414(i). A defined benefit plan has the meaning set forth in Internal Revenue Code section 414(j), 26 U.S.C. 414(j).

ii. *Non-deferred profits-based compensation plans.* As used in §1026.36(d)(1)(iv), a ''non-deferred profits-based compensation plan'' is any compensation arrangement where an individual loan originator may be paid variable, additional compensation based in whole or in part on the mortgage-related business profits of the person paying the compensation, any affiliate, or a business unit within the organizational structure of the person or the affiliate, as applicable (*i.e.*, depending on the level within the person's or affiliate's organization at which the non-deferred profits-based compensation plan is established). A non-deferred profits-based compensation plan does not include a designated tax-advantaged plan or other forms of deferred compensation that are not designated tax-advantaged plans, such as those created pursuant to Internal Revenue Code section 409A, 26 U.S.C. 409A. Thus, if contributions to or benefits under a designated tax-advantaged plan or compensation under another form of deferred compensation plan are determined with reference to the mortgage-related business profits of the person making the contribution, then the contribution, benefits, or other compensation, as applicable, are not permitted by §1026.36(d)(1)(iv) (although, in the case of contributions to or benefits under a designated tax-advantaged plan, the benefits or contributions may be permitted by §1026.36(d)(1)(iii)). Under a non-deferred profits-based compensation plan, the individual loan originator may, for example, be paid directly in cash, stock, or other non-deferred compensation, and the compensation under the non-deferred profits-based compensation plan may be determined by a fixed formula or may be at the discretion of the person (e.g., the person may elect not to pay compensation under a non-deferred profits-based compensation plan in a given year), provided the compensation is not directly or indirectly based on the terms of the individual loan originator's transactions. As used in §1026.36(d)(1)(iv) and this commentary, non-deferred profits-based compensation plans include, without limitation, bonus pools, profits pools, bonus plans, and profit-sharing plans. Compensation under a non-deferred profits-based compensation plan could include, without limitation, annual or periodic bonuses, or awards of merchandise, services, trips, or similar prizes or incentives where the bonuses, contributions, or awards are determined with reference to the profits of the person, business unit, or affiliate, as applicable. As used in §1026.36(d)(1)(iv) and this commentary, a business unit is a division, department, or segment within the overall organizational structure of the person or the person's affiliate that performs discrete business functions and that the person or the affiliate treats separately for accounting or other organizational purposes. For example, a creditor that pays its individual loan originators bonuses at the end of a calendar year based on the creditor's average net return on assets for the calendar year is operating a non-deferred profits-based compensation plan under §1026.36(d)(1)(iv). A bonus that is paid to an individual loan originator from a source other than a non-deferred profits-based compensation plan (or a deferred compensation plan where the bonus is determined with reference to mortgage-related business profits), such as a retention bonus budgeted for in advance or a performance bonus paid out of a bonus pool set aside at the beginning of the company's annual accounting period as part of the company's operating budget, does not violate the prohibition on payment of compensation based on the terms of multiple transactions by multiple individual loan originators under §1026.36(d)(1)(i), as clarified by comment 36(d)(1)–1.ii; therefore, §1026.36(d)(1)(iv) does not apply to such bonuses.

iii. *Compensation that is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators.* The compensation arrangements addressed in §1026.36(d)(1)(iii) and (iv) are permitted even if they are directly or indirectly based on the terms of multiple transactions by multiple individual loan originators. See comment 36(d)(1)–1 for additional interpretation. If a loan originator organization's revenues are exclusively derived from transactions subject to §1026.36(d) (whether paid by creditors, consumers, or both) and that loan originator organization pays its individual loan originators a bonus under a non-deferred profits-based compensation plan, the bonus is not directly or indirectly based on the terms of multiple transactions by multiple individual loan originators if §1026.36(d)(1)(i) is otherwise complied with.

iv. *Compensation based on terms of an individual loan originator's transactions.* Under both §1026.36(d)(1)(iii), with regard to contributions made to a defined contribution plan that is a designated tax-advantaged plan, and §1026.36(d)(1)(iv)(A), with regard to compensation under a non-deferred profits-based compensation plan, the payment of compensation to an individual loan originator may not be directly or indirectly based on the terms of that individual loan originator's transaction or transactions. Consequently, for example, where an individual loan originator makes loans that vary in their interest rate spread, the compensation payment may not take into account the average interest rate spread on the individual loan originator's transactions during the relevant calendar year.

v. *Compensation under non-deferred profits-based compensation plans.* Assuming that the conditions in §1026.36(d)(1)(iv)(A) are met, §1026.36(d)(1)(iv)(B)(*1*) permits certain compensation to an individual loan originator under a non-deferred profits-based compensation plan. Specifically, if the compensation is determined with reference to the profits of the person from mortgage-related business, compensation under a non-deferred profits-based compensation plan is permitted provided the compensation does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the time period for which compensation under the non-deferred profits-based compensation plan is paid. The compensation restrictions under §1026.36(d)(1)(iv)(B)(*1*) are sometimes referred to in this commentary as the ''10-percent total compensation limit'' or the ''10-percent limit.''

A. *Total compensation.* For purposes of §1026.36(d)(1)(iv)(B)(*1*), the individual loan originator's total compensation consists of the sum total of: (1) All wages and tips reportable for Medicare tax purposes in box 5 on IRS form W–2 (or, if the individual loan originator is an independent contractor, reportable compensation on IRS form 1099–MISC) that are actually paid during the relevant time period (regardless of when the wages and tips are earned), except for any compensation under a non-deferred profits-based compensation plan that is earned during a different time period (see comment 36(d)(1)–3.v.C); (2) at the election of the person paying the compensation, all contributions that are actually made during the relevant time period by the creditor or loan originator organization to the individual loan originator's accounts in designated tax-advantaged plans that are defined contribution plans (regardless of when the contributions are earned); and (3) at the election of the person paying the compensation, all compensation under a non-deferred profits-based compensation plan that is earned during the relevant time period, regardless of whether the compensation is actually paid during that time period (see comment 36(d)(1)–3.v.C). If an individual loan originator has some compensation that is reportable on the W–2 and some that is reportable on the 1099–MISC, the total compensation is the sum total of what is reportable on each of the two forms.

B. *Profits of the Person.* Under §1026.36(d)(1)(iv), a plan is a non-deferred profits-based compensation plan if compensation is paid, based in whole or in part, on the profits of the person paying the compensation. As used in §1026.36(d)(1)(iv), ''profits of the person'' include, as applicable depending on where the non-deferred profits-based compensation plan is set, the profits of the person, the business unit to which the individual loan originators are assigned for accounting or other organizational purposes, or any affiliate of the person. Profits from mortgage-related business are profits determined with reference to revenue generated from transactions subject to §1026.36(d). Pursuant to §1026.36(b) and comment 36(b)–1, §1026.36(d) applies to closed-end consumer credit transactions secured by dwellings. This revenue includes, without limitation, and as applicable based on the particular sources of revenue of the person, business unit, or affiliate, origination fees and interest associated with dwelling-secured transactions for which individual loan originators working for the person were loan originators, income from servicing of such transactions, and proceeds of secondary market sales of such transactions. If the amount of the individual loan originator's compensation under non-deferred profits-based compensation plans paid for a time period does not, in the aggregate, exceed 10 percent of the individual loan originator's total compensation corresponding to the same time period, compensation under non-deferred profits-based compensation plans may be paid under §1026.36(d)(1)(iv)(B)(*1*) regardless of whether or not it was determined with reference to the profits of the person from mortgage-related business.

C. *Time period for which the compensation under the non-deferred profits-based compensation plan is paid and to which the total compensation corresponds.* Under §1026.36(d)(1)(iv)(B)(*1*), determination of whether payment of compensation under a non-deferred profits-based compensation plan complies with the 10-percent limit requires a calculation of the ratio of the compensation under the non-deferred profits-based compensation plan (*i.e.*, the compensation subject to the 10-percent limit) and the total compensation corresponding to the relevant time period. For compensation subject to the 10-percent limit, the relevant time period is the time period for which a person makes reference to profits in determining the compensation (*i.e.*, when the compensation was earned). It does not matter whether the compensation is actually paid during that particular time period. For total compensation, the relevant time period is the same time period, but only certain types of compensation may be included in the total compensation amount for that time period (see comment 36(d)(1)–3.v.A). For example, assume that during calendar year 2014 a creditor pays an individual loan originator compensation in the following amounts: $80,000 in commissions based on the individual loan originator's performance and volume of loans generated during the calendar year; and $10,000 in an employer contribution to a designated tax-advantaged defined contribution plan on behalf of the individual loan originator. The creditor desires to pay the individual loan originator a year-end bonus of $10,000 under a non-deferred profits-based compensation plan. The commissions are paid and employer contributions to the designated tax-advantaged defined contribution plan are made during calendar year 2014, but the year-end bonus will be paid in January 2015. For purposes of the 10-percent limit, the year-end bonus is counted toward the 10-percent limit for calendar year 2014, even though it is not actually paid until 2015. Therefore, for calendar year 2014 the individual loan originator's compensation that is subject to the 10-percent limit would be $10,000 (*i.e.*, the year-end bonus) and the total compensation would be $100,000 (*i.e.*, the sum of the commissions, the designated tax-advantaged plan contribution (assuming the creditor elects to include it in total compensation for calendar year 2014), and the bonus (assuming the creditor elects to include it in total compensation for calendar year 2014)); the bonus would be permissible under §1026.36(d)(1)(iv) because it does not exceed 10 percent of total compensation. The determination of total compensation corresponding to 2014 also would not take into account any compensation subject to the 10-percent limit that is actually paid in 2014 but is earned during a different calendar year (e.g., an annual bonus determined with reference to mortgage-related business profits for calendar year 2013 that is paid in January 2014). If the employer contribution to the designated tax-advantaged plan is earned in 2014 but actually made in 2015, however, it may not be included in total compensation for 2014. A company, business unit, or affiliate, as applicable, may pay compensation subject to the 10-percent limit during different time periods falling within its annual accounting period for keeping records and reporting income and expenses, which may be a calendar year or a fiscal year depending on the annual accounting period. In such instances, however, the 10-percent limit applies both as to each time period and cumulatively as to the annual accounting period. For example, assume that a creditor uses a calendar-year accounting period. If the creditor pays an individual loan originator a bonus at the end of each quarter under a non-deferred profits-based compensation plan, the payment of each quarterly bonus is subject to the 10-percent limit measured with respect to each quarter. The creditor can also pay an annual bonus under the non-deferred profits-based compensation plan that does not exceed the difference of 10 percent of the individual loan originator's total compensation corresponding to the calendar year and the aggregate amount of the quarterly bonuses.

D. *Awards of merchandise, services, trips, or similar prizes or incentives.* If any compensation paid to an individual loan originator under §1026.36(d)(1)(iv) consists of an award of merchandise, services, trips, or similar prize or incentive, the cash value of the award is factored into the calculation of the 10-percent total compensation limit. For example, during a given calendar year, individual loan originator A and individual loan originator B are each employed by a creditor and paid $40,000 in salary, and $45,000 in commissions. The creditor also contributes $5,000 to a designated tax-advantaged defined contribution plan for each individual loan originator during that calendar year, which the creditor elects to include in the total compensation amount. Neither individual loan originator is paid any other form of compensation by the creditor. In December of the calendar year, the creditor rewards both individual loan originators for their performance during the calendar year out of a bonus pool established with reference to the profits of the mortgage origination business unit. Individual loan originator A is paid a $10,000 cash bonus, meaning that individual loan originator A's total compensation is $100,000 (assuming the creditor elects to include the bonus in the total compensation amount). Individual loan originator B is paid a $7,500 cash bonus and awarded a vacation package with a cash value of $3,000, meaning that individual loan originator B's total compensation is $100,500 (assuming the creditor elects to include the reward in the total compensation amount). Under §1026.36(d)(1)(iv)(B)(*1*), individual loan originator A's $10,000 bonus is permissible because the bonus would not constitute more than 10 percent of individual loan originator A's total compensation for the calendar year. The creditor may not pay individual loan originator B the $7,500 bonus and award the vacation package, however, because the total value of the bonus and the vacation package would be $10,500, which is greater than 10 percent (10.45 percent) of individual loan originator B's total compensation for the calendar year. One way to comply with §1026.36(d)(1)(iv)(B)(*1*) would be if the amount of the bonus were reduced to $7,000 or less or the vacation package were structured such that its cash value would be $2,500 or less.

E. *Compensation determined only with reference to non-mortgage-related business profits.* Compensation under a non-deferred profits-based compensation plan is not subject to the 10-percent total compensation limit under §1026.36(d)(1)(iv)(B)(*1*) if the non-deferred profits-based compensation plan is determined with reference only to profits from business other than mortgage-related business, as determined in accordance with reasonable accounting principles. Reasonable accounting principles reflect an accurate allocation of revenues, expenses, profits, and losses among the person, any affiliate of the person, and any business units within the person or affiliates, and are consistent with the accounting principles applied by the person, the affiliate, or the business unit with respect to, as applicable, its internal budgeting and auditing functions and external reporting requirements. Examples of external reporting and filing requirements that may be applicable to creditors and loan originator organizations are Federal income tax filings, Federal securities law filings, or quarterly reporting of income, expenses, loan origination activity, and other information required by government-sponsored enterprises. As used in §1026.36(d)(1)(iv)(B)(*1*), profits means positive profits or losses avoided or mitigated.

F. *Additional examples. 1.* Assume that, during a given calendar year, a loan originator organization pays an individual loan originator employee $40,000 in salary and $125,000 in commissions, and makes a contribution of $15,000 to the individual loan originator's 401(k) plan. At the end of the year, the loan originator organization wishes to pay the individual loan originator a bonus based on a formula involving a number of performance metrics, to be paid out of a profit pool established at the level of the company but that is determined in part with reference to the profits of the company's mortgage origination unit. Assume that the loan originator organization derives revenues from sources other than transactions covered by §1026.36(d). In this example, the performance bonus would be directly or indirectly based on the terms of multiple individual loan originators' transactions as described in §1026.36(d)(1)(i), because it is being determined with reference to profits from mortgage-related business. Assume, furthermore, that the loan originator organization elects to include the bonus in the total compensation amount for the calendar year. Thus, the bonus is permissible under §1026.36(d)(1)(iv)(B)(*1*) if it does not exceed 10 percent of the loan originator's total compensation, which in this example consists of the individual loan originator's salary and commissions, the contribution to the 401(k) plan (if the loan originator organization elects to include the contribution in the total compensation amount), and the performance bonus. Therefore, if the loan originator organization elects to include the 401(k) contribution in total compensation for these purposes, the loan originator organization may pay the individual loan originator a performance bonus of up to $20,000 (*i.e.*, 10 percent of $200,000 in total compensation). If the loan originator organization does not include the 401(k) contribution in calculating total compensation, or the 401(k) contribution is actually made in January of the following calendar year (in which case it cannot be included in total compensation for the initial calendar year), the bonus may be up to $18,333.33. If the loan originator organization includes neither the 401(k) contribution nor the performance bonus in the total compensation amount, the bonus may not exceed $16,500.

2. Assume that the compensation during a given calendar year of an individual loan originator employed by a creditor consists of only salary and commissions, and the individual loan originator does not participate in a designated tax-advantaged defined contribution plan. Assume further that the creditor uses a calendar-year accounting period. At the end of the calendar year, the creditor pays the individual loan originator two bonuses: A "performance" bonus based on the individual loan originator's aggregate loan volume for a calendar year that is paid out of a bonus pool determined with reference to the profits of the mortgage origination business unit, and a year-end "holiday" bonus in the same amount to all company employees that is paid out of a company-wide bonus pool. Because the performance bonus is paid out of a bonus pool that is determined with reference to the profits of the mortgage origination business unit, it is compensation that is determined with reference to mortgage-related business profits, and the bonus is therefore subject to the 10-percent total compensation limit. If the company-wide bonus pool from which the ''holiday'' bonus is paid is derived in part from profits of the creditor's mortgage origination business unit, then the combination of the ''holiday'' bonus and the performance bonus is subject to the 10-percent total compensation limit. The ''holiday'' bonus is not subject to the 10-percent total compensation limit if the bonus pool is determined with reference only to the profits of business units other than the mortgage origination business unit, as determined in accordance with reasonable accounting principles. If the ''performance'' bonus and the ''holiday'' bonus in the aggregate do not exceed 10 percent of the individual loan originator's total compensation, the bonuses may be paid under §1026.36(d)(1)(iv)(B)(*1*) without the necessity of determining from which bonus pool they were paid or whether they were determined with reference to the profits of the creditor's mortgage origination business unit.

G. *Reasonable reliance by individual loan originator on accounting or statement by person paying compensation*. An individual loan originator is deemed to comply with its obligations regarding receipt of compensation under §1026.36(d)(1)(iv)(B)(*1*) if the individual loan originator relies in good faith on an accounting or a statement provided by the person who determined the individual loan originator's compensation under a non-deferred profits-based compensation plan pursuant to §1026.36(d)(1)(iv)(B)(*1*) and where the statement or accounting is provided within a reasonable time period following the person's determination.

vi. *Individual loan originators who originate ten or fewer transactions*. Assuming that the conditions in §1026.36(d)(1)(iv)(A) are met, §1026.36(d)(1)(iv)(B)(*2*) permits compensation to an individual loan originator under a non-deferred profits-based compensation plan even if the payment or contribution is directly or indirectly based on the terms of multiple individual loan originators' transactions if the individual is a loan originator (as defined in §1026.36(a)(1)(i)) for ten or fewer consummated transactions during the 12-month period preceding the compensation determination. For example, assume a loan originator organization employs two individual loan originators who originate transactions subject to §1026.36 during a given calendar year. Both employees are individual loan originators as defined in §1026.36(a)(1)(ii), but only one of them (individual loan originator B) acts as a loan originator in the normal course of business, while the other (individual loan originator A) is called upon to do so only occasionally and regularly performs other duties (such as serving as a manager). In January of the following calendar year, the loan originator organization formally determines the financial performance of its mortgage business for the prior calendar year. Based on that determination, the loan originator organization on February 1 decides to pay a bonus to the individual loan originators out of a company bonus pool. Assume that, between February 1 of the prior calendar year and January 31 of the current calendar year, individual loan originator A was the loan originator for eight consummated transactions, and individual loan originator B was the loan originator for 15 consummated transactions. The loan originator organization may award the bonus to individual loan originator A under §1026.36(d)(1)(iv)(B)(*2*). The loan originator organization may not award the bonus to individual loan originator B relying on the exception under §1026.36(d)(1)(iv)(B)(*2*) because it would not apply, although it could award a bonus pursuant to the 10-percent total compensation limit under §1026.36(d)(1)(iv)(B)(*1*) if the requirements of that provision are complied with.

4. *Creditor's flexibility in setting loan terms*. Section 1026.36(d) also 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 §1026.36(d), 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 6.0 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. In these transactions, a creditor also may offer different consumers varying interest rates that include a consistent interest rate premium to recoup the loan originator's compensation through increased interest paid by the consumer (such as by consistently adding 0.25 percentage points to the interest rate on each transaction where the loan originator is compensated based on a percentage of the amount of the credit extended).

5. *Effect of modification of transaction terms*. Under §1026.36(d)(1), a loan originator's compensation may not be based on any of the terms of a credit transaction. Thus, a creditor and a loan originator may not agree to set the loan 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 credit 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 credit 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. Thus, while the creditor may change credit terms or pricing to match a competitor, to avoid triggering high-cost mortgage provisions, or for other reasons, the loan originator's compensation on that transaction may not be changed for those reasons. A loan originator therefore may not agree to reduce its compensation or provide a credit to the consumer to pay a portion of the consumer's closing costs, for example, to avoid high-cost mortgage provisions. A loan originator organization may not reduce its own compensation in a transaction where the loan originator organization receives compensation directly from the consumer, with or without a corresponding reduction in compensation paid to an individual loan originator. See comment 36(d)(1)–7 for further interpretation.

6. *Periodic changes in loan originator compensation and terms of transactions.* Section 1026.36 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 not result in payments to the loan originator that are based on the terms 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 loan originator compensation, and prospectively revise the compensation it agrees to pay to a loan originator. For example, assume that during the first six months of the year, a creditor pays $3,000 to a particular loan originator for each loan delivered, regardless of the terms of the transaction. After considering the volume of business produced by that loan originator, the creditor could decide that as of July 1, it will pay $3,250 for each loan delivered by that particular loan originator, regardless of the terms of the transaction. 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.

7. *Permitted decreases in loan originator compensation.* Notwithstanding comment 36(d)(1)–5, §1026.36(d)(1) does not prohibit a loan originator from decreasing its compensation to defray the cost, in whole or part, of an unforeseen increase in an actual settlement cost over an estimated settlement cost disclosed to the consumer pursuant to section 5(c) of RESPA or an unforeseen actual settlement cost not disclosed to the consumer pursuant to section 5(c) of RESPA. For purposes of comment 36(d)(1)–7, an increase in an actual settlement cost over an estimated settlement cost or a cost not disclosed is unforeseen if the increase occurs even though the estimate provided to the consumer is consistent with the best information reasonably available to the disclosing person at the time of the estimate. For example:

i. Assume that a consumer agrees to lock an interest rate with a creditor in connection with the financing of a purchase-money transaction. A title issue with the property being purchased delays closing by one week, which in turn causes the rate lock to expire. The consumer desires to re-lock the interest rate. Provided that the title issue was unforeseen, the loan originator may decrease the loan originator's compensation to pay for all or part of the rate-lock extension fee.

ii. Assume that when applying the tolerance requirements under the regulations implementing RESPA sections 4 and 5(c), there is a tolerance violation of $70 that must be cured. Provided the violation was unforeseen, the rule is not violated if the individual loan originator's compensation decreases to pay for all or part of the amount required to cure the tolerance violation.

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

9. *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:

i. 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.

ii. 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.

10. *Amount of credit extended under a reverse mortgage.* For closed-end reverse mortgage loans, the ''amount of credit extended'' for purposes of §1026.36(d)(1) means either:

i. The maximum proceeds available to the consumer under the loan; or

ii. The maximum claim amount as defined in 24 CFR 206.3 if the mortgage is subject to 24 CFR part 206, or the appraised value of the property, as determined by the appraisal used in underwriting the loan, if the mortgage is not subject to 24 CFR part 206.

36(d)(2) Payments by Persons Other Than Consumer

36(d)(2)(i) Dual Compensation

1. *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 any loan originator, directly or indirectly, in connection with that particular credit transaction, whether before, at, or after consummation. 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. In a transaction where a loan originator receives compensation directly from a consumer, a creditor still may provide funds for the benefit of the consumer in that transaction, provided such funds are applied solely toward costs of the transaction other than loan originator compensation. Section 1026.36(d)(2)(i)(C) provides that, if a loan originator organization receives compensation directly from a consumer, the loan originator organization may provide compensation to individual loan originators, and the individual loan originator may receive compensation from the loan originator organization, subject to the restriction in §1026.36(d)(1). (See comment 36(a)(1)–1.i for an explanation of the use of the term ''loan originator organization'' and ''individual loan originator'' for purposes of §1026.36(d)(2)(i)(C).) For example, payments by a mortgage broker to an individual loan originator as compensation for originating a specific credit transaction do not violate §1026.36(d)(2)(i)(A) even if the consumer directly pays the mortgage broker a fee in connection with that transaction. However, neither the mortgage broker nor the individual loan originator can receive compensation from the creditor in connection with that particular credit transaction.

2. *Compensation received directly from a consumer*. i. Payments by a consumer to a loan originator from loan proceeds are considered compensation received directly from the consumer, while payments derived from an increased interest rate are not considered compensation received directly from the consumer. However, payments by a consumer to the creditor are not considered payments to the loan originator that are received directly from the consumer whether they are paid directly by the consumer (for example, in cash or by check) or out of the loan proceeds. See the definition of ''compensation'' in §1026.36(a)(3) and related commentary.

ii. Funds from the creditor that will be applied to reduce the consumer's settlement charges, including origination fees paid by a creditor to the loan originator, that are characterized on the disclosures made pursuant to the Real Estate Settlement Procedures Act as a ''credit'' are nevertheless not considered to be received by the loan originator directly from the consumer for purposes of §1026.36(d)(2)(i).

iii. Section 1026.36(d)(2)(i)(B) provides that compensation received directly from a consumer includes payments to a loan originator made pursuant to an agreement between the consumer and a person other than the creditor or its affiliates, under which such other person agrees to provide funds toward the consumer's costs of the transaction (including loan originator compensation). Compensation to a loan originator is sometimes paid on the consumer's behalf by a person other than a creditor or its affiliates, such as a non-creditor seller, home builder, home improvement contractor or real estate broker or agent. Such payments to a loan originator are considered compensation received directly from the consumer for purposes of §1026.36(d)(2) if they are made pursuant to an agreement between the consumer and the person other than the creditor or its affiliates. State law determines whether there is an agreement between the parties. *See* §1026.2(b)(3). The parties do not have to agree specifically that the payments will be used to pay for the loan originator's compensation, but just that the person will make a payment to the loan originator toward the consumer's costs of the transaction, or ''closing costs'' and the loan originator retains such payment. For example, assume that a non-creditor seller (that is not the creditor's affiliate) has an agreement with the consumer to pay $1,000 of the consumer's closing costs on a transaction. Any of the $1,000 that is paid by the non-creditor seller to the loan originator and constitutes ''compensation'' as defined in §1026.36(a)(3) to the loan originator is compensation received directly from the consumer, even if the agreement does not specify that some or all of $1,000 must be used to compensate the loan originator. Nonetheless, payments by the consumer to the creditor are not payments to the loan originator that are received directly from the consumer. *See* comment 36(d)(2)(i)–2.i. Accordingly, payments in the transaction to the creditor on behalf of the consumer by a person other than the creditor or its affiliates are not payments to the loan originator that are received directly from the consumer.

36(d)(3) Affiliates

1. 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

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

36(e)(1) General

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.

2. *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.

i. 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.

ii. 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.

iii. 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."

3. *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

1. *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).

2. *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

1. *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.

2. *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:

i. There is a written agreement between the originator and the creditor governing the originator's submission of mortgage loan applications to the creditor;

ii. 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

iii. 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.

3. *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 of discount points, origination points or origination 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. The loan with the lowest interest rate for which the consumer likely qualifies is the loan with the lowest rate the consumer can likely obtain, regardless of how many discount points, origination points or origination fees the consumer must pay to obtain it. 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 uses 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:

i. If the interest rate varies based on changes to an index, the originator uses the fully-indexed rate that would be in effect at consummation without regard to any initial discount or premium.

ii. For a step-rate loan, the originator uses the highest rate that would apply during the first five years.

4. *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

1. *Scope.* Section 1026.36(f) sets forth qualification requirements that a loan originator must meet. As provided in §1026.36(a)(1) and accompanying commentary, the term "loan originator" includes natural persons and organizations and does not exclude creditors for purposes of the qualification requirements in §1026.36(f).

2. *Licensing and registration requirements.* Section 1026.36(f) requires loan originators to comply with applicable State and Federal licensing and registration requirements, including any such requirements imposed by the SAFE Act and its implementing regulations and State laws. SAFE Act licensing and registration requirements apply to individual loan originators, but many State licensing and registration requirements apply to loan originator organizations as well.

3. *No effect on licensing and registration requirements.* Section 1026.36(f) does not affect which loan originators must comply with State and Federal licensing and registration requirements. For example, the fact that the definition of loan originator in §1026.36(a)(1) differs somewhat from that in the SAFE Act does not affect who must comply with the SAFE Act. To illustrate, assume an individual is an employee of an organization that a State has determined to be a bona fide nonprofit organization and the State has not subjected the employee to that State's SAFE Act loan originator licensing. If that same individual meets the definition of loan originator in §1026.36(a)(1), the individual is subject to the requirements of §1026.36, but the State may continue not to subject the employee to that State's SAFE Act licensing requirements. Similarly, the qualification requirements imposed under §1026.36(f) do not add to or affect the criteria that States must consider in determining whether a loan originator organization is a bona fide nonprofit organization under the SAFE Act.

Paragraph 36(f)(1)

1. *Legal existence and foreign qualification.* Section 1026.36(f)(1) requires a loan originator organization to comply with applicable State law requirements governing the legal existence and foreign qualification of the loan originator organization. Covered State law requirements include those that must be complied with to bring the loan originator organization into legal existence, to maintain its legal existence, to be permitted to transact business in another State, or to facilitate service of process. For example, covered State law requirements include those for incorporation or other type of legal formation and for designating and maintaining a registered agent for service of process. State law requirements to pay taxes and other requirements that do not relate to legal accountability of the loan originator organization to consumers are outside the scope of §1026.36(f)(1).

Paragraph 36(f)(2)

1. *License or registration.* Section 1026.36(f)(2) requires the loan originator organization to ensure that individual loan originators who work for it are licensed or registered in compliance with the SAFE Act and other applicable law. The individual loan originators who work for a loan originator organization include individual loan originators who are its employees or who operate under a brokerage agreement with the loan originator organization. Thus, for example, a brokerage is responsible for verifying that the loan originator individuals who work directly for it are licensed and registered in accordance with applicable law, whether the individual loan originators are its employees or independent contractors who operate pursuant to a brokerage agreement. A loan originator organization can meet this duty by confirming the registration or license status of an individual at *www.nmlsconsumeraccess.org*.

Paragraph 36(f)(3)

1. *Unlicensed individual loan originators.* Section 1026.36(f)(3) sets forth actions that a loan originator organization must take for any of its individual loan originator employees who are not required to be licensed and are not licensed as a loan originator pursuant to the SAFE Act. Individual loan originators who are not subject to SAFE Act licensing generally include employees of depository institutions and their Federally regulated subsidiaries and employees of bona

fide nonprofit organizations that a State has exempted from licensing under the criteria in 12 CFR 1008.103(e)(7).

Paragraph 36(f)(3)(i)

1. *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.

2. *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).

Paragraph 36(f)(3)(ii)

Paragraph 36(f)(3)(ii).

1. *Scope of review.* Section 1026.36(f)(3)(ii) requires the loan originator organization to review the information that it obtains under §1026.36(f)(3)(i) and other reasonably available information to determine whether the individual loan originator meets the standards in §1026.36(f)(3)(ii). Other reasonably available information includes any information the loan originator organization has obtained or would obtain as part of a reasonably prudent hiring process, including information obtained from application forms, candidate interviews, other reliable information and evidence provided by a candidate, and reference checks. 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).

2. *Retroactive determinations not required.* Section 1026.36(f)(3)(ii) does not require the loan originator organization to review the covered information and make the required determinations for an individual whom the loan originator organization hired as a loan originator on or 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 employing the individual is subject to the requirements of §1026.36(f)(3)(ii).

3. *Subsequent determinations.* The loan originator organization must make the required determinations for an individual before the individual acts as a loan originator. Subsequent reviews and assessments are required only if the loan originator organization knows of reliable information indicating that the individual loan originator likely no longer meets the required standards in §1026.36(f)(3). For example, if the loan originator organization has knowledge of criminal conduct of its individual loan originator through a newspaper article, a previously obtained criminal background report, or the NMLSR, the loan originator organization must determine whether any resulting conviction, or any other information, causes the individual to fail to meet the standards in §1026.36(f)(3)(ii), regardless of when the loan originator was hired or previously screened.

Paragraph 36(f)(3)(ii)(B)

1. *Financial responsibility, character, and general fitness.* The determination of financial responsibility, character, and general

fitness required under §1026.36(f)(3)(ii)(B) requires an assessment of all information obtained pursuant to paragraph (f)(3)(i) and any other reasonably available information, including information that is known to the loan originator organization or would become known to the loan originator organization as part of a reasonably prudent hiring process. The absence of any significant adverse information is sufficient to support an affirmative determination that the individual meets the standards. A review and assessment of financial responsibility is sufficient if it considers, as relevant factors, the existence of current outstanding judgments, tax liens, other government liens, nonpayment of child support, or a pattern of bankruptcies, foreclosures, or delinquent accounts. A review and assessment of financial responsibility is not required to consider debts arising from medical expenses. A review and assessment of character and general fitness is sufficient if it considers, as relevant factors, acts of unfairness or dishonesty, including dishonesty by the individual in the course of seeking employment or in connection with determinations pursuant to the qualification requirements of §1026.36(f), and any disciplinary actions by regulatory or professional licensing agencies. No single factor necessarily requires a determination that the individual does not meet the standards for financial responsibility, character, or general fitness, provided that the loan originator organization considers all relevant factors and reasonably determines that, on balance, the individual meets the standards.

2. *Written procedures for making determinations.* A loan originator organization that establishes written procedures for determining whether individuals meet the financial responsibility, character, and general fitness standards under §1026.36(f)(3)(ii)(B) and comment 36(f)(3)(ii)(B)–1 and follows those written procedures for an individual and complies with the requirement for that individual. Such procedures may provide that bankruptcies and foreclosures are considered under the financial responsibility standard only if they occurred within a recent timeframe established in the procedures. Such procedures are not required to include review of a credit score.

Paragraph 36(f)(3)(iii)

1. *Training.* The periodic training required in §1026.36(f)(3)(iii) must be sufficient in frequency, timing, duration, and content to ensure that the individual loan originator has the knowledge of State and Federal legal requirements that apply to the individual loan originator's loan origination activities. The training must take into consideration the particular responsibilities of the individual loan originator and the nature and complexity of the mortgage loans with which the individual loan originator works. An individual loan originator is not required to receive training on requirements and standards that apply to types of mortgage loans that the individual loan originator does not originate, or on subjects in which the individual loan originator already has the necessary knowledge and skill. Training may be delivered by the loan originator organization or any other person and may utilize workstation, internet, teleconferencing, or other interactive technologies and delivery methods. Training that a government agency or housing finance agency has established for an individual to originate mortgage loans under a program sponsored or regulated by a Federal, State, or other government agency or housing finance agency satisfies the requirement in §1026.36(f)(3)(iii), to the extent that the training covers the types of loans the individual loan originator originates and applicable Federal and State laws and regulations. Training that the NMLSR has approved to meet the licensed loan originator continuing education requirement at §1008.107(a)(2) of this chapter satisfies the requirement of §1026.36(f)(3)(iii), to the extent that the training covers the types of loans the individual loan originator originates and applicable Federal and State laws and regulations. The training requirements under §1026.36(f)(3)(iii) apply to individual loan originators regardless of when they were hired.

36(g) Name and NMLSR ID on Loan Documents

Paragraph 36(g)(1)

1. *NMLSR ID.* Section 1026.36(g) requires a loan originator organization to include its name and NMLSR ID and the name and NMLSR ID of the individual loan originator on certain loan documents. As provided in §1026.36(a)(1), the term "loan originator" includes creditors that engage in loan originator activities for purposes of this requirement. Thus, for example, if an individual loan originator employed by a bank originates a loan, the names and NMLSR IDs of the individual and the bank must be included on covered loan documents. The NMLSR ID is a number generally assigned by the NMLSR to individuals registered or licensed through NMLSR to provide loan origination services. For more information, see the SAFE Act sections 1503(3) and (12) and 1504 (12 U.S.C. 5102(3) and (12) and 5103), and its implementing regulations (12 CFR 1007.103(a) and 1008.103(a)(2)). A loan originator organization may also have an NMLSR unique identifier.

2. *Loan originators without NMLSR IDs.* An NMLSR ID is not required by §1026.36(g) to be included on loan documents if the loan originator is not required to obtain and has

not been issued an NMLSR ID. For example, certain loan originator organizations and individual loan originators who are employees of bona fide nonprofit organizations may not be required to obtain a unique identifier under State law. However, some loan originators may have obtained NMLSR IDs, even if they are not required to have one for their current jobs. If a loan originator organization or an individual loan originator has been provided a unique identifier by the NMLSR, it must be included on the covered loan documents, regardless of whether the loan originator organization or individual loan originator is required to obtain an NMLSR unique identifier. In any event, the name of the loan originator is required by §1026.36(g) to be included on the covered loan documents.

3. *Inclusion of name and NMLSR ID.* Section 1026.36(g)(1) requires the inclusion of loan originator names and NMLSR IDs on each loan document. Those items need not be included more than once on each loan document on which loan originator names and NMLSR IDs are required, such as by including them on every page of a document.

Paragraph 36(g)(1)(ii)

1. *Multiple individual loan originators.* If more than one individual meets the definition of a loan originator for a transaction, the name and NMLSR ID of the individual loan originator with primary responsibility for the transaction at the time the loan document is issued must be included. A loan originator organization that establishes and follows a reasonable, written policy for determining which individual loan originator has primary responsibility for the transaction at the time the document is issued complies with the requirement. If the individual loan originator with primary responsibility for a transaction at the time a document is issued is not the same individual loan originator who had primary responsibility for the transaction at the time that a previously issued document was issued, the previously issued document is not required to be reissued merely to change a loan originator name and NMLSR ID.

36(i) Prohibition on financing credit insurance.

1. *Financing credit insurance premiums or fees.* In the case of single-premium credit insurance, a creditor violates §1026.36(i) by adding the credit insurance premium or fee to the amount owed by the consumer at closing. In the case of monthly-pay credit insurance, a creditor violates §1026.36(i) if, upon the close of the monthly period in which the premium or fee is due, the creditor includes the premium or fee in the amount owed by the consumer.

36(k) Negative amortization counseling.

36(k)(1) Counseling required.

1. *HUD-certified or -approved counselor or counseling organization.* For purposes of §1026.36(k), organizations or counselors certified or approved by the U.S. Department of Housing and Urban Development (HUD) to provide the homeownership counseling required by §1026.36(k) include counselors and counseling organizations that are certified or approved pursuant to section 106(e) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(e)) or 24 CFR part 214, unless HUD determines otherwise.

2. *Homeownership counseling.* The counseling required under §1026.36(k) must include information regarding the risks and consequences of negative amortization.

3. *Documentation.* Examples of documentation that demonstrate a consumer has received the counseling required under §1026.36(k) include a certificate of counseling, letter, or email from a HUD-certified or -approved counselor or counseling organization indicating that the consumer has received homeownership counseling.

4. *Processing applications.* Prior to receiving documentation that a consumer has received the counseling required under §1026.36(k), a creditor may not extend credit to a first-time borrower in connection with a closed-end transaction secured by a dwelling that may result in negative amortization, but may engage in other activities, such as processing an application for such a transaction (by, for example, ordering an appraisal or title search).

36(k)(3) Steering prohibited.

1. See comments 34(a)(5)(vi)–1 and –2 for guidance concerning steering.

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

1. *Disclosures not applicable.* The disclosures required by §1026.37 are required to reflect the terms of the legal obligation between the parties, and if any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure in good faith, based on the best information reasonably available to the creditor pursuant to §§1026.17(c) and 1026.19(e). See comments 17(c)(1)–1, 17(c)(2)(i)–1 and –2, and 19(e)(1)(i)–1. Where a disclosure is not applicable to a particular transaction, unless otherwise provided by §1026.37, form H–24 of appendix H to this part may not be modified to delete the disclosure from form H–24, or to state ''not applicable'' or ''N/A'' in place of such disclosure. The portion of the form pertaining to the inapplicable disclosure may be left blank, unless otherwise provided by §1026.37. For example, in a transaction for which the consumer does not pay points to the creditor to reduce the interest rate, the amounts required to be disclosed by §1026.37(f)(1)(i) may be left blank on form H–24. As provided in §1026.37(i) and (j), however,

the adjustable payment and adjustable interest rate tables required by those paragraphs may be included only if those disclosures are applicable to the transaction and otherwise must be excluded.

2. *Format.* See §1026.37(o) and its commentary for guidance on the proper format to be used in making the disclosures, as well as permissible modifications.

37(a) General information.

37(a)(3) Creditor.

1. *Multiple creditors.* For transactions with multiple creditors, see §1026.17(d) and comment 17(d)–1 for further guidance. The creditor making the disclosures, however, must be identified as the creditor for purposes of §1026.37(a)(3).

2. *Mortgage broker as loan originator.* In transactions involving a mortgage broker, the name and address of the creditor must be disclosed, if known, even if the mortgage broker provides the disclosures to the consumer under §1026.19(e)(1)(ii). As required by §1026.19(e)(1)(i), the mortgage broker must make a good faith effort to disclose the name and address of the creditor, but if the name of the creditor is not yet known, the disclosure required by §1026.37(a)(3) may be left blank. *See* comment 37–1.

37(a)(4) Date issued.

1. *Applicable date.* Section 1026.37(a)(4) requires disclosure of the date the creditor mails or delivers the Loan Estimate to the consumer. The creditor's method of delivery does not affect the date issued. For example, if the creditor hand delivers the Loan Estimate to the consumer on August 14, or if the creditor places the Loan Estimate in the mail on August 14, the date disclosed under §1026.37(a)(4) is August 14.

2. *Mortgage broker as loan originator.* In transactions involving a mortgage broker, the date disclosed is the date the mortgage broker mails or delivers the Loan Estimate to the consumer, because pursuant to §1026.19(e)(1)(ii), the mortgage broker is required to comply with all relevant requirements of §1026.19(e).

37(a)(5) Applicants.

1. *Multiple consumers.* If there is more than one consumer applying for the credit, §1026.37(a)(5) requires disclosure of the name and the mailing address of each consumer to whom the Loan Estimate will be delivered. If the names and mailing addresses of all consumers applying for the credit do not fit in the space allocated on the Loan Estimate, an additional page with that information may be appended to the end of the form. For additional information on permissible changes, see §1026.37(o)(5) and its commentary.

37(a)(6) Property.

1. *Alternate property address.* Section 1026.37(a)(6) requires disclosure of the address including the zip code of the property that secures or will secure the transaction. A creditor complies with §1026.37(a)(6) by disclosing a complete address for purposes of the U.S. Postal Service. If the address is unavailable, a creditor complies with §1026.37(a)(6) by disclosing the location of such property including a zip code, which is required in all instances. Location of the property under §1026.37(a)(6) includes location information, such as a lot number. The disclosure of multiple zip codes is permitted if the consumer is investigating home purchase opportunities in multiple zip codes.

2. *Personal property.* Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option pursuant to §1026.37(a)(6), if a description fits in the space provided on form H–24 for the disclosure required by §1026.37(a)(6). An additional page may not be appended to the form to disclose a description of personal property.

3. *Multiple properties.* Where more than one property secures the credit transaction, §1026.37(a)(6) requires disclosure of all properties. If the addresses of all properties securing the transaction do not fit in the space allocated on the Loan Estimate, an additional page with that information with respect to real properties may be appended to the end of the form.

37(a)(7) Sale price.

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

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

37(a)(8) Loan term.

1. *Partial years.*

i. *Terms to maturity of 24 months or more.* Section 1026.37(a)(8) requires disclosure of the term to maturity in years, or months, or both, as applicable. Where the term exceeds 24 months and equals a whole number of years, a creditor complies with §1026.37(a)(8) by disclosing the number of years, followed by the designation ''years.'' Where the term exceeds 24 months but does not equal a whole number of years, a creditor complies with §1026.37(a)(8) by disclosing the term to maturity as the number of years followed by the designation ''yr.'' and the remaining number of months, followed by the designation ''mo.'' For example, if the term to maturity of the transaction is 185 months, the correct disclosure would be ''15 yr. 5 mo.''

ii. *Terms to maturity of less than 24 months.* If the term to maturity is less than 24 months and does not equal a whole number of years, a creditor complies with §1026.37(a)(8) by disclosing the number of months only, followed by the designation ''mo.'' For example, if the term to maturity of a transaction is six months or 16 months, it would be disclosed as ''6 mo.'' or ''16 mo.,'' respectively. If the term to maturity is 12 months, however it would be disclosed simply as ''1 year.''

2. *Adjustable loan term.* Section 1026.37(a)(8) requires disclosure of the term to maturity of the credit transaction. If the term to maturity is adjustable, *i.e.*, it is not known with certainty at consummation, the creditor complies with §1026.37(a)(8), if it discloses the possible range of the loan term, including the maximum number of years possible under the terms of the legal obligation. For example, if the loan term depends on the value of interest rate adjustments during the term of the loan, to calculate the maximum loan term, the creditor assumes that the interest rate rises as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap.

3. *Loan term start date.* See comment app. D–7.i for an explanation of how a creditor discloses the loan term of a multiple-advance loan to finance the construction of a dwelling that may be permanently financed by the same creditor.

37(a)(9) Purpose.

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

i. *Purchase.* The consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. In a purchase transaction with simultaneous subordinate financing, the simultaneous subordinate loan is also disclosed with the purpose ''Purchase.''

ii. *Refinance.* The consumer refinances an existing obligation already secured by the consumer's dwelling to change the rate, term, or other loan features and may or may not receive cash from the transaction. For example, in a refinance with no cash provided, the new amount financed does not exceed the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. Conversely, in a refinance with cash provided, the consumer refinances an existing mortgage obligation and receives money from the transaction that is in addition to the funds used to pay the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. In such a transaction, the consumer may, for example, use the newly-extended credit to pay off the balance of the existing mortgage and other consumer debt, such as a credit card balance.

iii. *Construction.* Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-permanent loan). In a construction-only loan, the borrower may be required to make interest-only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-permanent loans, see §1026.17(c)(6)(ii), comments 17(c)(6)–2, –3, and –5, and appendix D to this part.

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

2. *Refinance coverage.* The disclosure requirements under §1026.37(a)(9)(ii) apply to credit transactions that meet the definition of a refinancing under §1026.20(a) but without regard to whether they are made by a creditor, holder, or servicer of the existing obligation. Section 1026.20(a) applies only to refinancings undertaken by the original creditor or a holder or servicer of the original debt. *See* comment 20(a)–5.

37(a)(10) Product.

1. *No features.* If the loan product disclosed pursuant to §1026.37(a)(10) does not include any of the features described in §1026.37(a)(10)(ii), only the product type and introductory and first adjustment periods, if applicable, are disclosed. For example:

i. *Adjustable rate.* When disclosing an adjustable rate product, the disclosure of the loan product must be preceded by the length of the introductory period and the frequency of the first adjustment period thereafter. Thus, for example, if the loan product is an adjustable rate with an introductory rate that is fixed for the first five years of the loan term and then adjusts every three years starting in year six, the disclosure required by §1026.37(a)(10) is ''5/3 Adjustable Rate.'' If the first adjustment period is not the period for all adjustments under the terms of the legal obligation, the creditor should still disclose the initial adjustment period and should not disclose other adjustment periods. For example, if the loan product is an adjustable rate with an introductory rate that is fixed for the first five years of the loan term and then adjusts every three years starting in year six, and then annually starting in year fifteen, the disclosure required by §1026.37(a)(10) would still be ''5/3 Adjustable Rate.''

A. *No introductory period.* If the loan product is an adjustable rate with no introductory rate, the creditor should disclose ''0'' where the introductory rate period would ordinarily be disclosed. For example, if the loan product is an adjustable rate that adjusts every three years with no introductory period, the disclosure required by §1026.37(a)(10) is ''0/3 Adjustable Rate.''

B. *Introductory period not yet known.* If the loan product is an adjustable rate with an introductory period that is not yet known at the time of delivery of the Loan Estimate, the creditor should disclose the shortest potential introductory period for the particular loan product offered. For example, if the loan product is an adjustable rate with an introductory period that may be between 36 and 48 months and the rate would then adjust every year, the disclosure required by §1026.37(a)(10) is ''3/1 Adjustable Rate.''

ii. *Step rate.* If the loan product is a step rate with an introductory interest rate that lasts for ten years and adjusts every year thereafter for the next five years, and then adjusts every three years for the next 15 years, the disclosure required by §1026.37(a)(10) is ''10/1 Step Rate.'' If the loan product is a step rate with no introductory rate, the creditor should disclose ''0'' where the introductory rate period would ordinarily be disclosed.

iii. *Fixed rate.* If the loan product is not an adjustable rate or a step rate, as described in §1026.37(a)(10)(i)(A) and (B), even if an additional feature described in §1026.37(a)(10)(ii) may change the consumer's periodic payment, the disclosure required by §1026.37(a)(10)(i) is ''Fixed Rate.''

2. *Additional features.* When disclosing a loan product with at least one of the features described in §1026.37(a)(10)(ii), §1026.37(a)(10)(iii) and (iv) require the disclosure of only the first applicable feature in the order of §1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the first adjustment period, as applicable, followed by a description of the loan product and its time period as provided for in §1026.37(a)(10)(i). For example:

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

ii. *Interest only.* When disclosing an ''Interest Only'' feature, as defined in §1026.18(s)(7)(iv), the applicable time period must precede the label ''Interest Only.'' Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as ''5 Year Interest Only, Fixed Rate.'' If the interest only feature fails to cover the total interest due, then, as required by §1026.37(a)(10)(iii), the disclosure must reference the negative amortization feature and not the interest only feature (*e.g.*, ''5 Year Negative Amortization, Fixed Rate''). See comment app. D–7.ii for an explanation of the disclosure of the time period of an interest only feature for a construction loan or a construction-permanent loan.

iii. *Step payment.* When disclosing a step payment feature (which is sometimes referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change must precede the label ''Step Payment'' (*e.g.*, ''5 Year Step Payment'') followed by the name of the loan product. Thus, a fixed rate mortgage subject to a 5-year step payment plan is disclosed as a "5 Year Step Payment, Fixed Rate."

iv. *Balloon payment*. If a loan product includes a "balloon payment," as that term is defined in §1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan product. Thus, if the loan product is a step rate with an introductory rate that lasts for three years and adjusts each year thereafter until the balloon payment is due in the seventh year of the loan term, the disclosure required is "Year 7 Balloon Payment, 3/1 Step Rate." If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed.

v. *Seasonal payment*. If a loan product includes a seasonal payment feature, §1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label "Seasonal Payment" without any preceding number of years satisfies this requirement.

3. *Periods not in whole years*.

i. *Terms of 24 months or more*. For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is a number of months that is 24 or greater and does not equate to a whole number of years, §1026.37(a)(10) requires disclosure of the whole number of years followed by a decimal point with the remaining months rounded to two places. For example, if the loan product is an adjustable rate with an introductory period of 30 months that adjusts every year thereafter, the creditor would be required to disclose "2.5/1 Adjustable Rate." If the introductory period were 31 months, the required disclosure would be 2.58/1 Adjustable Rate."

ii. *Terms of less than 24 months*. For product types and features that have introductory periods or adjustment periods that do not equate to a number of whole years, if the period is less than 24 months, §1026.37(a)(10) requires disclosure of the number of months, followed by the designation "mo." For example, if the product type is an adjustable rate with an 18-month introductory period that adjusts every 18 months starting in the 19th month, the required disclosure would be "18 mo./18mo. Adjustable Rate."

iii. *Adjustments more frequent than monthly*. For adjustment periods that change more frequently than monthly, §1026.37(a)(10) requires disclosure of the applicable unit-period, such as daily, weekly, or bi-weekly. For example, for an adjustable rate construction loan with no introductory fixed rate period where the interest rate adjusts every seven days, the disclosure required by §1026.37(a)(10) is "0/Weekly Adjustable Rate."

37(a)(11) Loan type.

1. *Other*. If the transaction is a type other than a conventional, FHA, or VA loan, §1026.37(a)(11)(iv) requires the creditor to disclose the loan type as "Other" and provide a name or brief description of the loan type. For example, a loan that is guaranteed or funded by the Federal government under the Rural Housing Service (RHS) of the U.S. Department of Agriculture is required to be disclosed under the subcategory "Other." Section 1026.37(a)(11)(iv) requires a brief description of the loan type (*e.g.*, "RHS"). A loan that is insured or guaranteed by a State agency must also be disclosed as "Other."

37(a)(12) Loan identification number (Loan ID #).

1. *Unique identifier*. Section 1026.37(a)(12) requires that the creditor disclose a loan identification number that may be used by the creditor, consumer, and other parties to identify the transaction, labeled as "Loan ID #." The loan identification number is determined by the creditor, which number may contain any alpha-numeric characters. Because the number must allow for the identification of the particular credit transaction under §1026.37(a)(12), a creditor must use a unique loan identification number, *i.e.*, the creditor may not use the same loan identification number for different, but related, loan transactions (such as different loans to the same borrower). Where a creditor issues a revised Loan Estimate for a transaction, the loan identification number must be sufficient to enable identification of the transaction pursuant to §1026.37(a)(12).

37(a)(13) Rate lock.

1. *Interest rate*. For purposes of §1026.37(a)(13), the interest rate is locked for a specific period of time if the creditor has agreed to extend credit to the consumer at a given rate, subject to contingencies that are described in any rate lock agreement between the creditor and consumer.

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

3. *Time zone*. The disclosure required by §1026.37(a)(13) requires the applicable time zone for all times provided, as determined by

the creditor. For example, if the creditor is located in New York and determines that the Loan Estimate will expire at 5:00 p.m. in the time zone applicable to its location, while standard time is in effect, the disclosure must include a reference to the Eastern time zone (*i.e.*, 5:00 p.m. EST).

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

37(b) Loan terms.

1. *Legal obligation.* The disclosures required by §1026.37 must reflect good faith estimates of the credit terms to which the parties will be legally bound for the transaction. Accordingly, if certain terms of the transaction are known or reasonably available to the creditor, based on information such as the consumer's selection of a product type or other information in the consumer's application, §1026.37 requires the creditor to disclose those credit terms. For example, if the consumer selects a product type with a prepayment penalty, §1026.37(b)(4) requires disclosure of the maximum amount of the prepayment penalty and period in which the prepayment penalty may be charged as known to the creditor at the time the disclosures are provided.

37(b)(2) Interest rate.

1. *Interest rate at consummation not known.* Where the interest rate that will apply at consummation is not known at the time the creditor must deliver the disclosures required by §1026.19(e), §1026.37(b)(2) requires disclosure of the fully-indexed rate, defined as the index plus the margin at consummation. Although §1026.37(b)(2) refers to the index plus margin ''at consummation,'' if the index value that will be in effect at consummation is unknown at the time the disclosures are provided under §1026.19(e)(1)(iii), *i.e.*, within three business days after receipt of a consumer's application, the fully-indexed rate disclosed under §1026.37(b)(2) may be based on the index in effect at the time the disclosure is delivered. The index in effect at consummation (or the time the disclosure is delivered under §1026.19(e)) need not be used if the contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 days before consummation (or any earlier date of disclosure) in calculating the fully-indexed rate to be disclosed. See comment app. D–7.iii for an explanation of the disclosure of the permanent financing interest rate for a construction-permanent loan.

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

1. *Frequency of principal and interest payment.* Pursuant to §1026.37(o)(5)(i), if the contract provides for a unit-period, as defined in appendix J to this part, of a month, such as a monthly payment schedule, the payment disclosed under §1026.37(b)(3) should be labeled ''Monthly Principal & Interest.'' If the contract requires bi-weekly payments of principal or interest, the payment should be labeled ''Bi-Weekly Principal & Interest.'' If a creditor voluntarily permits a payment schedule not provided for in the contract, such as an informal principal-reduction arrangement, the disclosure should reflect only the payment frequency provided for in the contract. *See* §1026.17(c)(1).

2. *Initial periodic payment if not known.* Under §1026.37(b)(3), the initial periodic payment amount that will be due under the terms of the legal obligation must be disclosed. If the initial periodic payment is not known because it will be based on an interest rate at consummation that is not known at the time the disclosures required by §1026.19(e) must be provided, for example, if it is based on an external index that may fluctuate before consummation, §1026.37(b)(3) requires that the disclosure be based on the fully-indexed rate disclosed under §1026.37(b)(2). See comment 37(b)(2)–1 for guidance regarding calculating the fully-indexed rate.

37(b)(4) Prepayment penalty.

1. *Transaction includes a prepayment penalty.* Section 1026.37(b)(4) requires disclosure of a statement of whether the transaction includes a prepayment penalty. If the transaction includes a prepayment penalty, §1026.37(b)(7) sets forth the information that must be disclosed under §1026.37(b)(4) (*i.e.*, the maximum amount of the prepayment penalty that may be imposed under the terms of the loan contract and the date on which the penalty will no longer be imposed). For an example of such disclosure, see form H–24 of appendix H to this part. The disclosure under §1026.37(b)(4) applies to transactions where the terms of the loan contract provide for a prepayment penalty, even though the creditor does not know at the time of the disclosure whether the consumer will, in fact, make a payment to the creditor that would cause imposition of the penalty. For example, if the monthly interest accrual amortization method described in comment 37(b)(4)–2.i is used such that interest is assessed on the balance for a full month even if the consumer makes a full prepayment before the end of the month, the transaction includes a prepayment penalty

that must be disclosed pursuant to §1026.37(b)(4).

2. *Examples of prepayment penalties.* For purposes of §1026.37(b)(4), the following are examples of prepayment penalties:

i. A charge determined by treating the loan balance as outstanding for a period of time after prepayment in full and applying the interest rate to such "balance," even if the charge results from interest accrual amortization used for other payments in the transaction under the terms of the loan contract. "Interest accrual amortization" refers to the method by which the amount of interest due for each period (*e.g.*, month) in a transaction's term is determined. For example, "monthly interest accrual amortization" treats each payment as made on the scheduled, monthly due date even if it is actually paid early or late (until the expiration of any grace period). Thus, under the terms of a loan contract providing for monthly interest accrual amortization, if the amount of interest due on May 1 for the preceding month of April is $3,000, the loan contract will require payment of $3,000 in interest for the month of April whether the payment is made on April 20, on May 1, or on May 10. In this example, if the consumer prepays the loan in full on April 20 and if the accrued interest as of that date is $2,000, then assessment of a charge of $3,000 constitutes a prepayment penalty of $1,000 because the amount of interest actually earned through April 20 is only $2,000.

ii. A fee, such as an origination or other loan closing cost, that is waived by the creditor on the condition that the consumer does not prepay the loan. See comment 37(b)(4)–3.iii below for additional guidance regarding waived bona fide third-party charges imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation.

iii. A minimum finance charge in a simple interest transaction.

iv. Computing a refund of unearned interest by a method that is less favorable to the consumer than the actuarial method, as defined by section 933(d) of the Housing and Community Development Act of 1992, 15 U.S.C. 1615(d). For purposes of computing a refund of unearned interest, if using the actuarial method defined by applicable State law results in a refund that is greater than the refund calculated by using the method described in section 933(d) of the Housing and Community Development Act of 1992, creditors should use the State law definition in determining if a refund is a prepayment penalty.

3. *Fees that are not prepayment penalties.* For purposes of §1026.37(b)(4), fees that are not prepayment penalties include, for example:

i. Fees imposed for preparing and providing documents when a loan is paid in full, if such fees are imposed whether or not the loan is prepaid. Examples include a loan payoff statement, a reconveyance document, or another document releasing the creditor's security interest in the dwelling that secures the loan.

ii. Loan guarantee fees.

iii. A waived bona fide third-party charge imposed by the creditor if the consumer pays all of a covered transaction's principal before the date on which the principal is due sooner than 36 months after consummation. For example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup the $3,000 in waived charges if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 charge is not a prepayment penalty. In contrast, for example, assume that at consummation, the creditor waives $3,000 in closing costs to cover bona fide third-party charges but the terms of the loan agreement provide that the creditor may recoup $4,500 in part to recoup waived charges, if the consumer repays the entire loan balance sooner than 36 months after consummation. The $3,000 that the creditor may impose to cover the waived bona fide third-party charges is not a prepayment penalty, but the additional $1,500 charge is a prepayment penalty and must be disclosed pursuant to §1026.37(b)(4).

4. *Rebate of finance charge.* For an obligation that includes a finance charge that does not take into account each reduction in the principal balance of the obligation, the disclosure under §1026.37(b)(4) reflects whether or not the consumer is entitled to a rebate of any finance charge if the obligation is prepaid in full or part. Finance charges that do not take into account each reduction in the principal balance of an obligation may include precomputed finance charges. If any portion of an unearned precomputed finance charge will not be provided as a rebate upon full prepayment, the disclosure required by §1026.37(b)(4) will be an affirmative answer, indicate the maximum amount of such precomputed finance charge that may not be provided as a rebate to the consumer upon any prepayment, and state when the period during which a full rebate would not be provided terminates, as required by §1026.37(b)(7). If, instead, there will be a full rebate of the precomputed finance charge and no other prepayment penalty imposed on the consumer, to comply with the requirements of §1026.37(b)(4) and (7), the creditor states a negative answer only. If the transaction involves both a precomputed finance charge and a finance charge computed by application of a rate to an unpaid balance, disclosure about both the entitlement to any

rebate of the finance charge upon prepayment and any other prepayment penalty are made as one disclosure under §1026.37(b)(4), stating one affirmative or negative answer and an aggregated amount and time period for the information required by §1026.37(b)(7). For example, if in such a transaction, a portion of the precomputed finance charge will not be provided as a rebate and the loan contract also provides for a prepayment penalty based on the amount prepaid, both disclosures are made under §1026.37(b)(4) as one aggregate amount, stating the maximum amount and time period under §1026.37(b)(7). If the transaction instead provides a rebate of the precomputed finance charge upon prepayment, but imposes a prepayment penalty based on the amount prepaid, to comply with §1026.37(b)(4), the creditor states an affirmative answer and the information about the prepayment penalty, as required by §1026.37(b)(7). For further guidance and examples of these types of charges, see comment 18(k)(2)–1. For analogous guidance, see comment 18(k)–2. For further guidance on prepaid finance charges generally, see comment 18(k)–3.

5. *Additional guidance.* For additional guidance generally on disclosure of prepayment penalties, see comment 18(k)–1.

37(b)(5) Balloon payment.

1. *Regular periodic payment.* If a payment is not itself a regular periodic payment and is more than two times any one regular periodic payment during the loan term, then it is disclosed as a balloon payment under §1026.37(b)(5). The regular periodic payments used to determine whether a payment is a balloon payment under §1026.37(b)(5) are the payments of principal and interest (or interest only, depending on the loan features) specified under the terms of the loan contract that are due from the consumer for two or more unit-periods in succession. All regular periodic payments during the loan term are used to determine whether a particular payment is a balloon payment, regardless of whether the regular periodic payments have changed during the loan term due to rate adjustments or other payment changes permitted or required under the loan contract.

i. For example, assume that, under a 15-year step rate mortgage, the loan contract provides for scheduled monthly payments of $300 each during the years one through three and scheduled monthly payments of $700 each during years four through 15. If an irregular payment of $1,000 is scheduled during the final month of year 15, that payment is disclosed as a balloon payment under §1026.37(b)(5), because it is more than two times the regular periodic payment amount of $300 during years one through three. This is the case even though the irregular payment is not more than two times the regular periodic payment of $700 per month during years four through fifteen. The $700 monthly payments during years four through fifteen are not balloon payments even though they are more than two times the regular periodic payments during years one through three, because they are regular periodic payments.

ii. If the loan has an adjustable rate under which the regular periodic payments may increase after consummation, but the amounts of such payment increases (if any) are unknown at the time of consummation, then the regular periodic payments are based on the fully-indexed rate, except as otherwise determined by any premium or discounted rates, the application of any interest rate adjustment caps, or any other known, scheduled rates under the terms specified in the loan contract. For analogous guidance, see comments 17(c)(1)–8 and –10. Similarly, if a loan has an adjustable interest rate which does not adjust the regular periodic payment but would, if the rate increased, increase only the final payment, the amount of the final payment for purposes of the balloon payment determination is based on the fully-indexed rate, except as otherwise determined by any premium or discounted rate caps, or any other known, scheduled rates under the terms specified in the loan contract. For example, assume that, under a 30-year adjustable rate mortgage, (1) the loan contract requires monthly payments of $300 during years one through five, (2) the loan contract permits interest rate increases every three years starting in the sixth year up to the fully-indexed rate, subject to caps on interest rate adjustments specified in the loan contract, (3) based on the application of the interest rate adjustment caps, the interest rate may increase to the fully-indexed rate starting in year nine, and (4) the monthly payment based on the fully-indexed rate is $700. The regular periodic payments during years one through five are $300 per month, because they are known and scheduled. The regular periodic payments during years six through eight are up to $700 per month, based on the fully-indexed rate but subject to the application of interest rate adjustment caps specified under the loan contract. The regular periodic payments during years nine through thirty are $700, based on the fully-indexed rate. Therefore, if an irregular payment of $1,000 is scheduled during the final month of year 30, that payment is disclosed as a balloon payment under §1026.37(b)(5), because it is more than two times the regular periodic payment amount of $300 during years one through five. This is the case even though the irregular payment is not more than two times the regular periodic payment during years nine through thirty (*i.e.*, based on the fully-indexed rate). However, the regular periodic payments during years six through thirty themselves are not balloon payments, even though they may be more than two times the regular periodic payments during years one through five.

iii. For a loan with a negative amortization feature, the regular periodic payment does not take into account the possibility that the consumer may exercise an option to make a payment greater than the scheduled periodic payment specified under the terms of the loan contract, if any.

iv. A final payment that differs from other regular periodic payments because of rounding to account for payment amounts including fractions of cents is still a regular periodic payment and need not be disclosed as a balloon payment under §1026.37(b)(5).

v. The disclosure of balloon payments in the "Projected Payments" table under §1026.37(c) is governed by that section and its commentary, rather than §1026.37(b)(5), except that the determination, as a threshold matter, of whether a payment disclosed under §1026.37(c) is a balloon payment is made in accordance with §1026.37(b)(5) and its commentary.

2. *Single and double payment transactions.* The definition of a "balloon payment" under §1026.37(b)(5) includes the payments under transactions that require only one or two payments during the loan term, even though a single payment transaction does not require regular periodic payments, and a transaction with only two scheduled payments during the loan term may not require regular periodic payments.

37(b)(6) Adjustments after consummation.

1. *Periods not in whole years.* For guidance on how to disclose increases after consummation that occur after a number of months less than 24 but that do not equate to a number of whole years or within a number of days less than a week, see the guidance provided in comment 37(a)(10)–3. For increases that occur after more than 24 months, see the guidance provided in comment 37(b)(8)–1.

37(b)(6)(i) Adjustment in loan amount.

1. *Additional information regarding adjustment in loan amount.* A creditor complies with the requirement under §1026.37(b)(6)(i) to disclose additional information indicating whether the maximum principal balance is potential or is scheduled to occur under the terms of the legal obligation by using the phrase "Can go as high as" or "Goes as high as," respectively. A creditor complies with the requirement under §1026.37(b)(6)(i) to disclose additional information indicating the due date of the last payment that may cause the principal balance to increase by using the phrase "Increases until." See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under §1026.37(o)(3).

37(b)(6)(ii) Adjustment in interest rate.

1. *Additional information regarding adjustment in interest rate.* A creditor complies with the requirement under §1026.37(b)(6)(ii) to disclose additional information indicating the frequency of adjustments to the interest rate and date when the interest rate may first adjust by using the phrases "Adjusts every" and "starting in." A creditor complies with the requirement under §1026.37(b)(6)(ii) to disclose additional information indicating the maximum interest rate, and the first date when the interest rate can reach the maximum interest rate using the phrase "Can go as high as" and then indicating the date at the end of that phrase or for a scheduled maximum interest rate under a step rate loan, "Goes as high as." If the loan term may increase based on an interest rate adjustment, the disclosure shall indicate the maximum possible loan term using the phrase "Can increase loan term to." See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under §1026.37(o)(3).

2. *Interest rates that adjust at multiple intervals.* If the terms of the legal obligation provide for more than one adjustment period, §1026.37(b)(6)(ii) requires disclosure of only the frequency of the first interest rate adjustment. For example, if the interest rate is fixed for five years, then adjusts every two years starting in year six, then adjusts every year starting in year 10, the disclosure required is "Adjusts every 2 years starting in year 6."

37(b)(6)(iii) Increase in periodic payment.

1. *Additional information regarding increase in periodic payment.* A creditor complies with the requirement under §1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases "Adjusts every" and "starting in." A creditor complies with the requirement under §1026.37(b)(6)(iii) to disclose additional information indicating the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment by using the phrase "Can go as high as" and then indicating the date at the end of that phrase or, for a scheduled maximum amount, such as under a step payment loan, "Goes as high as." A creditor complies with the requirement under §1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required to be paid and the due date of the last periodic payment of such period using the phrase "Includes only interest and no principal until." See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under §1026.37(o)(3). See comment app. D–7.iv for an explanation of the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

2. *Periodic principal and interest payments that adjust at multiple intervals.* If there are

multiple periods of adjustment under the terms of the legal obligation, §1026.37(b)(6)(iii) requires disclosure of the frequency of only the first adjustment to the periodic principal and interest payment, regardless of the basis for the adjustment. Accordingly, where the periodic principal and interest payment may change because of more than one factor and such adjustments are on different schedules, the frequency disclosed is the adjustment of whichever factor adjusts first. For example, where the interest rate for a transaction is fixed until year six and then adjusts every three years but the transaction also has a negative amortization feature that ends in year seven, §1026.37(b)(6)(iii) requires disclosure that the interest rate will adjust every three years starting in year six because the periodic principal and interest payment adjusts based on the interest rate before it adjusts based on the end of the negative amortization period.

37(b)(7) Details about prepayment penalty and balloon payment.

Paragraph 37(b)(7)(i).

1. *Maximum prepayment penalty.* Section 1026.37(b)(7)(i) requires disclosure of the maximum amount of the prepayment penalty that may be imposed under the terms of the legal obligation. The creditor complies with §1026.37(b)(7)(i) when it assumes that the consumer prepays at a time when the prepayment penalty may be charged and that the consumer makes all payments prior to the prepayment on a timely basis and in the amount required by the terms of the legal obligation. The creditor must determine the maximum of each amount used in calculating the prepayment penalty. For example, if a transaction is fully amortizing and the prepayment penalty is two percent of the loan balance at the time of prepayment, the prepayment penalty amount should be determined by using the highest loan balance possible during the period in which the penalty may be imposed. If more than one type of prepayment penalty applies, the creditor must aggregate the maximum amount of each type of prepayment penalty in the maximum penalty disclosed.

2. *Additional information regarding prepayment penalty.* A creditor complies with the requirement under §1026.37(b)(7)(i) to disclose additional information indicating the maximum amount of the prepayment penalty that may be imposed and the date when the period during which the penalty may be imposed terminates using the phrases ''As high as'' and ''if you pay off the loan during.'' See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under §1026.37(o)(3).

Paragraph 37(b)(7)(ii).

1. *Additional information regarding balloon payment.* A creditor complies with the requirement under §1026.37(b)(7)(ii) to disclose additional information indicating the maximum amount of the balloon payment and the due date of such payment using the phrases ''You will have to pay'' and ''at the end of.'' See form H–24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under §1026.37(o)(3). If the transaction includes more than one balloon payment, a creditor complies with §1026.37(b)(7)(ii) by disclosing the highest of the balloon payments and the due date of that payment.

37(b)(8) Timing.

1. *Whole years.* For adjustments that occur after a period of whole years, the timing of information required by §1026.37(b)(8) starts with year number ''1,'' counting from the date that interest for the first scheduled periodic payment begins to accrue for §1026.37(b)(8)(i), or from the due date of the first periodic payment for §1026.37(b)(8)(ii), or from the date of consummation for §1026.37(b)(8)(iii). For example, an interest rate that is fixed for five years and can first adjust at the beginning of the 61st month from the date that interest for the regularly scheduled periodic payment began to accrue would be disclosed as beginning to adjust in ''year 6.'' A monthly periodic payment that adjusts starting with the 61st scheduled payment likewise would be disclosed as adjusting in ''year 6.''

2. *Periods not in whole years.* For adjustments that occur after a number of months less than 24 that do not equate to a number of whole years or within a number of days less than a week, see the guidance provided in comment 37(a)(10)–3.

37(c) Projected payments.

1. *Definitions.* For purposes of §1026.37(c), the terms ''adjustable rate,'' ''fixed rate,'' ''negative amortization,'' and ''interest only'' have the meanings in §1026.37(a)(10).

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

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

Paragraph 37(c)(1)(i).

1. *Periodic payments.* For purposes of §1026.37(c)(1)(i), the periodic payment is the regularly scheduled payment of principal and interest, mortgage insurance premiums, and escrow payments described in §1026.37(c)(2) without regard to any final payment that differs from other payments because of rounding to account for payment amounts including fractions of cents.

2. *Initial periodic payment or range of payments.* Section 1026.37(c)(1)(i) requires the creditor to disclose the initial periodic payment or range of payments. The disclosure required is of the actual periodic payment or range of payments that corresponds to the

interest rate that will apply at consummation, including any initial discounted or premium interest rate. For examples of discounted and premium rate transactions, see comment 17(c)(1)–10.v. For guidance regarding whether the disclosure should reflect a buydown, see comments 17(c)(1)–3 through –5. If the initial periodic payment or range of payments may vary based on an adjustment to an index value that applies at consummation, §1026.37(c)(1)(i) requires that the disclosure of the initial periodic payment or range of payments be based on the fully-indexed rate disclosed under §1026.37(b)(2). See comment 37(b)(2)–1 for guidance regarding calculating the fully-indexed rate.

Paragraph 37(c)(1)(i)(A).

1. *Periodic principal and interest payments.* For purposes of §1026.37(c)(1)(i)(A), periodic principal and interest payments may change when the interest rate, applicable interest rate caps, required periodic principal and interest payments, or ranges of such payments may change. Minor payment variations resulting solely from the fact that months have different numbers of days are not changes to periodic principal and interest payments.

2. *Negative amortization.* In a loan that contains a negative amortization feature, periodic principal and interest payments or the range of such payments may change for purposes of §1026.37(c)(1)(i)(A) at the time the negative amortization period ends under the terms of the legal obligation, meaning the consumer must begin making payments that do not result in an increase of the principal balance. The occurrence of an event requiring disclosure of additional separate periodic payments or ranges of payments should be based on the assumption that the consumer will make payments as scheduled or, if applicable, elect to make the periodic payments that would extend the negative amortization period to the latest time permitted under the terms of the legal obligation. The occurrence of all subsequent events requiring disclosure of additional separate periodic payments or ranges of payments should be based on this assumption. The table required by §1026.37(c) should also reflect any balloon payment that would result from such scheduled payments or election. See §1026.37(c)(1)(ii)(A) for special rules regarding disclosure of balloon payments.

3. *Interest only.* In a loan that contains an interest only feature, periodic principal and interest payments may change for purposes of §1026.37(c)(1)(i)(A) when the interest only period ends, meaning the consumer must begin making payments that do not defer repayment of principal.

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

1. *Balloon payment.* For purposes of §1026.37(c)(1)(i)(B), whether a balloon payment occurs is determined pursuant to §1026.37(b)(5) and its commentary. For guidance on the amount of a balloon payment disclosed on the table required by §1026.37(c), see comment 37(c)(2)(i)–3.

Paragraph 37(c)(1)(i)(C).

1. *General.* ''Mortgage insurance or any functional equivalent'' means the amounts identified in §1026.4(b)(5). For purposes of §1026.37(c), ''mortgage insurance or any functional equivalent'' includes any mortgage guarantee that provides coverage similar to mortgage insurance (such as a United States Department of Veterans Affairs or United States Department of Agriculture guarantee), even if not technically considered insurance under State or other applicable law. The fees for such a guarantee are included in ''mortgage insurance premiums.''

2. *Calculation of mortgage insurance termination.* For purposes of §1026.37(c)(1)(i)(C), mortgage insurance premiums should be calculated based on the declining principal balance that will occur as a result of changes to the interest rate and payment amounts, applying the interest rates applicable to the transaction. Such calculation should take into account any initial discounted or premium interest rate. For example, for an adjustable rate transaction that has a discounted interest rate during an initial five-year period, the creditor makes the calculation using a composite rate based on the rate in effect during the initial five-year period and, thereafter, the fully-indexed rate, unless otherwise required by applicable law. For guidance on calculation of the amount of mortgage insurance premiums to disclose on the table required by §1026.37(c), see §1026.37(c)(2)(ii) and its commentary. See comment 37(b)(2)–1 for guidance regarding calculating the fully-indexed rate.

3. *Disclosure of mortgage insurance termination.* The table required by §1026.37(c) should reflect the consumer's mortgage insurance premiums until the date on which the creditor must automatically terminate coverage under applicable law, even though the consumer may have a right to request that the insurance be cancelled earlier. Unlike termination of mortgage insurance, a subsequent decline in the consumer's mortgage insurance premiums is not, by itself, an event that requires the disclosure of additional separate periodic payments or ranges of payments in the table required by §1026.37(c). For example, some mortgage insurance programs annually adjust premiums based on the declining loan balance. Such annual adjustment to the amount of premiums would not require a separate disclosure of a periodic payment or range payments.

Paragraph 37(c)(1)(i)(D).

1. *Anniversary of the due date of initial periodic payment.* Section 1026.37(c)(1)(i)(D) provides that the anniversary of the due date of

the initial periodic payment or range of payments that immediately follows the occurrence of multiple events described in §1026.37(c)(1)(i)(A) during a single year is an event that requires disclosure of additional periodic payments or ranges of payments. Section 1026.37(c)(1)(i)(A) provides that a potential change in the periodic principal and interest payment is an event requiring disclosure of additional separate periodic payments. See comment 37(c)(1)(iii)(B)–1 for an example of the application of §1026.37(c)(1)(i)(D).

Paragraph 37(c)(1)(ii).

Paragraph 37(c)(1)(ii)(A).

1. *Special rule regarding balloon payments that are final payments.* Section 1026.37(c)(1)(ii)(A) is an exception to the general rule in §1026.37(c)(1)(ii), and requires that a balloon payment that is scheduled as a final payment under the terms of the legal obligation is always disclosed as a separate periodic payment or range of payments, in which case the creditor discloses as a single range of payments all events requiring disclosure of additional separate periodic payments or ranges of payments described in §1026.37(c)(1)(i)(A) through (D), other than the final balloon payment, occurring after the second separate periodic payment or range of payments disclosed. Balloon payments that are not scheduled as final payments under the terms of the legal obligation, such as a balloon payment due at the scheduled recast of a loan that permits negative amortization, are disclosed pursuant to the general rule in §1026.37(c)(1)(ii). A balloon payment that is a final payment is disclosed as a single payment, and not combined with other changes to periodic principal and interest payments and disclosed as a range.

2. *Example.* Assume a loan with a term of seven years, where the interest rate adjusts each year for the first three years and is fixed thereafter, that provides for a balloon payment as the final payment, where no mortgage insurance is required, and no escrow account will be established for the payment of charges described in §1026.37(c)(4)(ii). The creditor discloses on the table required by §1026.37(c) in the first column the initial periodic payment or range of payments, in the second column the periodic payment or range of payments that would apply after the first interest rate adjustment, in the third column the periodic payments or ranges of payments that would apply after the second interest rate adjustment until the final balloon payment (disclosed as a single range of payments), and in the fourth column the final balloon payment. Although the balloon payment that is scheduled as the final payment under the terms of the legal obligation occurs after the third separate periodic payment or range of payments, the creditor discloses the final balloon payment as a separate event requiring disclosure of additional periodic payments or range of payments due to the special rule in §1026.37(c)(1)(ii)(A).

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

1. *Special rule regarding disclosure of the automatic termination of mortgage insurance.* Section 1026.37(c)(1)(ii)(B) is an exception to the general rule in §1026.37(c)(1)(ii), and requires that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as a separate periodic payment or range of payments only if the total number of separate periodic payments or ranges of payments otherwise disclosed does not exceed three. This means that the automatic termination of mortgage insurance or any functional equivalent under applicable law is disclosed as its own event only if there is a column in which to disclose it, *i.e.*, there are only three other separate periodic payments or ranges of payments that are required to be disclosed. Where the automatic termination of mortgage insurance or any functional equivalent under applicable law is not disclosed as a separate periodic payment or range of payments, the absence of a required mortgage insurance payment is disclosed with the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments, as applicable.

2. *Examples of special rule regarding disclosure of the automatic termination of mortgage insurance.* i. Assume a step-rate loan with a 30-year term with an introductory interest rate that lasts for five years, a different interest rate that applies for the next five-year period, a final interest rate adjustment after 10 years, where mortgage insurance would terminate for purposes of §1026.37(c)(1)(i)(C) in the third year, and where no escrow account would be established for the payment of charges described in §1026.37(c)(4)(ii). The creditor would disclose on the table required by §1026.37(c) the initial periodic payment for years one through three (reflecting the principal and interest payment corresponding to the introductory interest rate and payments for mortgage insurance premiums), an additional separate periodic payment for years four and five (reflecting the principal and interest payment corresponding to the introductory rate and no payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years six through 10 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the introductory rate), and an additional separate periodic payment or range of payments for years 11 through 30 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the second interest rate adjustment until the end of the loan

term). In this example, the automatic termination of mortgage insurance would be separately disclosed on the table required by §1026.37(c) because the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to §1026.37(c)(1) does not exceed three.

ii. Assume the same loan as above, except that the terms of the legal obligation also provide for a third interest rate adjustment that would occur after 15 years. The creditor would disclose on the table required by §1026.37(c) the initial periodic payment for years one through five (reflecting the principal and interest payment corresponding to the introductory interest rate and payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years six through 10 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the first interest rate adjustment and no payments for mortgage insurance premiums), an additional separate periodic payment or range of payments for years 11 through 15 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the second interest rate adjustment), and an additional separate periodic payment or range of payments for years 16 through 30 (reflecting the principal and interest payment corresponding to the interest rate that would apply after the third interest rate adjustment until the end of the loan term). In this example, the automatic termination of mortgage insurance would not be separately disclosed on the table required by §1026.37(c) because the total number of separate periodic payments or ranges of payments otherwise disclosed pursuant to §1026.37(c)(1) exceeds three. However, the creditor would disclose the termination of mortgage insurance beginning with the periodic payment or range of payments for years six through 10, which is the next disclosed event requiring disclosure of additional separate periodic payments or ranges of payments.

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

1. *Ranges of payments.* When a range of payments is required to be disclosed under §1026.37(c)(1), §1026.37(c)(1)(iii) requires the creditor to disclose the minimum and maximum amount for both the principal and interest payment under §1026.37(c)(2)(i) and the total periodic payment under §1026.37(c)(2)(iv). The amount required to be disclosed for mortgage insurance premiums pursuant to §1026.37(c)(2)(ii) and the amount payable into an escrow account pursuant to §1026.37(c)(2)(iii) shall not be disclosed as a range.

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

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

i. Assume a loan with a 30-year term with a payment that adjusts every month for the first 12 months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in §1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment and the periodic payment that would apply after each payment adjustment during the first 12 months, which single range represents the minimum payment and maximum payment, respectively. Under §1026.37(c)(1)(i)(D), the creditor also discloses, as an additional separate periodic payment or range of payments, the periodic principal and interest payment or range of payments that would apply after the payment becomes fixed.

ii. Assume instead a loan with a 30-year term with a payment that adjusts upward at three months and at six months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in §1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment, the periodic payment that would apply after the payment adjustment that occurs at three months, and the periodic payment that would apply after the payment adjustment that occurs at six months, which single range represents the minimum payment and maximum payment, respectively, which would apply during the first year of the loan. Under §1026.37(c)(1)(i)(D), the creditor also discloses as an additional separate periodic payment or range of payments, the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment or range of payments, because that is the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the first year of the loan.

iii. Assume that the same loan has a payment that, instead of becoming fixed after the adjustment at six months, adjusts once more at 18 months and becomes fixed thereafter. The creditor discloses the same single range of payments for year one. Under §1026.37(c)(1)(i)(D), the creditor separately discloses the principal and interest payment that would apply on the first anniversary of the due date of the initial periodic payment in year two. Under §1026.37(c)(1)(i)(A) and (c)(3)(ii), beginning in the next year in the sequence (*i.e.*, in year three), the creditor separately discloses the periodic payment that would apply after the payment adjustment that occurs at 18 months. See comment

37(c)(3)(ii)–1 regarding subheadings that state the years.

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

1. *Adjustable rate mortgages.* For an adjustable rate loan, the periodic principal and interest payment at each time the interest rate may change will depend on the rate that applies at the time of the adjustment, which is not known at the time the disclosure is provided. As a result, the creditor discloses the minimum and maximum periodic principal and interest payment that could apply during each period disclosed pursuant to §1026.37(c)(1) after the first period.

37(c)(2) Itemization.

Paragraph 37(c)(2)(i).

1. *General rule for adjustable rate loans.* For an adjustable rate loan, in disclosing the maximum possible payment for principal and interest under §1026.37(c), the creditor assumes that the interest rate will rise as rapidly as possible after consummation, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. For a loan with no lifetime interest rate cap, the maximum rate is determined by reference to other applicable laws, such as State usury law. In disclosing the minimum payment for purposes of §1026.37(c), the creditor assumes that the interest rate will decrease as rapidly as possible after consummation, taking into account any introductory rates, caps on interest rate adjustments, and lifetime interest rate floor. For an adjustable rate loan based on an index that has no lifetime interest rate floor, the minimum interest rate is equal to the margin.

2. *Special rule for adjustable rate loans with negative amortization features.* Section 1026.37(c)(2)(i)(B) provides a special rule for calculation of the maximum principal and interest payment in an adjustable rate loan that contains a negative amortization feature. That section provides that the maximum amounts payable for principal and interest after the negative amortization period ends are calculated using the maximum principal amount permitted under the terms of the legal obligation at the end of the negative amortization period. See section §1026.37(c)(1)(i)(A) and associated commentary for guidance regarding when the negative amortization period ends for purposes of §1026.37(c)(2). For example, if the maximum principal balance for the last payment in the negative amortization period is achieved at an interest rate that is not the maximum interest rate permitted under the terms of the legal obligation before the negative amortization period ends, future events requiring disclosure of additional, separate periodic payments or ranges of payments assume that the interest rate in effect at the end of the negative amortization period was such interest rate, and not the maximum possible interest rate. After the end of the negative amortization period, the general rule under §1026.37(c)(2)(i)(A) regarding assumptions of interest rate changes for the maximum principal and interest payment to be disclosed applies from such interest rate. The minimum payment in an adjustable rate loan that contains a negative amortization feature is determined pursuant to the general rule under §1026.37(c)(2)(i)(A).

3. *Disclosure of balloon payment amounts.* Although the existence of a balloon payment is determined pursuant to §1026.37(b)(5) and its commentary (*see* comment 37(c)(1)(i)(B)–1), balloon payment amounts to be disclosed under §1026.37(c) are calculated in the same manner as periodic principal and interest payments under §1026.37(c)(2)(i). For example, for a balloon payment amount that can change depending on previous interest rate adjustments that are based on the value of an index at the time of the adjustment, the balloon payment amounts are calculated using the assumptions for minimum and maximum interest rates described in §1026.37(c)(2)(i) and its commentary, and should be disclosed as a range of payments.

Paragraph 37(c)(2)(ii).

1. *Mortgage insurance disclosure.* Mortgage insurance premiums should be reflected on the disclosure required by §1026.37(c) even if no escrow account is established for the payment of mortgage insurance premiums. If the consumer is not required to purchase mortgage insurance or any functional equivalent, the creditor discloses the mortgage insurance premium amount as ''0.'' If the creditor is disclosing the automatic termination or the absence of mortgage insurance or any functional equivalent under applicable law or the absence of mortgage insurance or any functional equivalent after coverage has terminated, the creditor discloses the mortgage insurance premium as ''-.''

2. *Relationship to principal and interest disclosure.* The creditor discloses mortgage insurance premiums pursuant to §1026.37(c)(2)(ii) on the same periodic basis that payments for principal and interest are disclosed pursuant to §1026.37(c)(2)(i), even if mortgage insurance premiums are actually paid on some other periodic basis.

Paragraph 37(c)(2)(iii).

1. *Escrow disclosure.* The disclosure described in §1026.37(c)(2)(iii) is required only if the creditor will establish an escrow account for the payment of some or all of the charges described in §1026.37(c)(4)(ii). If no escrow account for the payment of some or all such charges will be established, the creditor discloses the escrow amount as ''0.'' If an escrow account is established for the payment of amounts described in §1026.37(c)(4)(ii), but no escrow payment is required with a particular periodic payment (such as with a final balloon payment) or range of payments,

the escrow payment should be disclosed as "—."

37(c)(3) Subheadings.

Paragraph 37(c)(3)(ii).

1. *Years.* Section 1026.37(c)(3)(ii) requires that each separate periodic payment or range of payments be disclosed under a subheading that states the years during which that payment or range of payments will apply and that such subheadings be stated in a sequence of whole years from the due date of the initial periodic payment. Therefore, for purposes of § 1026.37(c), "year" is defined as the twelve-month interval beginning on the due date of the initial periodic payment, and the next whole year begins each anniversary thereafter. If an event requiring the disclosure of an additional separate periodic payment or range of payments occurs on a date other than the anniversary of the due date of the initial periodic payment, and no other events occur during that single year requiring disclosure of multiple events under § 1026.37(c)(1)(iii)(B), such event is disclosed beginning in the next year in the sequence, because the separate periodic payment or range of payments that applied during the previous year will also apply during a portion of that year. For example:

i. Assume a fixed rate loan with a term of 124 months (10 years, four months). The creditor would label the disclosure of periodic payments as "Years 1–11."

ii. Assume a loan with a 30-year term that does not require mortgage insurance and requires interest only payments for the first 60 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest beginning at the 61st month for the duration of the loan, the creditor would label the first disclosure of periodic payments as "Years 1–5" (including the term "only interest" pursuant to § 1026.37(c)(2)(i)) and the second disclosure of periodic payments or range of payments as "Years 6–30." If that loan requires interest only payments for the first 54 months from the due date of the initial periodic payment, then requires fixed, fully amortizing payments of principal and interest for the duration of the loan, because the change in the periodic payment occurs on a date other than the anniversary of the due date of the initial periodic payment and the previous payment applies during that year, the creditor would likewise label the first disclosure of periodic payments as "Years 1–5" (including the term "only interest" pursuant to § 1026.37(c)(2)(i)) and the second disclosure of periodic payments or range of payments as "Years 6–30." If the loan that requires interest only payments for the first 54 months also requires mortgage insurance that would automatically terminate under applicable law after the 100th month from the due date of the initial periodic payment, the creditor would label the first disclosure of periodic payments as "Years 1–5" (including the term "only interest" pursuant to § 1026.37(c)(2)(i)), the second disclosure of periodic payments or range of payments as "Years 6–9," and the third disclosure of periodic payments or range of payments as "Years 10–30."

2. *Loans with variable terms.* If the loan term may increase based on an adjustment of the interest rate, the creditor must disclose the maximum loan term possible under the legal obligation. To calculate the maximum loan term, the creditor assumes that the interest rate rises as rapidly as possible, taking into account the terms of the legal obligation, including any applicable caps on interest rate adjustments and lifetime interest rate cap. *See* comment 37(a)(8)–2.

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

Paragraph 37(c)(4)(ii).

1. *Definition of taxes, insurance, and assessments.* See the commentary under § 1026.43(b)(8) for guidance on the charges that are included in taxes, insurance, and assessments for purposes of § 1026.37(c)(4)(ii), except that the portion of that commentary related to amounts identified in § 1026.4(b)(5) is inapplicable to the disclosure required by § 1026.37(c)(4)(ii).

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

1. *Description of other amounts.* Section 1026.37(c)(4)(iv) requires the creditor to disclose a statement of whether the amount disclosed pursuant to § 1026.37(c)(4)(ii) includes payments for property taxes, amounts identified in § 1026.4(b)(8) (homeowner's insurance premiums), and other amounts described in § 1026.37(c)(4)(ii), along with a description of any such other amounts. If the amount disclosed pursuant to § 1026.37(c)(4)(ii) requires the creditor to disclose a description of more than one amount other than amounts for payment of property taxes or homeowner's insurance premiums, the creditor may disclose a descriptive statement of one such amount along with an indication that additional amounts are also included, such as by using the phrase "and additional costs."

2. *Amounts paid by the creditor using escrow account funds.* Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed under § 1026.37(c)(4)(ii) will be paid by the creditor using escrow account funds. If only a portion of the amounts disclosed under § 1026.37(c)(4)(ii), including, without limitation, property taxes, homeowner's insurance, and assessments, will be paid by the creditor using escrow account funds, the creditor may indicate that only a portion of the amounts disclosed will be paid using escrow account funds, such as by using the word "some."

37(d) Costs at closing.

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

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

2. *Method of indication.* The indication of whether the estimated cash is either due from or payable to the consumer can be made by the use of check boxes as shown in form H–24(D) of appendix H to this part.

37(f) Closing cost details; loan costs.

1. *General description.* The items disclosed under §1026.37(f) include services that the creditor or mortgage broker require for consummation, such as underwriting, appraisal, and title services.

2. *Mortgage broker.* Commentary under §1026.19(e)(1)(ii) discusses the requirements and responsibilities of mortgage brokers that provide the disclosures required by §1026.19(e), which include the disclosures set forth in §1026.37(f).

3. *Construction loan inspection and handling fees.* Inspection and handling fees for the staged disbursement of construction loan proceeds, including draw fees, are loan costs associated with the transaction for purposes of §1026.37(f). If inspection and handling fees are collected at or before consummation, the total of such fees is disclosed in the loan costs table. If inspection and handling fees will be collected after consummation, the total of such fees is disclosed in a separate addendum and the fees are not counted for purposes of the calculating cash to close table. See comment 37(f)(6)–3 for a description of an addendum used to disclose inspection and handling fees that will be collected after consummation. See also comments 38(f)–2 and app. D–7.vii. If the number of inspections and disbursements is not known at the time the disclosures are provided, the creditor discloses the fees that will be collected based on the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)–1. See §1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures.

37(f)(1) Origination charges.

1. *Origination charges.* Charges included under the subheading ''Origination Charges'' pursuant to §1026.37(f)(1) are those charges paid by the consumer to each creditor and loan originator for originating and extending the credit, regardless of how such fees are denominated. In accordance with §1026.37(o)(4), the dollar amounts disclosed under §1026.37(f)(1) must be rounded to the nearest whole dollar and the percentage amounts must be disclosed as an exact number up to two or three decimal places, except that decimal places shall not be disclosed if the percentage is a whole number. See comment 19(e)(3)(i)–3 for a discussion of when a fee is considered to be ''paid to'' a person. See §1026.36(a) and associated commentary for a discussion of the meaning of ''loan originator'' in connection with limits on compensation in a consumer credit transaction secured by a dwelling.

2. *Indirect loan originator compensation.* Only charges paid directly by the consumer to compensate a loan originator are included in the amounts listed under §1026.37(f)(1). Compensation of a loan originator paid indirectly by the creditor through the interest rate is not itemized on the Loan Estimate required by §1026.19(e). However, pursuant to §1026.38(f)(1), such compensation is itemized on the Closing Disclosure required by §1026.19(f).

3. *Description of charges.* Other than for points charged in connection with the transaction to reduce the interest rate, for which specific language must be used, the creditor may use a general label that uses terminology that, under §1026.37(f)(5), is consistent with §1026.17(a)(1), clearly and conspicuously describes the service that is disclosed as an origination charge pursuant to §1026.37(f)(1). Items that are listed under the subheading ''Origination Charges'' may include, for example, application fee, origination fee, underwriting fee, processing fee, verification fee, and rate-lock fee.

4. *Points.* If there are no points charged in connection with the transaction to reduce the interest rate, the creditor leaves blank the percentage of points used in the label and the dollar amount disclosed under §1026.37(f)(1)(i).

5. *Itemization.* Creditors determine the level of itemization of ''Origination Charges'' that is appropriate under §1026.37(f)(1) in relation to charges paid by the consumer to the creditor, subject to the limitations in §1026.37(f)(1)(ii). For example, the following charges should be itemized separately: compensation paid directly by a consumer to a loan originator that is not also the creditor; or a charge imposed to pay for a loan level pricing adjustment assessed on the creditor, which the creditor passes onto the consumer as a charge at consummation and not as an adjustment to the interest rate.

37(f)(2) Services you cannot shop for.

1. *Services disclosed.* Items included under the subheading ''Services You Cannot Shop For'' pursuant to §1026.37(f)(2) are for those services that the creditor requires in connection with the transaction that would be provided by persons other than the creditor or mortgage broker and for which the creditor

does not permit the consumer to shop in accordance with §1026.19(e)(1)(vi). Comment 19(e)(1)(vi)–1 clarifies that a consumer is not permitted to shop if the consumer must choose a provider from a list provided by the creditor. Comment 19(e)(3)(i)–1 addresses determining good faith in providing estimates under §1026.19(e), including estimates for services for which the consumer cannot shop. Comments 19(e)(3)(iv)–1 through –3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer cannot shop.

2. *Examples of charges.* Examples of the services and amounts to be disclosed pursuant to §1026.37(f)(2) might include an appraisal fee, appraisal management company fee, credit report fee, flood determination fee, government funding fee, homeowner's association certification fee, lender's attorney fee, tax status research fee, third-party subordination fee, title—closing protection letter fee, title—lender's title insurance policy, and an upfront mortgage insurance fee, provided that the fee is charged at consummation and is not a prepayment of future premiums over a specific future time period or a payment into an escrow account. Government funding fees include a United States Department of Veterans Affairs or United States Department of Agriculture guarantee fee, or any other fee paid to a government entity as part of a governmental loan program, that is paid at consummation.

3. *Title insurance services.* The services required to be labeled beginning with ''Title –'' pursuant to §1026.37(f)(2) or (3) are those required for the issuance of title insurance policies to the creditor in connection with the consummation of the transaction or for conducting the closing. These services may include, for example:

i. Examination and evaluation, based on relevant law and title insurance underwriting principles and guidelines, of the title evidence to determine the insurability of the title being examined and what items to include or exclude in any title commitment and policy to be issued;

ii. Preparation and issuance of the title commitment or other document that discloses the status of the title as it is proposed to be insured, identifies the conditions that must be met before the policy will be issued, and obligates the insurer to issue a policy of title insurance if such conditions are met;

iii. Resolution of underwriting issues and taking the steps needed to satisfy any conditions for the issuance of the policies;

iv. Preparation and issuance of the policy or policies of title insurance; and

v. Premiums for any title insurance coverage for the benefit of the creditor.

4. *Lender's title insurance policy.* Section 1026.37(f)(2) and (3) requires disclosure of the amount the consumer will pay for the lender's title insurance policy. However, an owner's title insurance policy that covers the consumer and is not required to be purchased by the creditor is only disclosed pursuant to §1026.37(g). Accordingly, the creditor must quote the amount of the lender's title insurance coverage pursuant to §1026.37(f)(2) or (3) as applicable based on the type of lender's title insurance policy required by its underwriting standards for that loan. The amount disclosed for the lender's title insurance policy pursuant to §1026.37(f)(2) or (3) is the amount of the premium without any adjustment that might be made for the simultaneous purchase of an owner's title insurance policy. This amount may be disclosed as ''Title —Premium for Lender's Coverage,'' or in any similar manner that clearly indicates the amount of the premium disclosed pursuant to §1026.37(f)(2) is for the lender's title insurance coverage. See comment 37(g)(4)–1 for a discussion of the disclosure of the premium for an owner's title insurance policy that covers the consumer.

37(f)(3) Services you can shop for.

1. *Services disclosed.* Items included under the subheading ''Services You Can Shop For'' pursuant to §1026.37(f)(3) are for those services: That the creditor requires in connection with its decision to make the loan; that would be provided by persons other than the creditor or mortgage broker; and for which the creditor allows the consumer to shop in accordance with §1026.19(e)(1)(vi). Comments 19(e)(3)(ii)–1 through –3, and –5 address the determination of good faith in providing estimates of charges for services for which the consumer can shop. Comment 19(e)(3)(iii)–2 discusses the determination of good faith when the consumer chooses a provider that is not on the list the creditor provides to the consumer when the consumer is permitted to shop consistent with §1026.19(e)(1)(vi). Comments 19(e)(3)(iv)–1 through –3 discuss limits and requirements applicable to providing revised estimates for services for which the consumer can shop.

2. *Example of charges.* Examples of the services to be listed under this subheading pursuant to §1026.37(f)(3) might include a pest inspection fee, survey fee, title—closing agent fee, and title—closing protection letter fee.

3. *Title insurance.* See comments 37(f)(2)–3 and –4 for guidance on services that are to be labeled beginning with ''Title —'' and on calculating and labeling the amount disclosed for lender's title insurance pursuant to §1026.37(f)(3). See comment 37(g)(4)–1 for a discussion of the disclosure of the premium for owner's title insurance coverage.

37(f)(5) Item descriptions and ordering.

1. *Clear and conspicuous standard.* Section 1026.37(f)(5) requires creditors to label the loan costs disclosed pursuant §1026.37(f) using terminology that describes each item. A creditor complies with this requirement if it uses terminology that is clear and conspicuous, consistent with §1026.17(a)(1), and

describes the service or administrative function that the charge pays for in a manner that is reasonably understood by consumers within the space provided in form H–24 of appendix H to this part. For example, if a creditor imposes a fee on a consumer to cover the costs associated with underwriting the transaction, the creditor would comply with §1026.37(f)(5) if it labeled the cost ''Underwriting Fee.'' A label that uses abbreviations or acronyms that are not reasonably understood by consumers would not comply with §1026.37(f)(5).

37(f)(6) Use of addenda.

1. *State law disclosures.* If a creditor is required by State law to make additional disclosures that, pursuant to §1026.37(f)(6)(i), cannot be included in the disclosures required under §1026.37(f), the creditor may make those additional State law disclosures on a document whose pages are separate from, and are not presented as part of, the disclosures prescribed in §1026.37, for example, as an addendum to the Loan Estimate. *See* comment 37(o)(1)–1.

2. *Reference to addendum.* If an addendum is used as permitted under §1026.37(f)(6)(ii), an example of a label that complies with the requirement for an appropriate reference on the last line is: ''See attached page for additional items you can shop for.''

3. Addendum for post-consummation inspection and handling fees. A creditor makes the disclosures required by §1026.37(f) and comment 37(f)–3 for construction loan inspection and handling fees collected after consummation by disclosing the total of such fees under the heading ''Inspection and Handling Fees Collected After Closing'' in an addendum, which may be the addendum pursuant to §1026.37(f)(6) or any other addendum or additional page under §1026.37. *See* comment 37(o)(1)–1. For purposes of comment 38(f)–2, the addendum may be any addendum or additional page under §1026.38. If the actual amount of such fees is not known at the time the disclosures are provided, the disclosures in the addendum are based upon the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)–1. For example, such information could include amounts the creditor has previously charged in similar construction transactions or the amount of estimated inspection and handling fees used by the creditor for purposes of setting the construction loan's commitment amount.

37(g) Closing cost details; other costs.

1. *General description.* The items listed under the heading of ''Other Costs'' pursuant to §1026.37(g) include services that are ancillary to the creditor's decision to evaluate the collateral and the consumer for the loan. The amounts disclosed for these items are: Established by government action; determined by standard calculations applied to ongoing fixed costs; or based on an obligation incurred by the consumer independently of any requirement imposed by the creditor. Except for prepaid interest under §1026.37(g)(2)(iii), or charges for optional credit insurance provided by the creditor, the creditor does not retain any of the amounts or portions of the amounts disclosed as other costs.

2. *Charges pursuant to property contract.* The creditor is required to disclose charges that are described in §1026.37(g)(1) through (3). Other charges that are required to be paid at or before closing pursuant to the property contract for sale between the consumer and seller are disclosed on the Loan Estimate to the extent the creditor has knowledge of those charges when it issues the Loan Estimate, consistent with the good faith standard under §1026.19(e). A creditor has knowledge of those charges where, for example, it has the real estate purchase and sale contract. *See also* §1026.37(g)(4) and comment 37(g)(4)–3.

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

1. *Recording fees.* Recording fees listed under §1026.37(g)(1) are fees assessed by a government authority to record and index the loan and title documents as required under State or local law. Recording fees are assessed based on the type of document to be recorded or its physical characteristics, such as the number of pages. Unlike transfer taxes, recording fees are not based on the sale price of the property or loan amount. For example, a fee for recording a subordination agreement that is $20, plus $3 for each page over three pages, is a recording fee, but a fee of $1,250 based on 0.5 percent of the loan amount is a transfer tax, and not a recording fee.

2. *Other government charges.* Any charges or fees imposed by a State or local government that are not transfer taxes are aggregated with recording fees and disclosed under §1026.37(g)(1)(i).

3. *Transfer taxes—terminology.* In general, transfer taxes listed under §1026.37(g)(1) are State and local government fees on mortgages and home sales that are based on the loan amount or sales price, while recording fees are State and local government fees for recording the loan and title documents. The name that is used under State or local law to refer to these amounts is not determinative of whether they are disclosed as transfer taxes or as recording fees and other taxes under §1026.37(g)(1).

4. *Transfer taxes—consumer.* Only transfer taxes paid by the consumer are disclosed on the Loan Estimate pursuant to §1026.37(g)(1). State and local government transfer taxes are governed by State or local law, which determines if the seller or consumer is ultimately responsible for paying the transfer taxes. For example, if State law indicates a lien can attach to the consumer's acquired property if the transfer tax is not paid, the

transfer tax is disclosed. If State or local law is unclear or does not specifically attribute transfer taxes to the seller or the consumer, the creditor is in compliance with requirements of §1026.37(g)(1) if the amount of the transfer tax disclosed is not less than the amount apportioned to the consumer using common practice in the locality of the property.

5. *Transfer taxes—seller*. Transfer taxes paid by the seller in a purchase transaction are not disclosed on the Loan Estimate under §1026.37(g)(1), but are disclosed on the Closing Disclosure pursuant to §1026.38(g)(1)(ii).

6. *Deletion and addition of items*. The lines and labels required by §1026.37(g)(1) may not be deleted, even if recording fees or transfer taxes are not charged to the consumer. No additional items may be listed under the subheading in §1026.37(g)(1).

37(g)(2) Prepaids.

1. *Examples*. Prepaid items required to be disclosed pursuant to §1026.37(g)(2) include the interest due at consummation for the period of time before interest begins to accrue for the first scheduled periodic payment and certain periodic charges that are required by the creditor to be paid at consummation. Each periodic charge listed as a prepaid item indicates, as applicable, the time period that the charge will cover, the daily amount, the percentage rate of interest used to calculate the charge, and the total dollar amount of the charge. Examples of periodic charges that are disclosed pursuant to §1026.37(g)(2) include:

i. Real estate property taxes due within 60 days after consummation of the transaction;

ii. Past-due real estate property taxes;

iii. Mortgage insurance premiums;

iv. Flood insurance premiums; and

v. Homeowner's insurance premiums.

2. *Interest rate*. The interest rate disclosed pursuant to §1026.37(g)(2)(iii) is the same interest rate disclosed pursuant to §1026.37(b)(2).

3. *Terminology*. For purposes of §1026.37(g)(2), the term ''property taxes'' has the same meaning as in §1026.43(b)(8) and further described in comment 43(b)(8)–2; the term ''homeowner's insurance'' means the amounts identified in §1026.4(b)(8); and the term ''mortgage insurance'' has the same meaning as ''mortgage insurance or any functional equivalent'' in §1026.37(c), which means the amounts identified in §1026.4(b)(5).

4. *Deletion of items*. The lines and labels required by §1026.37(g)(2) may not be deleted, even if amounts for those labeled items are not charged to the consumer. If an amount for a labeled item is not charged to the consumer, the time period, daily amount, and percentage used in the labels are left blank.

37(g)(3) Initial escrow payment at closing.

1. *Listed item not charged*. Pursuant to §1026.37(g)(3), each periodic charge to be included in the escrow or reserve account must be itemized under the ''Initial Escrow Payment at Closing'' subheading, with a relevant label, monthly payment amount, and number of months expected to be collected at consummation. If an item described in §1026.37(g)(3)(i) through (iii) is not charged to the consumer, the monthly payment amount and time period used in the labels are left blank.

2. *Aggregate escrow account calculation*. The aggregate escrow account adjustment required under §1026.38(g)(3) and 12 CFR 1024.17(d)(2) is not included on the Loan Estimate under §1026.37(g)(3).

3. *Terminology*. As used in §1026.37(g)(3), the term ''property taxes'' has the same meaning as in §1026.43(b)(8) and further described in comment 43(b)(8)–2; the term ''homeowner's insurance'' means the amounts identified in §1026.4(b)(8); and the term ''mortgage insurance'' has the same meaning as ''mortgage insurance or any functional equivalent'' in §1026.37(c).

4. *Deletion of items*. The lines and labels required by §1026.37(g)(3) may not be deleted, even if amounts for those labeled items are not charged to the consumer.

5. *Escrowed tax payments for different time frames*. Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR 1024.17, as applicable. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a property tax under §1026.37(g)(3)(i); and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate item under §1026.37(g)(3)(v).

37(g)(4) Other.

1. *Owner's title insurance policy rate*. The amount disclosed for an owner's title insurance premium pursuant to §1026.37(g)(4) is based on a basic owner's policy rate, and not on an ''enhanced'' title insurance policy premium, except that the creditor may instead disclose the premium for an ''enhanced'' policy when the ''enhanced'' title insurance policy is required by the real estate sales contract, if such requirement is known to the creditor when issuing the Loan Estimate. This amount should be disclosed as ''Title—Owner's Title Policy (optional),'' or in any similar manner that includes the introductory description ''Title –'' at the beginning of the label for the item, the parenthetical description ''(optional)'' at the end of the label, and clearly indicates the amount of the premium disclosed pursuant to §1026.37(g)(4) is for the owner's title insurance coverage. See comment 37(f)(2)–4 for a discussion of the disclosure of the premium for lender's title insurance coverage.

2. *Simultaneous title insurance premium rate in purchase transactions*. The premium for an owner's title insurance policy for which a

special rate may be available based on the simultaneous issuance of a lender's and an owner's policy is calculated and disclosed pursuant to §1026.37(g)(4) as follows:

i. The title insurance premium for a lender's title policy is based on the full premium rate, consistent with §1026.37(f)(2) or (f)(3).

ii. The owner's title insurance premium is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage.

3. *Designation of optional items.* Products disclosed under §1026.37(g)(4) for which the parenthetical description ''(optional)'' is included at the end of the label for the item include only items that are separate from any item disclosed on the Loan Estimate under paragraphs other than §1026.37(g)(4). For example, such items may include optional owner's title insurance, credit life insurance, debt suspension coverage, debt cancellation coverage, warranties of home appliances and systems, and similar products, when coverage is written in connection with a credit transaction that is subject to §1026.19(e). However, because the requirement in §1026.37(g)(4)(ii) applies to separate products only, additional coverage and endorsements on insurance otherwise required by the lender are not disclosed under §1026.37(g)(4). See comments 4(b)(7) and (b)(8)–1 through –3 and comments 4(b)(10)–1 and –2 for guidance on determining when credit life insurance, debt suspension coverage, debt cancellation coverage, and similar coverage is written in connection with a transaction subject to §1026.19(e).

4. *Examples.* Examples of other items that are disclosed under §1026.37(g)(4) if the creditor is aware of those items when it issues the Loan Estimate include commissions of real estate brokers or agents, additional payments to the seller to purchase personal property pursuant to the property contract, homeowner's association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer pursuant to the property contract. Although the consumer is obligated for these costs, they are not imposed upon the consumer by the creditor or loan originator. Therefore, they are not disclosed with the parenthetical description ''(optional)'' at the end of the label for the item, and they are disclosed pursuant to §1026.37(g) rather than §1026.37(f). Even if such items are not required to be disclosed on the Loan Estimate under §1026.37(g)(4), however, they may be required to be disclosed on the Closing Disclosure pursuant to §1026.38. Comment 19(e)(3)(iii)-3 discusses application of the good faith requirement for services chosen by the consumer that are not required by the creditor.

37(g)(6) Total closing costs.

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

1. *Lender credits.* Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in §1026.37(g)(6)(ii). Such lender credits include non-specific lender credits as well as specific lender credits. *See* comment 19(e)(3)(i)–5.

2. *Credits or rebates from the creditor to offset a portion or all of the closing costs.* For loans where a portion or all of the closing costs are offset by a credit or rebate provided by the creditor (sometimes referred to as ''no-cost'' loans), whether all or a defined portion of the closing costs disclosed under §1026.37(f) or (g) will be paid by a credit or rebate from the creditor, the creditor discloses such credit or rebate as a lender credit under §1026.37(g)(6)(ii). The creditor should ensure that the lender credit disclosed under §1026.37(g)(6)(ii) is sufficient to cover the estimated costs the creditor represented to the consumer as not being required to be paid by the consumer at consummation, regardless of whether such representations pertained to specific items.

37(g)(7) Item descriptions and ordering.

1. *Clear and conspicuous standard.* See comment 37(f)(5)–1 for guidance regarding the requirement to label items using terminology that describes each item.

37(g)(8) Use of addenda.

1. *State law disclosures.* If a creditor is required by State law to make additional disclosures that, pursuant to §1026.37(g)(8), cannot be included in the disclosures required under §1026.37(g), the creditor may make those additional State law disclosures on a separate document whose pages are physically separate from, and are not presented as part of, the disclosures prescribed in §1026.37. *See* comment 37(o)(1)–1.

37(h) Calculating cash to close.

37(h)(1) For all transactions.

1. *Labels for amounts disclosed.* Section 1026.37(h)(1) describes the amounts that are used to calculate the estimated amount of cash or other funds that the consumer must provide at consummation. The labels that are to be used under §1026.37(h)(1) are illustrated by form H–24(A) of appendix H to this part.

2. *Simultaneous subordinate financing.* On the Loan Estimate for simultaneous subordinate financing purchase transactions, the sale price disclosed under §1026.37(a)(7)(i) is not used under §1026.37(h)(1) for the calculating cash to close table calculations that include the sale price as a component of the calculation. For example, sale price is generally included in the closing costs financed calculation under §1026.37(h)(1)(ii) as a component of the estimated total amount of payments to third parties. However, for simultaneous subordinate financing transactions, the estimated total amount of payments to third parties would not include the sale

price. The estimated total amount of payments to third parties only includes payments occurring in the simultaneous subordinate financing transaction other than payments toward the sale price.

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

1. *Calculation of amount.* The amount of closing costs financed disclosed under §1026.37(h)(1)(ii) is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed under §1026.37(f) and (g) from the loan amount disclosed under §1026.37(b)(1). The estimated total amount of payments to third parties includes the sale price disclosed under §1026.37(a)(7)(i), if applicable, unless otherwise excluded under comment 37(h)(1)–2. Other examples of payments to third parties not otherwise disclosed under §1026.37(f) and (g) include the amount of construction costs for transactions that involve improvements to be made on the property and payoffs of secured or unsecured debt. If the result of the calculation is zero or negative, the amount of $0 is disclosed under §1026.37(h)(1)(ii). If the result of the calculation is a positive number, that amount is disclosed as a negative number under §1026.37(h)(1)(ii), but only to the extent that the absolute value of the amount disclosed under §1026.37(h)(1)(ii) does not exceed the total amount of closing costs disclosed under §1026.37(g)(6).

2. *Loan amount.* The loan amount disclosed under §1026.37(b)(1), a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note.

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

1. *Down payment and funds from borrower calculation.* For purposes of §1026.37(h)(1)(iii)(A)(*1*), the down payment and funds from borrower amount is calculated as the difference between the sale price of the property disclosed under §1026.37(a)(7)(i) and the sum of the loan amount and any amount of existing loans assumed or taken subject to that will be disclosed on the Closing Disclosure under §1026.38(j)(2)(iv). The calculation is independent of any loan program or investor requirements.

2. *Funds for borrower.* Section 1026.37(h)(1)(iii)(A)(*2*) requires that, in a purchase transaction as defined in paragraph (a)(9)(i) of this section that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under §1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under §1026.38(j)(2)(iv) exceeds the sale price disclosed under §1026.37(a)(7)(i), the amount of funds from the consumer is determined in accordance with §1026.37(h)(1)(v). Section 1026.37(h)(1)(iii)(B) requires that, for all non-purchase transactions, the amount of estimated funds from the consumer is determined in accordance with §1026.37(h)(1)(v). Pursuant to §1026.37(h)(1)(v), the amount to be disclosed under §1026.37(h)(1)(iii)(A)(*2*) or (B) is determined by subtracting the sum of the loan amount disclosed under §1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under §1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under §1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under §1026.38(j)(1)(ii), (iii), and (v), as applicable. When the result of the calculation is positive, that amount is disclosed under §1026.37(h)(1)(iii) as ''Down Payment/Funds from Borrower,'' and $0 is disclosed under §1026.37(h)(1)(v) as ''Funds for Borrower.'' When the result of the calculation is negative, that amount is disclosed as a negative number under §1026.37(h)(1)(v) as ''Funds for Borrower,'' and $0 is disclosed under §1026.37(h)(1)(iii) as ''Down Payment/Funds from Borrower.'' When the result is $0, $0 is disclosed as ''Down Payment/Funds from Borrower'' and ''Funds for Borrower'' under §1026.37(h)(1)(iii) and (v), respectively.

37(h)(1)(iv) Deposit.

1. Section 1026.37(h)(1)(iv)(A) requires disclosure of a deposit in a purchase transaction. The deposit to be disclosed under §1026.37(h)(1)(iv)(A) is any amount that the consumer has agreed to pay to a party identified in the real estate purchase and sale agreement to be held until consummation of the transaction, which is often referred to as an earnest money deposit. In a purchase transaction in which no such deposit is paid in connection with the transaction, §1026.37(h)(1)(iv)(A) requires the creditor to disclose $0. In any other type of transaction, §1026.37(h)(1)(iv)(B) requires disclosure of the deposit amount as $0.

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

1. *No funds for borrower.* When the down payment and other funds from the borrower is determined in accordance with §1026.37(h)(1)(iii)(A)(*1*), the amount disclosed under §1026.37(h)(1)(v) as funds for the borrower is $0.

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

being satisfied in the transaction. The total amount of all existing debt being satisfied in the transaction is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under §1026.38(j)(1)(ii), (iii), and (v), as applicable.

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

1. *Non-specific seller credits to be disclosed.* Non-specific seller credits, *i.e.*, general payments from the seller to the consumer that do not pay for a particular fee on the disclosures provided under §1026.19(e)(1), known to the creditor at the time of delivery of the Loan Estimate, are disclosed under §1026.37(h)(1)(vi). For example, a creditor may learn the amount of seller credits that will be paid in the transaction from information obtained from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

2. *Seller credits for specific charges.* To the extent known by the creditor at the time of delivery of the Loan Estimate, specific seller credits, *i.e.*, seller credits for specific items disclosed under §1026.37(f) and (g), may be either disclosed under §1026.37(h)(1)(vi) or reflected in the amounts disclosed for those specific items under §1026.37(f) and (g). For example, if the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay half of a $100 required pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under §1026.37(f) with a $50 seller credit disclosed under §1026.37(h)(1)(vi) or disclose the required pest inspection fee as $50 under §1026.37(f), reflecting the specific seller credit in the amount disclosed for the pest inspection fee. If the creditor knows at the time of the delivery of the Loan Estimate that the seller has agreed to pay the entire $100 pest inspection fee, the creditor may either disclose the required pest inspection fee as $100 under §1026.37(f) with a $100 seller credit disclosed under §1026.37(h)(1)(vi) or disclose nothing under §1026.37(f), reflecting that the specific seller credit will cover the entire pest inspection fee.

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

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

2. *Persons that may make payments causing adjustment and other credits.* Persons, as defined under §1026.2(a)(22), means natural persons or organizations. Accordingly, persons that may pay amounts disclosed under §1026.37(h)(1)(vii) include, for example, any individual family members providing gifts or a developer or home builder organization providing a credit in the transaction.

3. *Credits.* Only credits from persons other than the creditor or seller can be disclosed pursuant to §1026.37(h)(1)(vii). Seller credits and credits from the creditor are disclosed pursuant to §1026.37(h)(1)(vi) and §1026.37(g)(6)(ii), respectively.

4. *Other credits to be disclosed.* Credits other than those from the creditor or seller are disclosed under §1026.37(h)(1)(vii). Disclosure of other credits is, like other disclosures under §1026.37, subject to the good faith requirement under §1026.19(e)(1)(i). See §1026.19(e)(1)(i) and comments 17(c)(2)(i)–1 and 19(e)(1)(i)–1. The creditor may obtain information regarding items to be disclosed under §1026.37(h)(1)(vii), for example, from the consumer, from a review of the purchase and sale contract, or from information obtained from a real estate agent in the transaction.

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

6. *Reduction in amounts for adjustments.* Adjustments that require additional funds from the consumer in a transaction disclosed using the formula under §1026.37(h)(1)(iii)(A)(*1*) or pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under §1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under §1026.38(j)(1)(v), are only included in the amount disclosed under §1026.37(h)(1)(vii) if such amounts are not included in the calculation under §1026.37(h)(1)(iii)(A)(*2*) or (B) or §1026.37(h)(1)(v) as debt being satisfied in the transaction. Other examples of adjustments for additional funds from the consumer include payoffs of secured or unsecured debt in a purchase transaction disclosed using the formula under §1026.37(h)(1)(iii)(A)(*1*) or prorations for property taxes and homeowner's association dues. The total amount disclosed under §1026.37(h)(1)(vii) is a sum of adjustments requiring additional funds from the consumer, calculated as positive amounts, and other credits, such as those provided for in comment 37(h)(1)(vii)–1, calculated as negative amounts.

37(h)(1)(viii) Estimated cash to close.

1. *Result of cash to close calculation.* The sum of the amounts disclosed pursuant to §1026.37(h)(1)(i) through (vii) is disclosed

under §1026.37(h)(1)(viii) as either a positive number, a negative number, or zero. A positive number indicates the amount that the consumer will pay at consummation. A negative number indicates the amount that the consumer will receive at consummation. A result of zero indicates that the consumer will neither pay nor receive any amount at consummation.

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

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

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

1. *Examples.* Examples of the amounts incorporated in the total amount disclosed under §1026.37(h)(2)(iii) include, but are not limited to: Payoffs of existing liens secured by the property identified under §1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmen's liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; construction costs associated with the transaction that the consumer will be obligated to pay in any transaction in which the creditor is otherwise permitted to use the alternative calculating cash to close table; and payments to other third parties for outstanding debts of the consumer, excluding settlement services, as required to be paid as a condition for the extension of credit. Amounts that will be paid with funds provided by the consumer, including partial payments, such as a portion of construction costs, or amounts that will be paid by third parties and will be disclosed on the Closing Disclosure under §1026.38(t)(5)(vii)(B), are calculated as credits, using positive numbers, in the total amount disclosed under §1026.37(h)(2)(iii).

2. *Disclosure of subordinate financing.* i. *First-lien Loan Estimate.* On the Loan Estimate for a first-lien transaction disclosed with the optional alternative table pursuant to §1026.37(h)(2), such as a refinance transaction that also has simultaneous subordinate financing, the proceeds of the simultaneous subordinate financing are included, as a positive number, in the total amount disclosed under §1026.37(h)(2)(iii). The total amount disclosed under §1026.37(h)(2)(iii) is a negative number unless the proceeds from the subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)–1 equal or exceed the total amount of other payoffs and payments that are included in the calculation under §1026.37(h)(2)(iii). If the proceeds from the subordinate financing and any amounts entered as credits as discussed in comment 37(h)(2)(iii)–1 equal or exceed the total amount of other payoffs and payments that are included in the calculation under §1026.37(h)(2)(iii), the total amount disclosed under §1026.37(h)(2)(iii) is disclosed as $0 or a positive number.

ii. *Simultaneous subordinate financing Loan Estimate.* On the simultaneous subordinate financing Loan Estimate disclosed with the optional alternative table pursuant to §1026.37(h)(2), the proceeds of the subordinate financing that will be applied to the first-lien transaction may be included in the payoffs and payments disclosure under §1026.37(h)(2)(iii).

37(h)(2)(iv) Cash to or from consumer.

1. *Method of indication.* The indication of whether the estimated cash to close is either due from or payable to the consumer is made by the use of check boxes, which is illustrated by form H–24(D) of appendix H to this part.

37(h)(2)(v) Closing costs financed.

1. *Limitation on amount disclosed.* The amount disclosed under §1026.37(h)(2)(v) is limited to the total amount of closing costs disclosed under §1026.37(g)(6), even if the difference between §1026.37(h)(2)(i) and §1026.37(h)(2)(iii) is greater than the amount disclosed under §1026.37(g)(6).

37(i) Adjustable payment table.

1. *When table is not permitted to be disclosed.* The disclosure described in §1026.37(i) is required only if the periodic principal and interest payment may change after consummation based on a loan term other than a change to the interest rate, or the transaction contains a seasonal payment product feature as described in §1026.37(a)(10)(ii)(E). If the transaction does not contain such loan terms, this table shall not appear on the Loan Estimate.

2. *Periods to be disclosed.* Section 1026.37(i)(1) through (4) requires disclosure of the periods during which interest only, optional payment, step payment, and seasonal payment product features will be in effect. The periods required to be disclosed should be disclosed by describing the number of payments counting from the first periodic payment due after consummation. The period of seasonal payments required to be disclosed by §1026.37(i)(4), to be clear and conspicuous, should be disclosed with a noun that identifies the unit-period, because such feature may apply on a regular basis during the loan

term that does not depend on when regular periodic payments begin. The disclosures required by §1026.37(i)(1) through (4) may include abbreviations to fit in the space provided for the information on form H–24, provided the information is disclosed in a clear and conspicuous manner. For example:

i. *Period from date of consummation.* If a loan has an interest only period for the first 60 regular periodic payments due after consummation, the disclosure states ''for your first 60 payments.''

ii. *Period during middle of loan term.* If the loan has an interest only period between the 61st and 85th payments, the disclosure states ''from your 61st to 85th payment.''

iii. *Multiple successive periods.* If there are multiple periods during which a certain adjustable payment term applies, such as a period of step payments that occurs from the first through 12th payments, does not occur from the 13th through 24th payments, and occurs again from the 25th through 36th payments, the period disclosed is the entire span of all such periods. Accordingly, such period is disclosed as ''for your first 36 payments.''

iv. *Seasonal payments.* For a seasonal payment product with a unit-period of a month that does not require periodic payments for the months of June, July, and August each year during the loan term, because such feature depends on calendar months and not on when regular periodic payments begin, the period is disclosed as ''from June to August.'' For a transaction with a quarterly unit-period that does not require a periodic payment every third quarter during the loan term and does not depend on calendar months, the period is disclosed as ''every third payment.'' In the same transaction, if the seasonal payment feature ends after the 20th quarter, the period is disclosed as ''every quarter until the 20th quarter.'' As described above in this comment 37(i)–2, the creditor may abbreviate ''quarter'' to ''quart.'' or ''Q.''

37(i)(5) Principal and interest payments.

1. *Statement of periodic payment frequency.* The subheading required by §1026.37(i)(5) must include the unit-period of the transaction, such as ''quarterly,'' ''bi-weekly,'' or ''annual.'' This unit-period should be the same as disclosed under §1026.37(b)(3). *See* §1026.37(o)(5)(i).

2. *Initial payment adjustment unknown.* The disclosure required by §1026.37(i)(5) must state the number of the first payment for which the regular periodic principal and interest payment may change. This payment is typically set forth in the legal obligation. However, if the exact payment number of the first adjustment is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible payment that may change under the terms of the legal obligation, based on the information available to the creditor at the time, as the initial payment number and amount.

3. *Subsequent changes.* The disclosure required by §1026.37(i)(5) must state the frequency of adjustments to the regular periodic principal and interest payment after the initial adjustment, if any, expressed in years, except if adjustments are more frequent than once every year, in which case the disclosure should be expressed as payments. If there is only one adjustment of the periodic payment under the terms of the legal obligation (for example, if the loan has an interest only period for the first 60 payments and there are no adjustments to the payment after the end of the interest only period), the disclosure should state: ''No subsequent changes.'' If the loan has graduated increases in the regular periodic payment every 12th payment, the disclosure should state: ''Every year.'' If the frequency of adjustments to the periodic payment may change under the terms of the legal obligation, the disclosure should state the smallest period of adjustments that may occur. For example, if an increase in the periodic payment is scheduled every sixth payment for 36 payments, and then every 12th payment for the next 24 payments, the disclosure should state: ''Every 6th payment.''

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

interest payment would be recalculated, but the last payment that permitted the principal balance to increase was the 60th payment, the disclosure required by §1026.37(i)(5) must assume the consumer only reaches the maximum principal balance at the 60th payment because this would result in the maximum possible principal and interest payment under the terms of the legal obligation. The disclosure must state the maximum periodic principal and interest payment based on this assumption and state ''as early as the 61st payment.''

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

37(j) Adjustable interest rate table.

1. *When table is not permitted to be disclosed.* The disclosure described in §1026.37(j) is required only if the interest rate may increase after consummation, either based on changes to an index or scheduled changes to the interest rate. If the legal obligation does not permit the interest rate to adjust after consummation, such as for a ''Fixed Rate'' product under §1026.37(a)(10), this table is not permitted to appear on the Loan Estimate. The creditor may not disclose a blank table or a table with ''N/A'' inserted within each row.

37(j)(1) Index and margin.

1. *Index and margin.* The index disclosed pursuant to §1026.37(j)(1) must be stated such that a consumer reasonably can identify it. A common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. For example, ''LIBOR'' may be disclosed instead of London Interbank Offered Rate. The margin should be disclosed as a percentage. For example, if the contract determines the interest rate by adding 4.25 percentage points to the index, the margin should be disclosed as ''4.25%.''

37(j)(2) Increases in interest rate.

1. *Adjustments not based on an index.* If the legal obligation includes both adjustments to the interest rate based on an external index and scheduled and pre-determined adjustments to the interest rate, such as for a ''Step Rate'' product under §1026.37(a)(10), the disclosure required by §1026.37(j)(1), and not §1026.37(j)(2), must be provided pursuant to §1026.37(j)(2). The disclosure described in §1026.37(j)(2) is stated only if the product type does not permit the interest rate to adjust based on an external index.

37(j)(3) Initial interest rate.

1. *Interest rate at consummation.* In all cases, the interest rate in effect at consummation must be disclosed as the initial interest rate, even if it will apply only for a short period, such as one month.

37(j)(4) Minimum and maximum interest rate.

1. *Minimum interest rate.* The minimum interest rate required to be disclosed by §1026.37(j)(4) is the minimum interest rate that may occur at any time during the term of the transaction, after any introductory or ''teaser'' interest rate expires, under the terms of the legal obligation, such as an interest rate ''floor.'' If the terms of the legal obligation do not state a minimum interest rate, the minimum interest rate that applies to the transaction under applicable law must be disclosed. If the terms of the legal obligation do not state a minimum interest rate, and no other minimum interest rate applies to the transaction under applicable law, the amount of the margin is disclosed.

2. *Maximum interest rate.* The maximum interest rate required to be disclosed pursuant to §1026.37(j)(4) is the maximum interest rate permitted under the terms of the legal obligation, such as an interest rate ''cap.'' If the terms of the legal obligation do not specify a maximum interest rate, the maximum interest rate permitted by applicable law, such as State usury law, must be disclosed.

37(j)(5) Frequency of adjustments.

1. *Exact month unknown.* The disclosure required by §1026.37(j)(5) must state the first month for which the interest rate may change. This month is typically scheduled in the terms of the legal obligation. However, if the exact month is not known at the time the creditor provides the Loan Estimate, the creditor must disclose the earliest possible month under the terms of the legal obligation, based on the best information available to the creditor at the time.

37(j)(6) Limits on interest rate changes.

1. *Different limits on subsequent interest rate adjustments.* If more than one limit applies to the amount of adjustments to the interest rate after the initial adjustment, the greatest limit on subsequent adjustments must be disclosed. For example, if the initial interest rate adjustment is capped at two percent, the second adjustment is capped at two and a half percent, and all subsequent adjustments are capped at three percent, the disclosure required by §1026.37(j)(6)(ii) states ''3%.''

37(k) Contact information.

1. *NMLSR ID.* Section 1026.37(k) requires the disclosure of an Nationwide Mortgage Licensing System and Registry (NMLSR ID) number for each creditor, mortgage broker, and loan officer identified on the Loan Estimate. The NMLSR ID is a unique number or other identifier generally assigned to individuals registered or licensed through NMLSR to provide loan originating services. For more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) sections 1503(3) and

(12) and 1504 (12 U.S.C. 5102(3) and (12) and 5103), and its implementing regulations (*i.e.*, 12 CFR 1007.103(a) and 1008.103(a)(2)). An entity may also have an NMLSR ID. Thus, if the creditor, mortgage broker, or loan officer has obtained an NMLSR ID, the NMLSR IDs must be provided in the disclosures required by §1026.37(k)(1) and (2).

2. *License number or unique identifier.* Section 1026.37(k)(1) and (2) requires the disclosure of a license number or unique identifier for the creditor, mortgage broker, and loan officer if such entity or individual has not obtained an NMLSR ID. In such event, if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity's or individual's business activities has issued a license number or other unique identifier to such entity or individual, that number is disclosed. In addition, §1026.37(k)(1) and (2) require the abbreviation of the State of the jurisdiction or regulatory body that issued such license or registration is required to be included before the word ''License'' in the label required by §1026.37(k)(1) and (2). If no such license or registration is required to be disclosed, such as if an NMLSR number is disclosed, the space provided for such an abbreviation in form H–24 of appendix H to this part may be left blank. A U.S. Postal Service State abbreviation complies with §1026.37(k)(1) and (2), if applicable.

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

4. *Email address and phone number.* Section 1026.37(k)(3) requires disclosure of the loan officer's email address and phone number. Disclosure of a general number or email address for the loan officer's lender or mortgage broker, as applicable, satisfies this requirement if no such information is generally available for such person.

37(l) Comparisons.

37(l)(1) In five years.

1. *Loans with terms of less than five years.* In transactions with a scheduled loan term of less than 60 months, to comply with §1026.37(l)(1), the creditor discloses the amounts paid through the end of the loan term.

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

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

2. *Negative amortization loans.* For loans that have a negative amortization feature under §1026.37(a)(10)(ii)(A), the creditor calculates the total payments in five years using the scheduled payments, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

Paragraph 37(l)(1)(ii).

1. *Calculation of principal paid in five years.* The disclosure required by §1026.37(l)(1)(ii) is calculated in the same manner as the disclosure required by §1026.37(l)(1)(i), except that the disclosed amount reflects only the total payments to principal through the end of the 60th month after the due date of the first periodic payment.

37(l)(3) Total interest percentage.

1. *General.* When calculating the total interest percentage, the creditor assumes that the consumer will make each payment in full and on time and will not make any additional payments. The creditor includes prepaid interest that the consumer will pay when calculating the total interest percentage. Prepaid interest that is disclosed as a negative number under §§1026.37(g)(2) or 1026.38(g)(2) is included as a negative value when calculating the total interest percentage.

2. *Adjustable rate and step rate mortgages.* For Adjustable Rate products under §1026.37(a)(10)(i)(A), §1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with comment 17(c)(1)–10. For Step Rate products under §1026.37(a)(10)(i)(B), §1026.37(l)(3) requires that the creditor compute the total interest percentage in accordance with §1026.17(c)(1) and its associated commentary.

3. *Negative amortization loans.* For loans that have a negative amortization feature under §1026.37(a)(10)(ii)(A), §1026.37(l)(3) requires that the creditor compute the total interest percentage using the scheduled payment, even if it is a negatively amortizing payment amount, until the consumer must begin making fully amortizing payments under the terms of the legal obligation.

37(m) Other considerations.

37(m)(1) Appraisal.

1. *Applicability.* The disclosure required by §1026.37(m)(1) is only applicable to transactions subject to §1026.19(e) that are also subject either to 15 U.S.C. 1639h or 1691(e) or both, as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not also subject to either or both of these provisions, as implemented by this part or Regulation B, respectively, the disclosure required by §1026.37(m)(1) may be omitted from the Loan Estimate as described by comment 37–1 as illustrated by form H–24 of appendix H to this part. For transactions subject to section 1639h but not section 1691(e), the creditor may delete the word ''promptly'' from the disclosure required by §1026.37(m)(1)(ii).

2. *Consummation.* Section 1026.37(m)(1) requires the creditor to disclose that it will provide a copy of any appraisal, even if the transaction is not consummated. On form H–24, the disclosure required by §1026.37(m)(1) states that the creditor will provide an appraisal, even if the ''loan does not close.'' Pursuant to §1026.37(o)(3), the disclosure required by §1026.37(m)(1) is that illustrated by form H–24.

37(m)(2) Assumption.

1. *Disclosure.* Section 1026.37(m)(2) requires the creditor to disclose whether or not a third party may be allowed to assume the loan on its original terms if the property is sold or transferred by the consumer. In many cases, the creditor cannot determine, at the time the disclosure is made, whether a loan may be assumable at a future date on its original terms. For example, the assumption clause commonly used in mortgages sold to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation conditions an assumption on a variety of factors, such as the creditworthiness of the subsequent borrower, the potential for impairment of the creditor's security, and the execution of an assumption agreement by the subsequent borrower. If the creditor can determine that such assumption is not permitted, the creditor complies with §1026.37(m)(2) by disclosing that the loan is not assumable. In all other situations, including where assumption of a loan is permitted or is dependent on certain conditions or factors, or uncertainty exists as to the future assumability of a mortgage loan, the creditor complies with §1026.37(m)(2) by disclosing that, under certain conditions, the creditor may allow a third party to assume the loan on its original terms.

2. *Original terms.* For purposes of §1026.37(m)(2), the imposition of an assumption fee is not a departure from the original terms of the obligation but a modification of the legal obligation, such as a change in the contract interest rate, represents a departure from the original terms.

37(m)(3) Homeowner's insurance.

1. *Optional disclosure.* Section 1026.37(m)(3) provides that creditors may, but are not required to, disclose a statement of whether homeowner's insurance is required on the property and whether the consumer may choose the insurance provider, labeled ''Homeowner's Insurance.''

2. *Relation to the finance charge.* Section 1026.4(d)(2) describes the conditions under which a creditor may exclude premiums for homeowner's insurance from the finance charge. For transactions subject to §1026.19(e), a creditor satisfies §1026.4(d)(2)(i) by disclosing the statement described in §1026.37(m)(3).

37(m)(4) Late payment.

1. *Definition.* Section 1026.37(m)(4) requires a disclosure if charges are added to an individual delinquent installment by a creditor that otherwise considers the transaction ongoing on its original terms. Late payment charges do not include: (i) The right of acceleration; (ii) fees imposed for actual collection costs, such as repossession charges or attorney's fees; (iii) referral and extension charges; or (iv) the continued accrual of simple interest at the contract rate after the payment due date. However, an increase in the interest rate on account of a late payment by the consumer is a late payment charge to the extent of the increase.

2. *Applicability of State law.* Many State laws authorize the calculation of late charges as either a percentage of the delinquent payment amount or a specified dollar amount, and permit the imposition of the lesser or greater of the two calculations. The language provided in the disclosure may reflect the requirements and alternatives allowed under State law.

37(m)(6) Servicing.

1. *Creditor's intent.* Section 1026.37(m)(6) requires the creditor to disclose whether it intends to service the loan directly or transfer servicing to another servicer after consummation. A creditor complies with §1026.37(m)(6) if the disclosure reflects the creditor's intent at the time the Loan Estimate is issued.

37(m)(7) Liability after foreclosure.

1. *When statement is not permitted to be disclosed.* The disclosure described by §1026.37(m)(7) is required under the condition specified by §1026.37(m)(7), specifically, if the purpose of the credit transaction is a refinance under §1026.37(a)(9)(ii). Under any other conditions, this statement is not permitted to appear in the Loan Estimate.

37(m)(8) Construction loans.

1. *Clear and conspicuous statement regarding redisclosure for construction loans.* For construction loans in transactions involving new construction, where the creditor reasonably expects the settlement date to be 60

days or more after the provision of the disclosures required under §1026.19(e)(1)(i), providing the statement, ''You may receive a revised Loan Estimate at any time prior to 60 days before consummation'' under the master heading ''Additional Information About This Loan'' and the heading ''Other Considerations'' pursuant to §1026.37(m)(8) satisfies the requirements set forth in §1026.19(e)(3)(iv)(F) that the statement be made clearly and conspicuously on the disclosure.

37(n) Signature statement.

1. *Signature line optional.* Whether a signature line is provided under §1026.37(n) is determined solely by the creditor. If a signature line is provided, however, the disclosure must include the statement required by §1026.37(n)(1).

2. *Multiple consumers.* If there is more than one consumer who will be obligated in the transaction, the first consumer signs as the applicant and each additional consumer signs as a co-applicant. If there is not enough space under the heading ''Confirm Receipt'' to provide signature lines for every consumer in the transaction, the creditor may add additional signature pages, as needed, at the end of the form for the remaining consumers' signatures. However, the creditor is required to disclose the heading and statement required by §1026.37(n)(1) on such additional pages.

3. *Consumer's name.* The creditor may insert the consumer's name under the signature line, rather than using the designation ''Applicant'' or ''Co-Applicant'' as illustrated in form H–24 of appendix H to this part, but is not required to do so pursuant to §1026.37(n)(1).

37(o) Form of disclosures.

37(o)(1) General requirements.

1. *Clear and conspicuous; segregation.* The clear and conspicuous standard requires that the disclosures required by §1026.37 be legible and in a readily understandable form. Section 1026.37(o)(1)(i) requires that the disclosures be grouped together and segregated from everything else. For example, creditors may not add additional pages in between the pages of the Loan Estimate, or attach to the Loan Estimate additional pages that are not provided for under §1026.37 after the last page of the Loan Estimate. As required by §1026.37(o)(3)(i), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H–24 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of §1026.37(o). In addition, §1026.37(o)(1)(ii) requires creditors to disclose on the Loan Estimate only the information required by §1026.37(a) through (n), except as otherwise provided by §1026.37(o), and in the same order, and positioned relative to the master headings, headings, subheadings, labels, and similar designations in the same manner, as shown in form H–24, set forth in appendix H to this part. For example, creditors may not use form H–24, but include in the Loan Terms table under the subheading ''Can this amount increase after closing?'' information that is not required by §1026.37(b)(6).

2. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens, and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Under §1026.37(o)(1)(ii), creditors may not include any additional information with the disclosures required by §1026.37, except as provided in §1026.37(o)(5). Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by §1026.37(c) and should not, for example, reflect the other options available to the consumer at maturity.

37(o)(2) Headings and labels.

1. *Estimated amounts.* Section 1026.37(o)(2) incorporates the ''estimated'' designations reflected on form H–24 of appendix H to this part into the disclosure requirements of §1026.37, even if the relevant provision of §1026.37 does not expressly require or permit disclosure of the word ''estimate.'' Where form H–24 uses the abbreviation ''est.'' in place of the word ''estimated,'' §1026.37(o)(2) also incorporates that designation into its requirement. For example, §1026.37(c)(2)(iv) requires disclosure of the total periodic payment labeled ''Total Monthly Payment,'' but the label on form H–24 contains the designation ''Estimated'' and thus, the label required by §1026.37(c)(2)(iv) must contain the designation ''Estimated.'' Although many of the disclosures required by §1026.38 cross-reference their counterparts in §1026.37, §1026.38(t) incorporates the ''estimated'' designations reflected on form H–25, not form H–24.

37(o)(3) Form.

1. *Non-federally related mortgage loans.* For a non-federally related mortgage loan, the

creditor is not required to use form H–24 of appendix H to this part, although its use as a model form for such transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of §1026.37(o)(1)(i). Even when the creditor elects not to use the model form, §1026.37(o)(1) requires that the disclosures be grouped together and segregated from everything else; contain only the information required by §1026.37(a) through (n); and be provided in the same order as they occur in form H–24, using the same relative positions of the headings, labels, and similar designations as shown in the form. In addition, §1026.37(o)(2) requires that the creditor include the designation of ''estimated'' for all headings, subheading, labels, and similar designations required by §1026.37 for which form H–24 contains the ''estimated'' designation in such heading, subheading, label, or similar designation. The disclosures required by §1026.37 comply with the requirement to be in a format substantially similar to form H–24 when provided on letter size (8.5″ x 11″) paper.

37(o)(4) Rounding.

1. *Rounding.* Consistent with §1026.2(b)(4), except as otherwise provided in §1026.37(o)(4), any amount required to be disclosed by §1026.37 is not permitted to be rounded and is disclosed using decimal places where applicable, unless otherwise provided.

2. *Calculations.* If a dollar amount that is required to be rounded by §1026.37(o)(4)(i) on the Loan Estimate is a total of one or more dollar amounts that are not required or permitted to be rounded, the total amount must be rounded consistent with §1026.37(o)(4)(i), but such component amounts used in the calculation must use such unrounded numbers. In addition, if any such unrounded component amount is required to be disclosed under §1026.37, consistent with §1026.2(b)(4), it should be disclosed as an unrounded number. If an amount that is required to be rounded by §1026.37(o)(4)(i) on the Loan Estimate is a total of one or more components that are also required to be rounded by §1026.37(o)(4)(i), the total amount must be calculated using such rounded amounts. For example, the subtotals required to be disclosed by §1026.37(f)(1), (2), and (3) are calculated using the rounded amounts disclosed under those subsections. *See also* comment 37(o)(4)(i)(C)–1. However, the amounts required to be disclosed by §1026.37(l) reference actual amounts for their components, rather than other amounts disclosed under §1026.37 and rounded pursuant to §1026.37(o)(4)(i), and thus, they are calculated using unrounded numbers.

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

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

1. *Rounding of dollar amounts.* Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, under §1026.37(o)(4)(i)(A), periodic mortgage insurance payments are rounded and disclosed to the nearest dollar, such that a periodic mortgage insurance payment of $164.50 is disclosed under §1026.37(c)(2)(ii) as $165, but a periodic mortgage insurance payment of $164.49 is disclosed as $164. The per-diem amount disclosed under §1026.37(g)(2)(iii) and the monthly amounts for the initial escrow payment at closing disclosed pursuant to §1026.37(g)(3)(i) through (iii) and (v) do not include partial cents. Dollar amounts are rounded or truncated to the nearest whole cent. For example, under §1026.37(g)(2)(iii), the creditor discloses per-diem interest of $68.1254 as $68.13 or $68.12. See form H–24(B) in appendix H to this part for an illustration of per-diem amounts for homeowner's insurance disclosed pursuant to §1026.37(g)(3)(i).

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

1. *Rounding of loan amount.* Section 1026.37(o)(4)(i)(B) requires the loan amount to be disclosed truncated at the decimal place if the loan amount is a whole number. For example, if §1026.37(b)(1) requires disclosure of a loan amount of $481,516.23, the creditor discloses the amount as $481,516.23. However, if the loan amount required to be disclosed were $481,516.00, the creditor would disclose $481,516.

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

1. *Rounding of the total monthly payment.* Section 1026.37(o)(4)(i)(C) requires the total monthly payment amount disclosed under §1026.37(c)(2)(iv) to be rounded if any of its components are rounded. For example, if the total monthly payment disclosed under §1026.37(c)(2)(iv) is composed of a $2,000.49 periodic principal and interest payment required to be disclosed by §1026.37(c)(2)(i) and a $164.49 periodic mortgage insurance payment required to be disclosed by §1026.37(c)(2)(ii), the creditor would calculate the total monthly payment by adding the exact periodic principal and interest payment of $2,000.49 and the rounded periodic mortgage insurance payment of $164, round the total, and disclose $2,164.

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

1. *Decimal places.* Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed rounding exact amounts to three decimal places, but the creditor does not disclose trailing zeros to the right of the decimal point. For example, a 2.4999 percent annual percentage rate is disclosed as ''2.5%'' under §1026.37(o)(4)(ii). Similarly, a 7.005 percent annual percentage rate is disclosed as ''7.005%,'' and a 7.000 percent annual percentage rate is disclosed as ''7%.''

37(o)(5) Exceptions.

1. *Permissible changes.* The changes required or permitted by §1026.37(o)(5) are permitted for federally related mortgage loans for which the use of form H–24 is required under

§1026.37(o)(3). For non-federally related mortgage loans, the changes required or permitted by §1026.37(o)(5) do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore, are permissible. Any changes to the disclosure not specified in §1026.37(o)(5) or not permitted by other provisions of §1026.37 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130.

2. *Manual completion.* Section 1026.37(o) does not require the creditor to use a computer, typewriter, or other word processor to complete the disclosure form. The information and amounts required to be disclosed by §1026.37 on form H–24 of appendix H to this part may be filled in by hand printing or using any other method, provided the information is clear and legible and complies with the formatting required by form H–24, including replicating bold font where required.

3. *Contact information.* If a transaction involves more than one creditor or mortgage broker, the space provided on form H–24 of appendix H to this part for the contact information required by §1026.37(m) may be altered to add additional labels to accommodate the additional information of such parties, provided that the information required by §1026.37(l), (m), and (n) are disclosed on the same page as illustrated by form H–24. If the space provided on form H–24 of appendix H to this part does not allow for the disclosure of such contact and other information on the same page, an additional page may be added to provide the required contact information with an appropriate reference to the additional page.

4. *Unit-period.* Section 1026.37(o)(5)(i) provides that wherever form H–24 or §1026.37 uses ''monthly'' to describe the frequency of any payments or uses ''month'' to describe the applicable unit-period, the creditor is required to substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments. For purposes of §1026.37, the term ''unit-period'' has the same meaning as in appendix J to Regulation Z.

5. *Additional page.* Information required or permitted to be disclosed by §1026.37 on a separate page should be formatted similarly to form H–24 of appendix H to this part, so as not to affect the substance, clarity, or meaningful sequence of the disclosure. In addition, information provided on additional pages should be consolidated on as few pages as necessary to not affect the substance, clarity, or meaningful sequence of the disclosure.

6. *Translation.* Section 1026.37(o)(5)(ii) permits the translation of form H–24 into languages other than English, consistent with §1026.27. Pursuant to §1026.37(o)(5)(ii) creditors may modify form H–24 to the extent that translation prevents the headings, labels, designations, and required disclosure items under §1026.37 from fitting in the space provided on form H–24. For example, if the translation of a required label does not fit within the line provided for such label in form H–24, the label may be disclosed over two lines. See form H–28 of appendix H to this part for Spanish translations of form H–24.

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

1. *Disclosures not applicable.* Where a disclosure is not applicable to a particular transaction, form H–25 of appendix H to this part may not be modified to state ''not applicable'' or ''N/A.'' The portion of the form pertaining to the inapplicable disclosure may be left blank unless otherwise provided by §1026.38. For example, the disclosure required by §1026.38(r) of the consumer's or seller's real estate broker may be left blank for a transaction that does not involve real estate brokers, such as a refinance or home equity loan. As provided in §1026.38(m) and (n), however, the adjustable payment and adjustable interest rate tables required by those paragraphs may be included only if those disclosures are applicable to the transaction and otherwise must be excluded.

2. *Format.* See §1026.38(t) and its commentary for guidance on the proper format to be used in making the disclosures, as well as required and permissible modifications.

3. *Good faith requirement.* The disclosures required by §1026.38 are required to reflect the actual terms of the legal obligation between the parties, and the actual costs associated with the settlement of the transaction. Creditors and settlement agents may estimate disclosures as provided pursuant to §1026.19(f)(1)(i) when the actual term or cost is unknown at the time the disclosures are made. *See* §§1026.17(c)(2) and 1026.19(f)(1)(i) and comments 17(c)(2)(i)–1 and –2, and 19(f)(1)(i)–2.

4. *Reductions in principal balance.* A principal reduction that occurs immediately or very soon after closing must be disclosed in the summaries of transactions table on the standard Closing Disclosure pursuant to §1026.38(j)(1)(v) or in the payoffs and payments table on the alternative Closing Disclosure pursuant to §1026.38(t)(5)(vii)(B). The disclosure of a principal reduction under §1026.38(j)(1)(v) or (t)(5)(vii)(B) includes the following elements: (1) The amount of the principal reduction; (2) the phrase ''principal reduction'' or a similar phrase; (3) for a principal reduction disclosure under

§1026.38(t)(5)(vii)(B) only, the name of the payee; (4) if applicable to the transaction, the phrase ''Paid Outside of Closing'' or ''P.O.C.'' and the name of the party making the payment; and (5) if the principal reduction is used to satisfy the requirements of §1026.19(f)(2)(v), a statement that the principal reduction is being provided to offset charges that exceed the legal limits, using any language that meets the clear and conspicuous standard under §1026.38(t)(1)(i). If a creditor is required to disclose the name of the party making the payment or that the principal reduction is being provided to offset charges that exceed the legal limits, and there is insufficient space under the §1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure for these elements of the principal reduction disclosure, the creditor may omit these elements from the §1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure. If the creditor omits these elements from the §1026.38(j)(1)(v) or (t)(5)(vii)(B) disclosure, the creditor must provide a complete principal reduction disclosure under an appropriate heading on an additional page, in accordance with §1026.38(j) and (t)(5)(ix), as applicable, with a reference to the abbreviated principal reduction disclosure under §1026.38(j)(1)(v) or (t)(5)(vii)(B).

i. *Principal reduction not paid with closing funds.* A principal reduction is disclosed in the summaries of transactions table under §1026.38(j)(1)(v) and marked with the phrase ''Paid Outside of Closing'' or the abbreviation ''P.O.C.'' pursuant to §1026.38(j)(4)(i), or in the payoffs and payments table under §1026.38(t)(5)(vii)(B) marked with the phrase ''Paid Outside of Closing'' or the abbreviation ''P.O.C.,'' if it is not paid from closing funds. For a principal reduction disclosed under §1026.38(j)(1)(v) that is not paid from closing funds, the amount of the principal reduction is not included in computing the summaries of transactions totals under §1026.38(j) or the cash to close disclosures under §1026.38(i). For a principal reduction disclosed under §1026.38(t)(5)(vii)(B) that is not paid from closing funds, the amount of the principal reduction is not included in computing the total payoffs and payments amount disclosed under §1026.38(t)(5)(vii)(B) or the cash to close amount disclosed under §1026.38(e)(5)(ii). For example, a creditor providing a $500 principal reduction to satisfy the refund requirements of §1026.19(f)(2)(v) discloses the principal reduction under §1026.38(j)(1)(v) by providing in Section K of the summaries of transactions table a statement such as ''$500.00 Principal Reduction for exceeding legal limits P.O.C. Lender,'' and not including the amount of the principal reduction in the summaries of transactions totals under §1026.38(j) or the calculating cash to close disclosures under §1026.38(i). Alternatively, if there is insufficient space under §1026.38(j)(1)(v) for a creditor to disclose the name of the party making the payment or a statement that the principal reduction is being provided to offset charges that exceed the legal limits, a creditor may disclose a statement such as ''$500.00 Principal Reduction P.O.C.'' under §1026.38(j)(1)(v) and a statement on an additional page such as ''$500.00 Principal Reduction for exceeding legal limits P.O.C. Lender. See Section K on page 3.''

ii. *Principal reduction paid with closing funds.* A principal reduction is disclosed in the summaries of transactions table under §1026.38(j)(1)(v) or in the payoffs and payments table under §1026.38(t)(5)(vii)(B) without the phrase ''Paid Outside of Closing'' or the abbreviation ''P.O.C.'' if it is paid from closing funds. The amount of a principal reduction that is paid with closing funds is included in the applicable calculations required under §1026.38. For example, in a refinance transaction using the alternative tables on the Closing Disclosure, a creditor discloses a $1,000 principal reduction to reduce the cash provided to the consumer by providing in the payoffs and payments table under §1026.38(t)(5)(vii)(B) a statement such as ''Principal Reduction to Consumer'' under the column heading ''TO'' and ''$1,000.00'' under the column heading ''AMOUNT,'' and by including such amount in the total payoffs and payments amount under §1026.38(t)(5)(vii)(B) and in the cash to close amount under §1026.38(e)(5)(ii). In this example, the creditor must disclose the following elements under §1026.38(t)(5)(vii)(B): The amount of the principal reduction, the phrase ''principal reduction'' or a similar phrase, and the name of the payee. The creditor should not include in the disclosure the phrase ''Paid Outside of Closing'' or ''P.O.C.'' and the name of the party making the payment, or a statement that the principal reduction is being provided to offset charges that exceed the legal limits, because those principal reduction disclosure elements are not applicable to the transaction in this particular example. The creditor may not use an addendum for the principal reduction disclosure in this example.

38(a) General information.

38(a)(3) Closing information.

38(a)(3)(i) Date issued.

1. *Applicable date.* For general guidance on identifying the date issued for the Closing Disclosure, see the commentary to §1026.37(a)(4).

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

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

38(a)(3)(iv) Settlement agent.

1. *Entity name.* Section 1026.38(a)(3)(iv) requires the name of the entity that employs the settlement agent. The name of the individual conducting the closing is not required.

38(a)(3)(v) File number.

1. *Alpha-numeric characters.* The file number required by § 1026.38(a)(3)(v) may contain any alpha-numeric characters and need not be limited to numbers.

38(a)(3)(vi) Property.

1. *Alternative property.* For guidance on disclosing the location of a property for which an address is unavailable, see the commentary to § 1026.37(a)(6). Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option, pursuant to § 1026.38(a)(3)(vi). If the form does not provide enough space to disclose a description of personal property under § 1026.38(a)(3)(vi), at the creditor's option an additional page may be used and appended to the end of the form provided that the creditor complies with the requirements of § 1026.38(t)(3).

2. *Multiple properties.* Where more than one property secures the credit transaction, § 1026.38(a)(3)(vi) requires disclosure of all property addresses. If the addresses of all properties securing the transaction do not fit in the space allocated on the Closing Disclosure, an additional page with the addresses of all such properties may be appended to the end of the form.

38(a)(3)(vii) Sale price.

1. *No seller.* In transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to ''Estimated Prop. Value.'' The creditor may use the estimate provided by the consumer at application but, if it has performed its own estimate of the property value for purposes of approving the credit transaction by the time the disclosure is provided to the consumer, the creditor must disclose the estimate it used for purposes of approving the credit transaction. For transactions involving construction where there is no seller, the creditor must disclose the value of the property that is used to determine the approval of the credit transaction, including improvements to be made on the property if those improvements are used in determining the approval of the credit transaction.

2. *Personal property.* For guidance on how to disclose the sale price of a transaction that includes personal property under § 1026.38(a)(3)(vii), see comment 37(a)(7)–2.

38(a)(4) Transaction information.

1. *Multiple borrowers and sellers.* The name and address of each consumer and seller in the transaction must be provided under the heading ''Transaction Information.'' If the form does not provide enough space to include the required information for each consumer and seller, an additional page may be used and appended to the end of the form provided that the creditor complies with the requirements of § 1026.38(t)(3). For additional guidance on disclosing multiple borrowers, see comment 37(a)(5)–1.

2. *No seller transactions or simultaneous subordinate financing transactions.* In transactions where there is no seller, such as in a refinancing or home equity loan, or for simultaneous subordinate financing purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction, the disclosure under § 1026.38(a)(4)(ii) may be left blank. *See also* § 1026.38(t)(5)(vii)(A).

3. *Multiple creditors.* See comment 37(a)(3)–1 regarding identification requirements for multiple creditors.

4. *Consumers.* Section 1026.38(a)(4)(i) requires disclosure of the consumer's name and mailing address, labeled ''Borrower.'' For purposes of § 1026.38(a)(4)(i), the term ''consumer'' is limited to persons to whom the credit is offered or extended. For guidance on how to disclose multiple consumers, see comment 38(a)(4)–1.

38(a)(5) Loan information.

1. *General.* See commentary to § 1026.37(a)(8) through (12) for guidance on the general requirements and definitions applicable to § 1026.38(a)(5)(i) through (v).

38(a)(5)(v) Loan identification number.

1. *Same identification number as Loan Estimate.* The loan identification number disclosed pursuant to § 1026.38(a)(5)(v) must be one that enables the creditor, consumer, and other parties to identify the transaction as the same transaction disclosed on the Loan Estimate. The loan identification number may contain any alpha-numeric characters. If a creditor uses the same loan identification number on several revised Loan Estimates to the consumer, but adds after such number a hyphen and a number to denote the number of revised Loan Estimates in sequence, the creditor must disclose the loan identification number before such hyphen on the Closing Disclosure to identify the transaction as the same for which the initial and revised Loan Estimates were provided.

38(b) Loan terms.

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

38(c) Projected payments.

1. *In general.* For guidance on the disclosure of the projected payments table, see §1026.37(c) and its commentary.

38(c)(1) Projected payments or range of payments.

1. *Escrow account analysis.* The amount of estimated escrow payments disclosed on the Closing Disclosure is accurate if it differs from the estimated escrow payment disclosed on the Loan Estimate because of the escrow account analysis described in Regulation X, 12 CFR 1024.17.

38(d) Costs at closing.

38(d)(2) Alternative table for transactions without a seller or for simultaneous subordinate financing.

1. *Required use.* The disclosure of the alternative cash to close table in §1026.38(d)(2) may only be provided by a creditor in a transaction without a seller or for a simultaneous subordinate financing transaction. In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative table for transactions without a seller or for simultaneous subordinate financing transactions is required if the Loan Estimate provided to the consumer disclosed the optional alternative table under §1026.37(d)(2) and must be used in conjunction with the use of the alternative calculating cash to close disclosure under §1026.38(e). See comments 38(j)–3 and 38(k)(2)(vii)–1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing. See also comments 38(t)(5)(vii)(B)–1 and –2 for the requirement to disclose the seller's contributions, if any, toward the subordinate financing in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure.

2. *Method of indication.* The indication of whether the cash is either due from or payable to the consumer is made by the use of check boxes as shown in form H–25(J) of appendix H to this part. Forms H–25(E) and H–25(G) of appendix H to this part contain examples of the use of these checkboxes.

38(e) Alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing.

1. *Required use.* The disclosure of the table in §1026.38(e) may only be provided by a creditor in a transaction without a seller or for a simultaneous subordinate financing transaction. In a purchase transaction, the alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative calculating cash to close table for transactions without a seller or for simultaneous subordinate financing is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional alternative table under §1026.37(h)(2), and must be used in conjunction with the alternative disclosure under §1026.38(d)(2).

2. *More prominent disclosures.* Section 1026.38(e)(1)(iii), (2)(iii), (3)(iii), and (4)(iii) requires that statements are given as to whether the ''Final'' amount disclosed under each subparagraph (ii) of §1026.38(e)(1) through (e)(4) is different than or equal to, and in some cases whether the amount is greater than or less than, the corresponding ''Loan Estimate'' amount disclosed under each subparagraph (i) of §1026.38(e)(1) through (e)(4). These statements are more prominent than the other disclosures under §1026.38(e). The statement of whether the estimated and final amounts are different, stated as a ''Yes'' or ''No'' in capital letters and in boldface, under the subheading ''Did this change?,'' as shown on forms H–25(E) and H–25(G) of appendix H to this part, complies with the requirement to state whether the amounts are different more prominently. Such statement of ''No'' satisfies the requirement to state that the estimated and final amounts are equal, and these sections do not provide for any narrative text to be included with such statement. The prominence requirement also requires that, in the event an increase or decrease in costs has occurred, certain words within the narrative text to be included under the subheading ''Did this change?'' for a ''Yes'' answer are displayed more prominently than other disclosures. For example, under §1026.38(e)(2)(iii)(A), this more prominent statement could take the form of the phrases ''Total Loan Costs (D)'' and ''Total Other Costs (I)'' being shown in boldface, as shown on forms H–25(E) and H–25(G) of appendix H to this part. See comment 38(e)–4 for further guidance regarding the prominence of such statements.

3. *Statements of differences.* The dollar amounts disclosed under §1026.38 generally are shown to two decimal places unless otherwise required. *See* comment 38(t)(4)–1. Any amount in the ''Final'' column of the alternative calculating cash to close table under §1026.38(e) is shown to two decimal places unless otherwise required. Pursuant to §1026.38(t)(4)(i)(C), however, any amount in the ''Loan Estimate'' column of the alternative calculating cash to close table under §1026.38(e) is rounded to the nearest dollar amount to match the corresponding estimated amount disclosed on the Loan Estimate's calculating cash to close table under §1026.37(h). For purposes of §1026.38(e)(1)(iii), (2)(iii), and (4)(iii), each statement of a change between the amounts disclosed on

the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under §1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amounts in the ''Loan Estimate'' column of the total closing costs row disclosed under §1026.38(e)(2)(i) is $12,500, but the non-rounded estimate of total closing costs is $12,500.35, and the ''Final'' column of the total closing costs row disclosed under §1026.38(e)(2)(ii) is $12,500.35, then, even though the table would appear to show a $0.35 increase in total closing costs, no statement of such increase is given under §1026.38(e)(2)(iii).

4. *Statements that the consumer should see details.* The provisions of §1026.38(e)(2)(iii)(A) and (e)(4)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under §1026.38(f), (g), or (t). Forms H–25(E) and H–25(G) of appendix H to this part contain examples of these statements. For example, §1026.38(e)(4)(iii)(A) requires a statement that the consumer should see the details disclosed pursuant to §1026.38(t)(5)(vii)(B), and, as shown on forms H–25(E) and H–25(G) of appendix H to this part, the statement, ''See Payoffs and Payments,'' in which the words ''Payoffs and Payments'' are in boldface, complies with this provision.

5. *Statement of increase or decrease.* Section 1026.38(e)(1)(iii)(A) requires a statement of whether the loan amount increased or decreased. A creditor complies with this requirement by disclosing, ''This amount increased'' or ''This amount decreased'' with the words ''increase'' and ''decrease'' in boldface font.

6. *Estimated amounts.* The amounts disclosed on the alternative calculating cash to close table under the subheading ''Loan Estimate'' under §1026.38(e)(1)(i), (2)(i), (4)(i), and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer under §1026.19(e).

38(e)(1) Loan amount.

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

1. *Statements of increases or decreases.* Section 1026.38(e)(1)(iii)(A) requires a statement of whether the amount increased or decreased from the estimated amount. The statement, ''This amount increased,'' in which the word ''increased'' is in boldface font and is replaced with the word ''decreased'' as applicable, complies with this requirement.

38(e)(2) Total closing costs.

Paragraph 38(e)(2)(i).

1. *Reference to disclosure of total closing costs.* Under §1026.38(e)(2)(i), the amount disclosed is labeled ''Total Closing Costs,'' and such label is accompanied by a reference to the disclosure of ''Total Closing Costs'' under §1026.38(h)(1). This reference may take the form, for example, of a cross-reference in parenthesis to the row on the table disclosed under §1026.38(h) that includes the itemized amount for ''Total Closing Costs,'' as shown on form H–25 of appendix H to this part.

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

1. *Statements and references regarding the total loan costs and total other costs.* Under §1026.38(e)(2)(iii)(A), the statements under the subheading ''Did this change?'' that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under §1026.38(f)(4) and (g)(5) are made only if and to the extent the difference in the ''Total Closing Costs'' is attributable to differences in itemized charges that are included in either or both of such subtotals.

i. For example, if an increase in the ''Total Closing Costs'' is attributable only to an increase in the appraisal fee (which is an itemized charge on the Closing Disclosure under the subheading ''Services Borrower Did Not Shop For,'' itself under the heading ''Loan Costs''), then a statement is given under the subheading ''Did this change?'' that the consumer should see the total loan costs subtotal disclosed on the Closing Disclosure under §1026.38(f)(4). If the increase in ''Total Closing Costs'' is attributable only to an increase in recording fees (which is an itemized charge on the Closing Disclosure under the subheading ''Taxes and Other Government Fees,'' itself under the heading ''Other Costs''), then a statement is given under the subheading ''Did this change?'' that the consumer should see the total other costs subtotal disclosed on the Closing Disclosure under §1026.38(g)(5). If, however, the increase is attributable in part to an increase in the appraisal fee and in part to an increase in the recording fee, then a statement is given under the subheading ''Did this change?'' that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under §1026.38(f)(4) and (g)(5).

ii. For guidance regarding the requirement that this statement be accompanied by a reference to the disclosures of the total loan costs and total other costs under §1026.38(f)(4) and (g)(5), see comment 38(e)(2)(i)–1. For an example of such reference, see form H–25 of appendix H to this part.

2. *Disclosure of excess amounts above limitations on increases in closing costs.*

i. Because certain closing costs, individually, are generally subject to the limitations on increases in closing costs under §1026.19(e)(3)(i) (*e.g.*, fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under §1026.19(e)(3)(ii) (*e.g.*, recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), §1026.38(e)(2)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to §1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under §1026.19(e)(3).

ii. Under §1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under ''Services You Cannot Shop For'' a $30 charge for a ''title courier fee,'' but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the ''Total Closing Costs'' that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third party service was actually provided, albeit at a lower amount than estimated. For an example, see form H–25 of appendix H to this part.

iii. Under §1026.38(e)(2)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading ''Services You Can Shop For'' may be subject to different limitations depending on the circumstances. Although §1026.19(e)(3)(iii) provides exceptions to the general rule, such a charge would generally be subject to the limitations under §1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under §1026.19(e)(3)(ii) if the consumer selected a third party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to §1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under §1026.19(e)(3).

3. *Statements regarding excess amount and any credit to the consumer.* Section 1026.38(e)(2)(iii)(A) requires a statement that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under §1026.38(h)(3) or a principal reduction under §1026.38(t)(5)(vii)(B), if provided under §1026.19(f)(2)(v). See form H–25(F) in appendix H to this part for examples of such statements under §1026.38(h)(3). *See also* comments 38–4 and 38(h)(3)–2.

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

Paragraph 38(e)(3)(i).

1. *Estimate of closing costs paid before closing.* Under §1026.38(e)(3)(i), the ''Loan Estimate'' amount for ''Closing Costs Subtotal Paid Before Closing'' is always shown as ''$0,'' because an estimate of such amount is not disclosed on the Loan Estimate.

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

1. *Equal amount.* Under §1026.38(e)(3)(iii)(B), the creditor gives a statement that the ''Final'' amount disclosed under §1026.38(e)(3)(ii) is equal to the ''Loan Estimate'' amount disclosed under §1026.38(e)(3)(i), only if the ''Final'' amount is $0, because the ''Loan Estimate'' amount is always disclosed as $0 under §1026.38(e)(3)(i). *See* comment 38(e)(3)(i)–1.

38(f) Closing cost details; loan costs.

1. *Lender-paid charges and specific lender credits.* Charges that are designated as paid by others under §1026.38(f) and (g), below, may include the letter ''L'' in parentheses, *i.e.* ''(L),'' to the left of the amount in the column to designate those charges paid by the creditor pursuant to the legal obligation between the creditor and consumer.

2. *Construction loan inspection and handling fees.* Construction loan inspection and handling fees are loan costs associated with the transaction for purposes of §1026.38(f). For information on how to disclose inspection and handling fees for the staged disbursement of construction loan proceeds if the amount or number of such fees or when they will be collected is not known at or before consummation, see comments 37(f)–3, 37(f)(6)–3, and app. D–7.vii. See §1026.17(e) and its commentary concerning the effect of subsequent events that cause inaccuracies in disclosures.

38(f)(1) Origination charges.

1. *Guidance in other comments.* For a description of origination charges and discount points, see comments 37(f)(1)–1, –2, and –3.

2. *Loan originator compensation.* All compensation paid to a loan originator, as defined by §1026.36(a)(1), that is a third-party associated with the transaction, regardless of the party that pays the compensation, must be disclosed pursuant to §1026.38(f)(1). Compensation from the consumer to a third-party loan originator is designated as borrower-paid at or before closing, as applicable, on the Closing Disclosure. Compensation from the creditor to a third-party loan originator is designated as paid by others on the Closing Disclosure. Compensation to a third-party loan originator from both the consumer and the creditor in the transaction is prohibited under §1026.36(d)(2).

3. *Calculating compensation to a loan originator from the creditor.* The amount disclosed as paid from the creditor to a third-party

loan originator under §1026.38(f)(1) is the dollar value of salaries, commissions, and any financial or similar compensation provided to a third-party loan originator by the creditor that are considered to be points and fees under §1026.32(b)(1)(ii). For additional guidance and examples on the calculation of compensation paid to the third-party loan originator from the creditor, see comments 32(b)(1)(ii)–1, —2, –3, and –4.

38(f)(2) Services borrower did not shop for.

1. *Guidance in other comments.* For examples of services, costs, and their descriptions disclosed under §1026.38(f)(2), see comments 37(f)(2)–1, –2, –3, and –4.

38(f)(3) Services borrower did shop for.

1. *Provider on written list.* Items that were disclosed pursuant to §1026.37(f)(3) cannot be disclosed under §1026.38(f)(3) when the consumer selected a provider contained on the written list provided under §1026.19(e)(1)(vi)(C). Instead, such costs are disclosed pursuant to §1026.38(f)(2).

38(f)(5) Subtotal of loan costs.

1. *Charges subtotaled.* The only charges that are loan costs that are subtotaled pursuant to §1026.38(f)(5) are those costs designated borrower-paid at or before closing. Charges which are loan costs designated seller-paid at or before closing, or paid by others, are not subtotaled pursuant to §1026.38(f)(5). The subtotal of charges that are seller-paid at or before closing or paid by others is disclosed under §1026.38(h)(2).

38(g) Closing costs details; other costs.

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

1. *Guidance.* For additional guidance on taxes and other government fees, see comments 37(g)(1)–1, –2, –3, and –4.

2. *Transfer taxes—itemization.* The creditor may itemize the transfer taxes paid on as many lines as necessary pursuant to §1026.38(g)(1) in order to disclose all of the transfer taxes paid as part of the transaction. The taxes should be allocated in the applicable columns as borrower-paid at or before closing, seller-paid at or before closing, or paid by others, as provided by State or local law, the terms of the legal obligation, or the real estate purchase contract.

3. *Recording fees.* i. *Fees for recording deeds and security instruments.* Section 1026.38(g)(1)(i)(A) requires, on the first line under the subheading ''Taxes and Other Government Fees'' and before the columns described in §1026.38(g), disclosure of the total fees expected to be paid to State and local governments for recording deeds and, separately, the total fees expected to be paid to State and local governments for recording security instruments. On a line labeled ''Recording Fees,'' form H–25 of appendix H to this part illustrates such disclosures with the additional labels ''Deed'' and ''Mortgage,'' respectively.

ii. *Total of all recording fees.* Section 1026.38(g)(1)(i)(B) requires, on the first line under the subheading ''Taxes and Other Government Fees'' and in the applicable column described in §1026.38(g), disclosure of the total amounts paid for recording fees, including but not limited to the amounts subject to §1026.38(g)(1)(i)(A). The total amount disclosed under §1026.38(g)(1)(i)(B) also includes recording fees expected to be paid to State and local governments for recording any other instrument or document to preserve marketable title or to perfect the creditor's security interest in the property. See comments 37(g)(1)–1, –2, and –3 for discussions of the difference between transfer taxes and recording fees.

38(g)(2) Prepaids.

1. *Guidance.* For additional guidance on prepaids, see comments 37(g)(2)–1 and –2.

2. *Negative prepaid interest.* The prepaid interest amount is disclosed as a negative number if the calculation of prepaid interest results in a negative number.

3. *No prepaid interest.* If interest is not collected for any period between closing and the date from which interest will be collected with the first monthly payment, then $0.00 is disclosed under §1026.38(g)(2).

4. *Interest rate for prepaid interest.* The dollar amounts disclosed pursuant to §1026.38(g)(2) must be based on the interest rate disclosed under §1026.38(b), as required by §1026.37(b)(2).

5. *Property taxes.* For a description of items that constitute property taxes, see comment 43(b)(8)–2.

38(g)(3) Initial escrow payment at closing.

1. *Initial escrow account itemization.* The creditor must state the amount that it will require the consumer to place into a reserve or escrow account at consummation to be applied to recurring charges for property taxes, homeowner's and similar insurance, mortgage insurance, homeowner's association dues, condominium dues, and other periodic charges. Each periodic charge to be included in the escrow or reserve account must be itemized under the ''Initial Escrow Payment at Closing'' subheading, with a relevant label, monthly payment amount, and number of months collected at closing.

2. *Aggregate accounting.* The method used to determine the aggregate adjustment for the purposes of establishing the escrow account is described in 12 CFR 1024.17(d)(2). Examples of this calculation methodology can be found in appendix E to 12 CFR part 1024. The aggregate adjustment, as illustrated by form H–25 of appendix H to this part, is disclosed as the last listed item in the amounts disclosed under §1026.38(g)(3).

3. *Escrowed tax payments for different timeframes.* Payments for property taxes that are paid at different time periods can be itemized separately when done in accordance with 12 CFR 1024.17. For example, a general property tax covering a fiscal year from January 1 to December 31 can be listed as a

property tax under §1026.38(g)(3) and a separate property tax to fund schools that cover a fiscal year from November 1 to October 31 can be added as a separate itemized amount under §1026.38(g)(3).

4. *Property taxes.* For a description of items that constitute property taxes, see comment 43(b)(8)–2.

5. *Definition of escrow account.* For a description of the amounts included in the initial escrow account disclosure under §1026.38(g)(3), see the definition of "escrow account" in 12 CFR 1024.17(b).

38(g)(4) Other.

1. *Costs disclosed.* The costs disclosed under §1026.38(g)(4) include all real estate brokerage fees, homeowner's or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor or not disclosed elsewhere under §1026.38.

2. *Owner's title insurance premium.* In a jurisdiction where simultaneous issuance title insurance rates are permitted, any owner's title insurance premium disclosed under §1026.38(g)(4) is calculated by using the full owner's title insurance premium, adding any simultaneous issuance premium for issuance of lender's coverage, and then deducting the full premium for lender's coverage disclosed under §1026.38(f)(2) or (f)(3). Section 1026.38(g)(4)(i) requires that the disclosure of the cost of the premium for an owner's title insurance policy include "Title—" at the beginning of the label. In addition, §1026.38(g)(4)(ii) requires that the disclosure of the cost of the premium for an owner's title insurance policy include the parenthetical "(optional)" at the end of the label when designated borrower-paid at or before closing.

3. *Guidance.* For additional guidance on the use of the term "(optional)" under §1026.38(g)(4)(ii), see comment 37(g)(4)–3.

4. *Real estate commissions.* The amount of real estate commissions pursuant to §1026.38(g)(4) must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. Additional charges made by real estate brokerages or agents to the seller or consumer are itemized separately as additional items for services rendered, with a description of the service and an identification of the person ultimately receiving the payment.

38(g)(6) Subtotal of costs.

1. *Costs subtotaled.* The only costs that are subtotaled pursuant to §1026.38(g)(6) are those costs that are designated borrower-paid at or before closing. Costs that are designated seller-paid at or before closing, or paid by others, are not subtotaled pursuant to §1026.38(g)(6). The subtotal of charges that are designated seller-paid at or before closing or paid by others is disclosed under §1026.38(h)(2).

38(h) Closing cost totals.

Paragraph 38(h)(2).

1. *Charges paid by seller and by others subtotaled.* All loan costs and other costs that are designated seller-paid at or before closing, or paid by others, are also totaled under §1026.38(h)(2).

Paragraph 38(h)(3).

1. *General lender credits.* When the consumer receives a generalized credit from the creditor for closing costs, the amount of the credit must be disclosed under §1026.38(h)(3). However, if such credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, pursuant to §1026.38(f) or (g), that amount should be reflected in the Paid by Others column in the Closing Cost Details tables under §1026.38(f) or (g). For a description of lender credits from the creditor, see comment 17(c)(1)–19. For a discussion of general lender credits and lender credits for specific charges, see comment 19(e)(3)(i)–5.

2. *Credits for excess charges.* Credits from the creditor to offset an amount charged in excess of the limitations described in §1026.19(e)(3) are disclosed pursuant to §1026.38(h)(3), along with a statement that such amount was paid to offset an excess charge, with funds other than closing funds. If an excess charge to the consumer is discovered after consummation and a refund provided, the corrected disclosure must be provided to the consumer under §1026.19(f)(2)(v). For an example, see form H–25(F) of appendix H to this part.

Paragraph 38(h)(4).

1. *Consistent terminology and order of charges.* On the Closing Disclosure the creditor must label the corresponding services and costs disclosed under §1026.38(f) and (g) using terminology that describes each item, as applicable, and must use terminology or the prescribed label, as applicable, that is consistent with that used on the Loan Estimate to identify each corresponding item. In addition, §1026.38(h)(4) requires the creditor to list the items disclosed under each subcategory of charges in a consistent order. If costs move between subheadings under §1026.38(f)(2) and (f)(3), listing the costs in alphabetical order in each subheading category is considered to be in compliance with §1026.38(h)(4). See comment 37(f)(5)–1 for guidance regarding the requirement to use terminology that describes the items to be disclosed.

38(i) Calculating cash to close.

1. *More prominent disclosures.* Section 1026.38(i)(1)(iii), (2)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii) requires that statements are given as to whether the "Final" amount disclosed under each subparagraph (ii) of §1026.38(i)(1) through (i)(8) is different or equal to, and in some cases whether the

amount is greater than or less than, the corresponding ''Loan Estimate'' amount disclosed under each subparagraph (i) of §1026.38(i)(1) through (i)(8). These statements are more prominent than the other disclosures under §1026.38(i). The statement of whether the estimated and final amounts are different, stated as a ''Yes'' or ''No'' in capital letters and in boldface font, under the subheading ''Did this change?,'' as shown on form H–25 of appendix H to this part, complies with the requirement to state whether the amounts are different more prominently. Such statement of ''No'' satisfies the requirement to state that the estimated and final amounts are equal, and these sections do not provide for any narrative text to be included with such statement. The prominence requirement also requires that, in the event an increase or decrease in costs has occurred, certain words within the narrative text to be included under the subheading ''Did this change?'' for a ''Yes'' answer are displayed more prominently than other disclosures. For example, under §1026.38(i)(1)(iii)(A), this more prominent statement could take the form of the phrases ''Total Loan Costs'' and ''Total Other Costs'' being shown in boldface, as shown on form H–25 of appendix H to this part. See comments 38(i)–3 and –4 for further guidance regarding the prominence of such statements.

2. *Statements of differences.* The dollar amounts disclosed under §1026.38 generally are shown to two decimal places unless otherwise required. *See* comment 38(t)(4)–1. Any amount in the ''Final'' column of the calculating cash to close table under §1026.38(i) is shown to two decimal places unless otherwise required. Under §1026.38(t)(4)(i)(C), however, any amount in the ''Loan Estimate'' column of the calculating cash to close table under §1026.38(i) is rounded to the nearest dollar amount to match the corresponding estimated amount disclosed on the Loan Estimate's calculating cash to close table under §1026.37(h). For purposes of §1026.38(i)(1)(iii), (3)(iii), (4)(iii), (5)(iii), (6)(iii), (7)(iii), and (8)(iii), each statement of a change between the amounts disclosed on the Loan Estimate and the Closing Disclosure is based on the actual, non-rounded estimate that would have been disclosed on the Loan Estimate under §1026.37(h) if it had been shown to two decimal places rather than a whole dollar amount. For example, if the amount in the ''Loan Estimate'' column of the total closing costs row disclosed under §1026.38(i)(1)(i) is $12,500, but the non-rounded estimate of total closing costs is $12,500.35, and the amount in the ''Final'' column of the total closing costs row disclosed under §1026.38(i)(1)(ii) is $12,500.35, then, even though the table would appear to show a $0.35 increase in total closing costs, no statement of such increase is given under §1026.38(i)(1)(iii).

3. *Statements that the consumer should see details.* The provisions of §1026.38(i)(4)(iii)(A), (5)(iii)(A), (7)(iii)(A), and (8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under §1026.38(j). Form H–25 of appendix H to this part contains some examples of these statements. For example, §1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed under §1026.38(j)(2)(ii). The following statement, which is similar to that shown on form H–25(B) of appendix H to this part for §1026.38(i)(7)(iii)(A), ''See Deposit in Section L,'' in which the words ''Section L'' are in boldface font, complies with this provision. In addition, for example, the statement ''See details in Sections K and L,'' in which the words ''Sections K and L'' are in boldface font, complies with the requirement under §1026.38(i)(8)(iii)(A). See form H–25(B) of appendix H to this part for an example of the statement required by §1026.38(i)(8)(iii)(A). See also comment 38(i)(7)(iii)(A)–1 for additional examples that comply with the requirements under §1026.38(i)(7)(iii)(A).

4. *Statements of increases or decreases.* The provisions of §1026.38(i)(4)(iii)(A), (i)(5)(iii)(A), and (i)(6)(iii)(A) each require a statement of whether the amount increased or decreased from the estimated amount. For the statement required by §1026.38(i)(6)(iii)(A), the statement ''This amount increased,'' in which the word ''increased'' is in boldface and is replaced with the word ''decreased'' as applicable, complies with this requirement. For the statements required by §1026.38(i)(4)(iii)(A) and (i)(5)(iii)(A), the statement, ''You increased this payment,'' in which the word ''increased'' is in boldface and is replaced with the word ''decreased'' as applicable, complies with these requirements.

5. *Estimated amounts.* The amounts disclosed in the ''Loan Estimate'' column of the calculating cash to close table under §1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer.

38(i)(1) Total closing costs.

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

1. *Statements and references regarding the total loan costs and total other costs.* Under §1026.38(i)(1)(iii)(A), the statements under the subheading ''Did this change?'' that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under §1026.38(f)(4) and (g)(5) is made only if and to the extent the difference in the ''Total Closing Costs'' is attributable to differences in itemized charges that are included in either or both of such subtotals.

i. For example, if an increase in the ''Total Closing Costs'' is attributable only to an increase in the appraisal fee (which is an itemized charge on the Closing Disclosure under the subheading "Services Borrower Did Not Shop For," itself under the heading "Loan Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total loan costs subtotal disclosed on the Closing Disclosure under §1026.38(f)(4). If the increase in "Total Closing Costs" is attributable only to an increase in recording fees (which is an itemized charge on the Closing Disclosure under the subheading "Taxes and Other Government Fees," itself under the heading "Other Costs"), then a statement is given under the subheading "Did this change?" that the consumer should see the total other costs subtotal disclosed on the Closing Disclosure under §1026.38(g)(5). If, however, the increase is attributable in part to an increase in the appraisal fee and in part to an increase in the recording fee, then a statement is given under the subheading "Did this change?" that the consumer should see the total loan costs and total other costs subtotals disclosed on the Closing Disclosure under §1026.38(f)(4) and (g)(5).

ii. For guidance regarding the requirement that this statement be accompanied by a reference to the disclosures of the total loan costs and total other costs under §1026.38(f)(4) and (g)(5), see comment 38(i)–1. For an example of such reference, see form H–25 of appendix H to this part.

2. *Disclosure of excess amounts above limitations on increases in closing costs.*

i. Because certain closing costs, individually, are generally subject to the limitations on increases in closing costs under §1026.19(e)(3)(i) (*e.g.*, fees paid to the creditor, transfer taxes, fees paid to an affiliate of the creditor), while other closing costs are collectively subject to the limitations on increases in closing costs under §1026.19(e)(3)(ii) (*e.g.*, recording fees, fees paid to an unaffiliated third party identified by the creditor if the creditor permitted the consumer to shop for the service provider), §1026.38(i)(1)(iii)(A) requires the creditor or closing agent to calculate subtotals for each type of excess amount, and then add such subtotals together to yield the dollar amount to be disclosed in the table. See commentary to §1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under §1026.19(e)(3).

ii. Under §1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation. For example, if the Loan Estimate included under "Services You Cannot Shop For" a $30 charge for a "title courier fee," but the title company elects to hand-deliver the title documents package to the creditor at no charge, the $30 fee is not factored into the calculation of the "Total Closing Costs" that are subject to the limitations on increases in closing costs. However, if the title courier fee was assessed, but at only $15, the charge is factored into the calculation because the third-party service was actually provided, albeit at a lower amount than estimated.

iii. Under §1026.38(i)(1)(iii)(A), calculation of the excess amounts above the limitations on increases in closing costs takes into account that certain itemized charges listed on the Loan Estimate under the subheading "Services You Can Shop For" may be subject to different limitations depending on the circumstances. Although §1026.19(e)(3)(iii) provides exceptions to the general rule, such a charge would generally be subject to the limitations under §1026.19(e)(3)(i) if the consumer decided to use a provider affiliated with the creditor. However, the same charge would instead be subject to the limitations under §1026.19(e)(3)(ii) if the consumer selected a third-party service provider unaffiliated with but identified by the creditor, and the creditor permitted the consumer to shop for the service provider. See commentary to §1026.19(e)(3) for additional guidance on calculating excess amounts above the limitations on increases in closing costs under §1026.19(e)(3).

3. *Statements regarding excess amount and any credit to the consumer.* Section 1026.38(i)(1)(iii)(A)(*3*) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under §1026.38(h)(3), or a principal reduction under §1026.38(j)(1)(v), if either is provided under §1026.19(f)(2)(v). See form H–25(F) of appendix H to this part for examples of such statements under §1026.38(h)(3). *See also* comments 38–4 and 38(h)(3)–2.

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

Paragraph 38(i)(2)(i).

1. *Estimate of closing costs paid before closing.* Under §1026.38(i)(2)(i), the "Loan Estimate" amount for "Closing Costs Paid Before Closing" is always shown as "$0," because an estimate of such amount is not disclosed on the Loan Estimate.

Paragraph 38(i)(2)(iii)(B).

1. *Equal amount.* Under §1026.38(i)(2)(iii)(B), the creditor or closing agent will give a statement that the "Final" amount disclosed under §1026.38(i)(2)(ii) is equal to the "Loan Estimate" amount disclosed under §1026.38(i)(2)(i), only if the "Final" amount is $0, because the "Loan Estimate" amount is always disclosed as $0 pursuant to §1026.38(i)(2)(i). *See* comment 38(i)(2)(i)–1.

38(i)(3) Closing costs financed.

1. *Calculation of amount.* i. *Generally.* The amount of closing costs financed disclosed

under §1026.38(i)(3) is determined by subtracting the total amount of payments to third parties not otherwise disclosed under §1026.38(f) and (g) from the loan amount disclosed under §1026.38(b). The total amount of payments to third parties includes the sale price of the property disclosed under §1026.38(j)(1)(ii). Other examples of payments to third parties not otherwise disclosed under §1026.38(f) and (g) include the amount of construction costs for transactions that involve improvements to be made on the property, and payoffs of secured or unsecured debt. If the result of the calculation is zero or negative, the amount of $0 is disclosed under §1026.38(i)(3). If the result of the calculation is positive, that amount is disclosed as a negative number under §1026.38(i)(3), but only to the extent that the absolute value of the amount disclosed under §1026.38(i)(3) does not exceed the total amount of closing costs disclosed under §1026.38(h)(1).

ii. *Simultaneous subordinate financing.* For simultaneous subordinate financing transactions, no sale price will be disclosed under §1026.38(j)(1)(ii), and therefore no sale price will be included in the closing costs financed calculation as a payment to third parties. The total amount of payments to third parties only includes payments occurring in the simultaneous subordinate financing transaction other than payments toward the sale price.

2. *Loan amount.* The loan amount disclosed under §1026.38(b), a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note.

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

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

1. *Down payment and funds from borrower calculation.* Under §1026.38(i)(4)(ii)(A)(*1*), the down payment and funds from borrower amount is calculated as the difference between the sale price of the property disclosed under §1026.38(a)(3)(vii)(A) and the sum of the loan amount disclosed under §1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under §1026.38(j)(2)(iv), except as required by §1026.38(i)(4)(ii)(A)(*2*). The calculation is independent of any loan program or investor requirements. The ''Final'' amount disclosed for ''Down Payment/Funds from Borrower'' reflects any change, following delivery of the Loan Estimate, in the amount of down payment and other funds required of the consumer. This change might result, for example, from an increase in the purchase price of the property.

2. *Funds for borrower.* Section 1026.38(i)(4)(ii)(A)(*2*) requires that, in a purchase transaction as defined in §1026.37(a)(9)(i) that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount disclosed under §1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under §1026.38(j)(2)(iv) exceeds the sale price disclosed under §1026.38(a)(3)(vii)(A), the amount of funds from the consumer is determined in accordance with §1026.38(i)(6)(iv). Pursuant to §1026.38(i)(6)(iv), the ''Final'' amount of ''Down Payment/Funds from Borrower'' to be disclosed under §1026.38(i)(4)(ii)(A)(*2*) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to that is disclosed under §1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under §1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under §1026.38(j)(1)(ii), (iii), and (v). The amount of ''Down Payment/Funds from Borrower'' under the subheading ''Final'' is disclosed either as a positive number or $0, depending on the result of the calculation. When the result of the calculation is positive, that amount is disclosed under §1026.38(i)(4)(ii)(A)(*2*) as ''Down Payment/Funds from Borrower,'' and $0 is disclosed under §1026.38(i)(6)(ii) as ''Funds for Borrower.'' When the result of the calculation is negative, that amount is disclosed under §1026.38(i)(6)(ii) as ''Funds for Borrower,'' and $0 is disclosed under §1026.38(i)(4)(ii)(A)(*2*) as ''Down Payment/Funds from Borrower.'' When the result is $0, $0 is disclosed as ''Down Payment/Funds from Borrower'' and ''Funds for Borrower'' under §1026.38(i)(4)(ii)(A)(*2*) and (6)(ii), respectively. An increase in the amount of ''Down Payment/Funds from Borrower'' under the subheading ''Final'' relative to the corresponding amount under the subheading ''Loan Estimate'' might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the transaction. For additional discussion of the determination of the ''Down Payment/Funds from Borrower'' amount, see comment 38(i)(6)(ii)–1.

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

1. *Funds for borrower.* Section 1026.38(i)(4)(ii)(B) requires that, in all transactions not subject to §1026.38(i)(4)(ii)(A), the ''Final'' amount disclosed for ''Down Payment/Funds from Borrower'' is the amount determined in accordance with §1026.38(i)(6)(iv). Pursuant to §1026.38(i)(6)(iv), the ''Final'' amount of ''Down Payment/Funds from Borrower'' to be disclosed under §1026.38(i)(4)(ii)(B) is determined by subtracting the sum of the loan amount disclosed under §1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under §1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under §1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under §1026.38(j)(1)(ii), (iii), and (v). The

"Final" amount of "Down Payment/Funds from Borrower" is disclosed either as a positive number or $0, depending on the result of the calculation. When the result of the calculation is positive, that amount is disclosed under §1026.38(i)(4)(ii)(B) as "Down Payment/Funds from Borrower," and $0 is disclosed under §1026.38(i)(6)(ii) as "Funds for Borrower." When the result of the calculation is negative, that amount is disclosed under §1026.38(i)(6)(ii) as "Funds for Borrower," and $0 is disclosed under §1026.38(i)(4)(ii)(B) as "Down Payment/Funds from Borrower." When the result is $0, $0 is disclosed as "Down Payment/Funds from Borrower" and "Funds for Borrower" under §1026.38(i)(4)(ii)(B) and (6)(ii), respectively. An increase in the "Final" amount of "Down Payment/Funds from Borrower" relative to the corresponding "Loan Estimate" amount might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the transaction. For additional discussion of the determination of the "Down Payment/Funds from Borrower" amount, see comment 38(i)(6)(ii)–1.

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

1. *Statement of differences.* Section 1026.38(i)(4)(iii)(A) requires, as applicable, a statement that the consumer has increased or decreased this payment, along with a statement that the consumer should see the details disclosed under §1026.38(j)(1) or (j)(2), as applicable. The applicable disclosure to be referenced corresponds to the label on the Closing Disclosure under which the information accounting for the increase in the "Down Payment/Funds from Borrower" amount is disclosed. For example, in a transaction that is a purchase as defined in §1026.37(a)(9)(i), if the purchase price of the property has increased and therefore caused the "Down Payment/Funds from Borrower" amount to increase, the statement, "You increased this payment. See details in Section K," with the words "increased" and "Section K" in boldface, complies with this requirement. In a purchase or refinancing transaction, in the event the amount of the credit extended by the creditor has decreased and therefore caused the "Down Payment/Funds from Borrower" amount to increase, the statement can read, for example, "You increased this payment. See details in Section L," with the same in boldface.

38(i)(5) Deposit.

1. *When no deposit.* Section 1026.38(i)(5) requires the disclosure in the calculating cash to close table of the deposit required to be disclosed under §1026.37(h)(1)(iv) and under §1026.38(j)(2)(ii), under the subheadings "Loan Estimate" and "Final," respectively. Under §1026.37(h)(1)(iv), for all transactions other than a purchase transaction as defined in §1026.37(a)(9)(i), the amount required to be disclosed is $0. In a purchase transaction in which no deposit is paid in connection with the transaction, under §§1026.37(h)(1)(iv) and 1026.38(i)(5)(i) and (ii) the amount required to be disclosed is $0.

38(i)(6) Funds for borrower.

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

1. *Final funds for borrower.* Section 1026.38(i)(6)(ii) provides that the "Final" amount for "Funds for Borrower" is determined in accordance with §1026.38(i)(6)(iv). Under §1026.38(i)(6)(iv), the "Final" amount of "Funds for Borrower" to be disclosed under §1026.38(i)(6)(ii) is determined by subtracting the sum of the loan amount disclosed under §1026.38(b) and any amount of existing loans assumed or taken subject to that is disclosed under §1026.38(j)(2)(iv) (excluding any closing costs financed disclosed under §1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction disclosed under §1026.38(j)(1)(ii), (iii), and (v). The amount is disclosed under §1026.38(i)(6)(ii) either as a negative number or as $0, depending on the result of the calculation. The "Final" amount of "Funds for Borrower" disclosed under §1026.38(i)(6)(ii) is an amount to be disbursed to the consumer or a designee of the consumer at consummation, if any.

2. *No funds for borrower.* When the down payment and funds from the borrower is determined in accordance with §1026.38(i)(4)(ii)(A)(*1*), the amount disclosed under §1026.38(i)(6)(ii) as "Funds for Borrower" is $0.

38(i)(7) Seller credits.

Paragraph 38(i)(7)(ii).

1. *Final seller credits.* Under §1026.38(i)(7)(ii), the "Final" amount of "Seller Credits" reflects any change, following the delivery of the Loan Estimate, in the amount of funds given by the seller to the consumer for generalized (*i.e.*, lump sum) credits for closing costs or for allowances for items purchased separately (*e.g.*, if the seller is a builder). Seller credits are distinguished from payments by the seller for items attributable to periods of time prior to consummation, which are among the "Adjustments and Other Credits" separately disclosed pursuant to §1026.38(i)(8). For additional guidance regarding seller credits, see comments 38(j)(2)(v)–1 and –2.

Paragraph 38(i)(7)(iii)(A).

1. *Statement that the consumer should see details.* Under §1026.38(i)(7)(iii)(A), if the amount disclosed under §1026.38(i)(7)(ii) in the "Final" column is not equal to the amount disclosed under §1026.38(i)(7)(i) in the "Loan Estimate" column (unless the difference is due to rounding), the creditor must disclose a statement that the consumer should see the details disclosed either: (1) Under §1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under

§1026.38(f) or (g); or (2) if the difference is attributable only to general seller credits disclosed under §1026.38(j)(2)(v), or only to specific seller credits disclosed in the seller-paid column of the closing cost details table under §1026.38(f) or (g), under only the applicable provision. If, for example, a decrease in the seller credits disclosed under §1026.38(i)(7)(ii) is attributable only to a decrease in general (*i.e.*, lump sum) seller credits, then a statement is given under the subheading ''Did this change?'' in the calculating cash to close table that the consumer should see the details disclosed under §1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of §1026.38(f) or (g), or that the consumer should see the details disclosed under §1026.38(j)(2)(v) in the summaries of transactions table. Form H–25(B) in appendix H to this part demonstrates this disclosure where the decrease in seller credits is attributable only to a decrease in general seller credits and the creditor choses only to reference the applicable provision; form H–25(B)'s statement ''See Seller Credits in Section L,'' in which the words ''Section L'' are in boldface font, complies with this requirement. Where the decrease in the seller credits disclosed under §1026.38(i)(7)(ii) is attributable to specific and general seller credits, or the creditor does not elect to reference only the applicable provision, then a statement is given under the subheading ''Did this change?'' that the consumer should see both the details disclosed under §1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column of the closing cost details table under §1026.38(f) or (g). For example, the statement ''See Seller-Paid column on page 2 and Seller Credits in Section L,'' in which the words ''Seller-Paid'' and ''Section L'' are in boldface font, complies with this requirement.

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

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

1. *Adjustments and other credits.* Under §1026.38(i)(8)(ii), the ''Final'' amount for ''Adjustments and Other Credits'' would include, for example, prorations of taxes or homeowner's association fees, utilities used but not paid for by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the consummation, and interest on loan assumptions. This category also includes generalized credits toward closing costs given by parties other than the seller. For additional guidance regarding adjustments and other credits, see commentary to §§1026.37(h)(1)(vii) and 1026.38(j)(2)(vi) and (xi). If the calculation required by §1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

38(i)(9) Cash to close.

Paragraph 38(i)(9)(ii).

1. *Final cash to close amount.* The ''Final'' amount of ''Cash to Close'' disclosed under §1026.38(i)(9)(ii) is the same as the amount disclosed on the Closing Disclosure as ''Cash to Close'' under §1026.38(j)(3)(iii). If the calculation required by §1026.38(i)(9)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

2. *More prominent disclosure.* Section 1026.38(i)(9)(ii) requires that the disclosure of the ''Final'' amount of ''Cash to Close'' be more prominent than the other disclosures under §1026.38(i). Such more prominent disclosure can take the form, for example, of boldface font, as shown on form H–25 of appendix H to this part.

38(j) Summary of borrower's transaction.

1. *In general.* It is permissible to have two separate Closing Disclosures in a transaction: one that reflects the consumer's costs and credits only, which is provided to the consumer, and one that reflects the seller's costs and credits only, which is provided to the seller. *See* §1026.38(t)(5)(v) and (vi). Some State laws may prohibit provision of information about the consumer to the seller and about the seller to the consumer.

2. *Addenda.* Additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under §1026.38(j) and (k), and for the purpose of including customary recitals and information used locally in real estate closings (for example, breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, an accounting of debits received and check disbursements, a statement stating receipt of funds, applicable special stipulations between consumer and seller, and the date funds are transferred). *See* §1026.38(t)(5)(ix). A reference such as ''See attached page for additional information'' should be placed in the applicable section of the Closing Disclosure.

3. *Identical amounts.* The amounts disclosed under the following provisions of §1026.38(j) are the same as the amounts disclosed under the corresponding provisions of §1026.38(k): §1026.38(j)(1)(ii) and (k)(1)(ii); §1026.38(j)(1)(iii) and (k)(1)(iii); if the amount disclosed under §1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, §1026.38(j)(1)(v) and (k)(1)(iv); §1026.38(j)(1)(vii) and (k)(1)(vi); §1026.38(j)(1)(viii) and (k)(1)(vii); §1026.38(j)(1)(ix) and (k)(1)(viii); §1026.38(j)(1)(x) and (k)(1)(ix); §1026.38(j)(2)(iv) and (k)(2)(iv); unless seller contributions toward simultaneous subordinate financing are disclosed under §1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure and §1026.38(k)(2)(vii) on the first-lien Closing Disclosure, §1026.38(j)(2)(v) and (k)(2)(vii); §1026.38(j)(2)(viii) and (k)(2)(x);

§ 1026.38(j)(2)(ix) and (k)(2)(xi); § 1026.38(j)(2)(x) and (k)(2)(xii); and § 1026.38(j)(2)(xi) and (k)(2)(xiii).

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

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

1. *Contract sales price and personal property.* Section 1026.38(j)(1)(ii) requires disclosure of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items. On the simultaneous subordinate financing Closing Disclosure, no contract sales price is disclosed under § 1026.38(j)(1)(ii). Personal property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property under § 1026.38(j)(1)(ii).

Paragraph 38(j)(1)(v).

1. *Contractual adjustments.* Section 1026.38(j)(1)(v) requires disclosure of amounts not otherwise disclosed under § 1026.38(j) that are owed to the seller but payable to the consumer after the real estate closing. For example, the following items must be disclosed and listed under the heading ''Adjustments'' under § 1026.38(j), to the extent applicable:

i. The balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption transaction;

ii. Any rent that the consumer will collect after the real estate closing for a period of time prior to the real estate closing; and

iii. The treatment of any tenant security deposit.

2. *Other consumer charges.* The amounts disclosed under § 1026.38(j)(1)(v) which are for charges owed by the consumer at the real estate closing not otherwise disclosed under § 1026.38(f), (g), and (j) will not have a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). For example, the amounts paid to any holders of existing liens on the property in a refinance transaction, construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of other secured or unsecured debt, any outstanding real estate property taxes, and principal reductions are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv). See comment 38–4 for an explanation of how to disclose a principal reduction under § 1026.38(j)(1)(v).

3. *Simultaneous subordinate financing Closing Disclosure.* On the simultaneous subordinate financing Closing Disclosure, the proceeds of the subordinate financing applied to the first-lien transaction may be included in the summaries of transactions table under § 1026.38(j)(1)(v). See also comments 37(h)(1)(v)–2 and 37(h)(1)(vii)–6 for an explanation of how to disclose on the Loan Estimate amounts that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v).

Paragraph 38(j)(1)(x).

1. *Additional adjustments.* Examples of items for which adjustments may be made include taxes, other than those disclosed pursuant to § 1026.38(j)(1)(vii) and (viii), paid in advance for an entire year or other period, when the real estate closing occurs prior to the expiration of the year or other period for which they were paid. Additional examples of items for which adjustments may be made include:

i. Flood and hazard insurance premiums, if the consumer is being substituted as an insured under the same policy;

ii. Mortgage insurance in loan assumptions;

iii. Planned unit development or condominium association assessments paid in advance;

iv. Fuel or other supplies on hand, purchased by the seller, which the consumer will use when the consumer takes possession of the property; and

v. Ground rent paid in advance.

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

Paragraph 38(j)(2)(ii).

1. *Deposit.* All amounts paid into a trust account by the consumer pursuant to the contract of sale for real estate, any addenda thereto, or any other agreement between the consumer and seller must be disclosed under § 1026.38(j)(2)(ii). If there is no deposit paid in a transaction, that amount is left blank on the Closing Disclosure.

2. *Reduction of deposit when deposit used to pay for closing charges prior to closing.* If the consumer's deposit has been applied toward a charge for a closing cost, the amount applied should not be included in the amount disclosed pursuant to § 1026.38(j)(2)(ii), but instead should be shown on the appropriate line for the closing cost in the Closing Cost Detail tables pursuant to § 1026.38(f) or (g), designated borrower-paid before closing.

Paragraph 38(j)(2)(iii).

1. *First user loan.* For purposes of § 1026.38(j), a first user loan is a loan to finance construction of a new structure or purchase of a new manufactured home that is known at the time of consummation to be real property under State law, where the structure was constructed for sale or the manufactured home was purchased for purposes of resale and the loan is used as or converted to a loan to finance purchase by the first user. For other loans subject to § 1026.19(f) that finance construction of a new structure or purchase of a manufactured home that is known at the time of consummation to be real property under State law, the sales price of the land and the construction cost or purchase price of the manufactured home should be disclosed separately and the amount of the

loan in the current transaction must be disclosed. The remainder of the Closing Disclosure should be completed taking into account adjustments and charges related to the temporary financing and permanent financing that are known at the time of consummation.

Paragraph 38(j)(2)(iv).

1. *Assumption of existing loan obligation of seller by consumer.* The outstanding amount of any loans that the consumer is assuming, or subject to which the consumer is taking title to the property must be disclosed under §1026.38(j)(2)(iv). When more than one loan is being assumed, the total amount of all outstanding loans being assumed should be disclosed under §1026.38(j)(2)(iv).

Paragraph 38(j)(2)(v).

1. *General seller credits.* When the consumer receives a generalized credit from the seller for closing costs or where the seller (typically a builder) is making an allowance to the consumer for items to purchase separately, the amount of the credit must be disclosed. However, if the seller credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables, pursuant to §1026.38(f) or (g), that amount should be reflected in the seller-paid column in the Closing Cost Details tables under §1026.38(f) or (g).

2. *Other seller credits.* Any other obligations of the seller to be paid directly to the consumer, such as for issues identified at a walk-through of the property prior to closing, are disclosed under §1026.38(j)(2)(v).

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

1. *Credits from any party other than the seller or creditor.* Section 1026.38(j)(2)(vi) requires disclosure of a description and the amount of items paid by or on behalf of the consumer and not disclosed elsewhere under §1026.38(j)(2). For example, credits a consumer receives from a real estate agent or other third party, other than a seller or creditor, are disclosed pursuant to §1026.38(j)(2)(vi). However, if the credit is attributable to a specific closing cost listed in the Closing Cost Details tables under §1026.38(f) or (g), that amount should be reflected in the paid by others column on the Closing Cost Details tables and not in the disclosure required under §1026.38(j)(2)(vi). Similarly, if a real estate agent rebates a portion of the agent's commission to the consumer, the rebate should be listed as a credit along with a description of the rebate, which must include the name of the party giving the credit.

2. *Subordinate financing proceeds on first-lien Closing Disclosure.* Any financing arrangements or other new loans not otherwise disclosed under §1026.38(j)(2)(iii) or (iv) must be disclosed under §1026.38(j)(2)(vi) on the first-lien Closing Disclosure. For example, if the consumer is using a second mortgage loan to finance part of the purchase price, whether from the same creditor, another creditor, or the seller, the principal amount of the second loan must be disclosed with a brief explanation on the first-lien Closing Disclosure. In this example, the principal amount of the subordinate financing is disclosed on the summaries of transactions table for the borrower's transaction either on line 04 under the subheading "L. Paid Already by or on Behalf of Borrower at Closing," or under the subheading "Other Credits." If the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds must also be listed, and may be listed on the same line as the principal amount of the subordinate financing on the first-lien Closing Disclosure. For an example, see form H–25(C) of appendix H to this part.

3. *Satisfaction of existing subordinate liens by consumer.* For payments to subordinate lien holders by or on behalf of the consumer, disclosure of any amounts paid with funds other than closing funds, as defined under §1026.38(j)(4)(ii), in connection with the second mortgage payoff are required to be disclosed under §1026.38(j)(2)(vi), with a statement that such amounts were paid outside of closing funds. For an example, see form H–25(D) of appendix H to this part.

4. *Transferred escrow balances.* In a refinance transaction, any transferred escrow balance is listed as a credit pursuant to §1026.38(j)(2)(vi), along with a description of the transferred escrow balance.

5. *Gift funds.* A credit must be disclosed only for any money or other payments made at closing by third parties, including family members, not otherwise associated with the transaction, along with a description of the nature of the funds provided under §1026.38(j)(2)(vi). Amounts provided in advance of the real estate closing to consumers by third parties, including family members, not otherwise associated with the transaction, are not required to be disclosed under §1026.38(j)(2)(vi).

6. *Adjustments.* Section 1026.38(j)(2)(vi) requires the disclosure of any additional amounts not already disclosed under §1026.38(f), (g), (h), and (j)(2), that are owed to the consumer but payable to the seller before the real estate closing. The disclosures made under §1026.38(j)(2)(vi) must also include a description for each disclosed amount. For example, rent paid to the seller from a tenant before the real estate closing for a period extending beyond the real estate closing is disclosed by identifying the amount as rent from a tenant under the heading "Adjustments." See also §1026.38(k)(2)(viii), which requires disclosure of a description and amount of any and all other obligations required to be paid by the seller at the real estate closing.

Paragraph 38(j)(2)(xi).

1. *Examples*. Section 1026.38(j)(2)(xi) requires the disclosure of any amounts the consumer is expected to pay after the real estate closing that are attributable in part to a period of time prior to the real estate closing. Examples of items that would be disclosed under §1026.38(j)(2)(xi) include:

i. Utilities used but not paid for by the seller; and

ii. Interest on loan assumptions.

38(j)(3) Calculation of borrower's transaction.

Paragraph 38(j)(3)(iii).

1. *Stating if amount is due to or from consumer*. To comply with §1026.38(j)(3)(iii), the creditor must state either the cash required from the consumer at closing, or cash payable to the consumer at closing.

2. *Methodology*. To calculate the cash to close, total the amounts disclosed under §1026.38(j)(3)(i) and (ii). If that calculation results in a positive amount, the amount is due from the consumer. If the calculation results in a negative amount, the amount is due to the consumer.

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

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

1. *Charges not paid with closing funds*. Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed under §1026.38(j) be marked as ''paid outside of closing'' or ''P.O.C.'' The disclosure must identify the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person. For an example of a disclosure of a charge not made from closing funds, see form H–25(D) of appendix H to this part. For an explanation of what constitutes closing funds, see §1026.38(j)(4)(ii). See also comment 38–4 for an explanation of how to disclose a principal reduction that is not paid from closing funds.

2. *Items paid without closing funds not included in sums*. Charges that are paid outside of closing funds under §1026.38(j)(4)(i) should not be included in computing totals under §1026.38(j)(1) and (j)(2).

38(k) Summary of seller's transaction.

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

2. *Extra line items*. For guidance regarding the use of addenda for items disclosed on the Closing Disclosure under §1026.38(k), see comment 38(j)–2.

3. *Identical amounts*. The amounts disclosed under certain provisions of §1026.38(k) are the same as the amounts disclosed under certain provisions of §1026.38(j). *See* comment 38(j)–3 for a listing of the specific provisions.

38(k)(1) Itemization of amounts due to seller.

1. *Simultaneous subordinate financing*. Section 1026.38(k) does not apply in a simultaneous subordinate financing purchase transaction as defined in §1026.37(a)(9)(i) if the first-lien Closing Disclosure records the entirety of the seller's transaction. If §1026.38(k) applies to a simultaneous subordinate financing transaction, §1026.38(k) is completed based only on the terms and conditions of the simultaneous subordinate financing transaction and no contract sales price is disclosed under §1026.38(k)(1)(ii) on the Closing Disclosure for the simultaneous subordinate financing.

38(k)(2) Itemization of amounts due from seller.

Paragraph 38(k)(2)(ii).

1. *Distributions of deposit to seller prior to closing*. If the deposit or any portion thereof has been disbursed to the seller prior to closing, the amount of the deposit that has been distributed to the seller must be disclosed under §1026.38(k)(2)(ii).

Paragraph 38(k)(2)(iv).

1. *Assumption of existing loan obligation of seller by consumer*. If the consumer is assuming or taking title subject to existing liens and the amounts of the outstanding balance of the liens are to be deducted from the sales price, the amounts of the outstanding balance of the liens must be disclosed under §1026.38(k)(2)(iv).

2. *Other seller credits*. Any other obligations of the seller to be paid directly to the consumer, such as credits for issues identified at a walk-through of the property prior to the real estate closing, are disclosed under §1026.38(k)(2)(vii).

Paragraph 38(k)(2)(vii).

1. *Simultaneous subordinate financing—seller contribution*. If a simultaneous subordinate financing transaction is disclosed with the alternative tables pursuant to §1026.38(d)(2) and (e), the first-lien Closing Disclosure must include any contributions from the seller toward the simultaneous subordinate financing that are disclosed in the payoffs and payments table under §1026.38(t)(5)(vii)(B) on the simultaneous subordinate financing Closing Disclosure. For example, assume the simultaneous subordinate financing transaction is disclosed using the alternative tables pursuant to §1026.38(d)(2) and (e) and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The simultaneous subordinate financing Closing Disclosure must include the $200.00 contribution in the payoffs and payments table pursuant to §1026.38(t)(5)(vii)(B) and comments 38(t)(5)(vii)(B)–1 and –2. The first-lien Closing Disclosure must include the $200.00 contribution in the summaries of transactions table

for the seller's transaction under §1026.38(k)(2)(vii).

Paragraph 38(k)(2)(viii).

1. *Satisfaction of other seller obligations.* Seller obligations, other than second liens, that must be paid off to clear title to the property must be disclosed pursuant to §1026.38(k)(2)(viii). Examples of disclosures pursuant to §1026.38(k)(2)(viii) include the satisfaction of outstanding liens imposed due to Federal, State, or local income taxes, real estate property tax liens, judgments against the seller reduced to a lien upon the property, or any other obligations the seller wishes the closing agent to pay from their proceeds at the real estate closing.

2. *Consumer satisfaction of outstanding subordinate loans.* If the consumer is satisfying existing liens which will not be deducted from the sales price, the amount of the outstanding balance of the loan must be disclosed under §1026.38(k)(2)(viii). For example, the amount of any second lien which will be paid as part of the real estate closing that is not deducted from the seller's proceeds under §1026.38(k)(2)(iv), is disclosed under §1026.38(k)(2)(viii). For payments to the subordinate lien holder, any amounts paid must be disclosed, and other amounts paid by or on behalf of the seller must be disclosed as paid outside of closing funds under §1026.38(j)(2)(vi). For additional discussion, see comment 38(j)(2)(vi)–2.

3. *Escrows held by closing agent for payment of invoices received after consummation.* Funds to be held by the closing agent for the payment of either repairs, or water, fuel, or other utility bills that cannot be prorated between the parties at closing because the amounts used by the seller prior to closing are not yet known must be disclosed under §1026.38(k)(2)(viii). Subsequent disclosure of the actual amount of these post-closing items to be paid from closing funds is optional.

38(k)(3) Calculation of seller's transaction.

1. *Stating if amount is due to or from seller.* To comply with §1026.38(k)(3)(iii), the creditor must state either the cash required from the seller at closing, or cash payable to the seller at closing.

2. *Methodology.* To calculate the cash due to or from the consumer, total the amounts disclosed under §1026.38(k)(3)(i) and (ii). If that calculation results in a positive amount, the amount is due to the seller. If the calculation results in a negative amount, the amount is due from the seller.

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

1. *Guidance.* For guidance regarding the disclosure of items paid with funds other than closing funds, see comments 38(j)(4)(i)–1 and –2.

38(l) Loan disclosures.

38(l)(2) Demand feature.

1. *Covered features.* See comment 18(i)–2 for a description of demand features triggering the disclosure requirements of §1026.38(l)(2).

38(l)(3) Late payment.

1. *Guidance.* See the commentary to §1026.37(m)(4) for guidance on disclosing late payment fees, as required under §1026.38(l)(3).

38(l)(6) Security interest.

1. *Alternate property address.* Section 1026.38(l)(6) requires disclosure of the address for the property that secures the credit, including the zip code. If the address is unavailable, §1026.38(l)(6) requires disclosure of other location information for the property, such as a lot number; however, disclosure of a zip code is required in all instances. For transactions secured by a consumer's interest in a timeshare plan, the creditor may disclose as other location information a lot, square, or other such number or other legal description of the property assigned by the local governing authority, or if no such number or description is available, disclose the name of the timeshare property or properties with a designation indicating that the property is an interest in a timeshare plan.

2. *Personal property.* Where personal property also secures the credit transaction, a description of that property may be disclosed, at the creditor's option, pursuant to §1026.38(l)(6). If the form does not provide enough space to disclose a description of personal property to be disclosed under §1026.38(l)(6), an additional page may be used and appended to the end of the form provided that the creditor complies with the requirements of §1026.38(t)(3). The creditor may use one addendum to disclose the personal property under §1026.38(a)(3)(vi) and (l)(6). *See* comment 38(a)(3)(vi)–1.

38(l)(7) Escrow account.

1. *Definition of escrow account.* For a description of an escrow account for purposes of the escrow account disclosure under §1026.38(l)(7), see the definition of "escrow account" in 12 CFR 1024.17(b).

2. *Addenda.* Additional pages may be attached to the Closing Disclosure to add lines, as necessary, to accommodate the complete listing of all items required to be shown on the Closing Disclosure under §1026.38(l)(7). *See* §1026.38(t)(5)(ix). A reference such as "See attached page for additional information" must be placed in the applicable section of the Closing Disclosure, if an additional page is used to list all items required to be shown.

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

1. *Estimated costs not paid by escrow account funds.* Section 1026.38(l)(7)(i)(A)(*2*) requires the creditor to estimate the amount the consumer is likely to pay during the first year after consummation for the mortgage-related obligations described in §1026.43(b)(8) that are known to the creditor and that will not be paid using escrow account funds. The creditor discloses this amount only if an escrow account will be established.

2. *During the first year*. Section 1026.38(l)(7)(i)(A)(*2*) requires disclosure based on payments during the first year after consummation. Alternatively, if the creditor elects to make the disclosures required by §1026.38(l)(7)(i)(A)(*1*) and (l)(7)(i)(A)(*4*) based on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, then the creditor may make the disclosures required by §1026.38(l)(7)(i)(A)(*2*) based on a 12-month period beginning with the borrower's initial payment date (rather than beginning with consummation). *See* comment 38(l)(7)(i)(A)(*5*)–1.

Paragraph 38(l)(7)(i)(A)(4).

1. *Estimated costs paid using escrow account funds*. The amount the consumer will be required to pay into an escrow account with each periodic payment during the first year after consummation disclosed under §1026.38(l)(7)(i)(A)(*4*) is equal to the sum of the amount of estimated escrow payments disclosed under §1026.38(c)(1) (as described in §1026.37(c)(2)(iii)) and the amount the consumer will be required to pay into an escrow account to pay some or all of the mortgage insurance premiums disclosed under §1026.38(c)(1) (as described in §1026.37(c)(2)(ii)).

Paragraph 38(l)(7)(i)(A)(5).

1. *During the first year*. Section 1026.38(l)(7)(i)(A)(*4*) requires disclosure of the amount the consumer will be required to pay into the escrow account with each periodic payment during the first year after consummation. Section 1026.38(l)(7)(i)(A)(*1*) requires a disclosure, labeled ''Escrowed Property Costs over Year 1,'' calculated as the amount disclosed under §1026.38(l)(7)(i)(A)(*4*) multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. For example, creditors may base such disclosures on less than 12 payments if, based on the payment schedule dictated by the legal obligation, fewer than 12 periodic payments will be made to the escrow account during the first year after consummation. Alternatively, §1026.38(l)(7)(i)(A)(*5*) permits the creditor to base the disclosures required by §1026.38(l)(7)(i)(A)(*1*) and (*4*) on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17, even if those disclosures differ from what would otherwise be disclosed under §1026.38(l)(7)(i)(A)(*1*) and (*4*)—as, for example, when there are fewer than 12 periodic payments scheduled to be made to the escrow account during the first year after consummation.

Paragraph 38(l)(7)(i)(B)(1).

1. *Estimated costs paid directly by the consumer*. The creditor discloses an amount under §1026.38(l)(7)(i)(B)(*1*) only if no escrow account will be established.

2. *During the first year*. Section 1026.38(l)(7)(i)(B)(*1*) requires disclosure based on payments during the first year after consummation. A creditor may comply with this requirement by basing the disclosure on a 12-month period beginning with the borrower's initial payment date or on a 12-month period beginning with consummation.

38(m) Adjustable payment table.

1. *Guidance*. See the commentary to §1026.37(i) for guidance regarding the disclosure required by §1026.38(m).

2. *Master heading*. The disclosure required by §1026.38(m) is required to be provided under a different master heading than the disclosure required by §1026.37(i), but all other requirements applicable to the disclosure required by §1026.37(i) apply to the disclosure required by §1026.38(m).

3. *When table is not permitted to be disclosed*. Like the disclosure required by §1026.37(i), the disclosure required by §1026.38(m) is required only if the periodic principal and interest payment may change after consummation based on a loan term other than on an adjustment to the interest rate or if the transaction is a seasonal payment product as described under §1026.37(a)(10)(ii)(E). If the transaction does not contain these terms, this table is not permitted on the Closing Disclosure. *See* comments 37–1 and 37(i)–1.

4. *Final loan terms*. The disclosures required by §1026.38(m) must include the information required by §1026.37(i), as applicable, but the creditor must make the disclosure using the information that is required by §1026.19(f). *See* comments 19(f)(1)(i)–1 and –2.

38(n) Adjustable interest rate table.

1. *Guidance*. See the commentary to §1026.37(j) for guidance regarding the disclosures required by §1026.38(n).

2. *Master heading*. The disclosure required by §1026.38(n) is required to be provided under a different master heading than the disclosure required by §1026.37(j), but all other requirements applicable to the disclosure required by §1026.37(j) apply to the disclosure required by §1026.38(n).

3. *When table is not permitted to be disclosed*. Like the disclosure required by §1026.37(j), the disclosure required by §1026.38(n) is required only if the interest rate may change after consummation based on the terms of the legal obligation. If the interest rate will not change after consummation, this table is not permitted on the Closing Disclosure. *See* comments 37–1 and 37(j)–1.

4. *Final loan terms*. The disclosures required by §1026.38(n) must include the information required by §1026.37(j), as applicable, but the creditor must make the disclosure using the information that is known at the time the disclosure is required to be provided by §1026.19(f).

38(o) Loan calculations.

1. *Examples*. Section 1026.38(o)(1) and (2) sets forth the accuracy requirements for the

total of payments and the finance charge, respectively. The following examples illustrate the interaction of these provisions:

i. Assume that loan costs that are designated borrower-paid at or before closing and that are part of the finance charge (see §1026.4 for calculation of the finance charge) are understated by more than $100. For example, assume that borrower-paid loan origination fees (see §1026.4(a)) are cumulatively understated by $150, resulting in the amounts disclosed as the total of payments and the finance charge both being understated by more than $100. Both the disclosed total of payments and the disclosed finance charge would not be accurate for purposes of §1026.38(o)(1) and (2), respectively.

ii. Assume that loan costs that are designated borrower-paid at or before closing and that are not part of the finance charge are understated by more than $100. For example, assume that borrower-paid property appraisal and inspection fees that are excluded from the finance charge under §1026.4(c)(7)(iv) are cumulatively understated by $150, resulting in the amount disclosed as the total of payments being understated by more than $100. The disclosed total of payments would not be accurate for purposes of §1026.38(o)(1), but the disclosed finance charge would be accurate for purposes of §1026.38(o)(2).

38(o)(1) Total of payments.

1. *Calculation of total of payments.* The total of payments is the total, expressed as a dollar amount, the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled, through the end of the loan term. The total of payments excludes charges that would otherwise be included as components of the total of payments if such charges are designated on the Closing Disclosure as paid by seller or paid by others. A seller or other party, such as the creditor, may agree to offset payments of principal, interest, mortgage insurance, or loan costs, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. Because these amounts are not paid by the consumer, they are excluded from the total of payments calculation. Non-specific credits, however, are generalized payments to the consumer that do not pay for a particular fee and therefore do not offset amounts for purposes of the total of payments calculation. For guidance on the amounts included in the total of payments calculation, see the ''In 5 Years'' disclosure under §1026.37(l)(1)(i) and comment 37(l)(1)(i)–1. For a discussion of lender credits, see comment 19(e)(3)(i)–5. For a discussion of seller credits, see comment 38(j)(2)(v)–1.

38(o)(2) Finance charge.

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

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

38(o)(3) Amount financed.

1. *Calculation of amount financed.* The amount financed is calculated in accordance with the requirements of §1026.18(b) and its commentary.

38(o)(5) Total interest percentage.

1. *In general.* For guidance on calculation and disclosure of the total interest percentage, see §1026.37(l)(3) and its commentary.

38(p) Other disclosures.

38(p)(1) Appraisal.

1. *Applicability.* The disclosure required by §1026.38(p)(1) is only applicable to closed-end transactions subject to §1026.19(f) that are also subject either to 15 U.S.C. 1639h or 1691(e), as implemented by this part or Regulation B, 12 CFR part 1002, respectively. Accordingly, if a transaction is not subject to either of those provisions, the disclosure required by §1026.38(p)(1) may be left blank on form H–25 of appendix H to this part.

38(p)(3) Liability after foreclosure.

1. *State law requirements.* If the creditor forecloses on the property and the proceeds of the foreclosure sale are less than the unpaid balance on the loan, whether the consumer has continued or additional responsibility for the loan balance after foreclosure, and the conditions under which liability occurs, will vary by State. If the applicable State law affords any type of protection, other than a statute of limitations that only limits the timeframe in which a creditor may seek redress, §1026.38(p)(3) requires a statement that State law may protect the consumer from liability for the unpaid balance.

38(q) Questions notice.

Paragraph 38(q)(3).

1. *Prominent question mark.* The notice required under §1026.38(q) includes a prominent question mark. This prominent question mark is an aspect of form H–25 of appendix H to this part, the standard form or model form, as applicable, pursuant to §1026.38(t). If the creditor deviates from the depiction of the question mark as shown on form H–25, the creditor complies with §1026.38(q) if (1) the size and location of the question mark on the Closing Disclosure are substantially similar in size and location to the question mark shown on form H–25, and (2) the creditor otherwise complies with §1026.38(t)(5) regarding permissible changes to the form of the Closing Disclosure.

38(r) Contact information.

1. *Each person to be identified.* Form H–25 of appendix H to this part includes the contact information required to be disclosed under §1026.38(r) generally in a five-column tabular format (*i.e.*, there are columns from left to right that disclose the contact information

for the creditor, mortgage broker, consumer's real estate broker, seller's real estate broker, and settlement agent). Columns are left blank where no such person is participating in the transaction. For example, if there is no mortgage broker involved in the transaction, the column for the mortgage broker is left blank. Conversely, in the event the transaction involves more than one of each such person (*e.g.*, two sellers' real estate brokers splitting a commission), the space in the contact information table provided on form H–25 of appendix H to this part may be altered to accommodate the information for such persons, provided that the information required by §1026.38(o),(p),(q),(r) and (s) is disclosed on the same page as illustrated by form H–25. If the space provided on form H–25 does not accommodate the addition of such information, an additional table to accommodate the information may be provided on a separate page, with an appropriate reference to the additional table. A creditor or settlement agent may also omit a column on the table that is inapplicable or, if necessary, replace an inapplicable column with the contact information for the additional person.

2. *Name of person*. Where §1026.38(r)(1) calls for disclosure of the name of the person participating in the transaction, the person's legal name (*e.g.*, the name used for registration, incorporation, or chartering purposes), the person's trade name, if any, or an abbreviation of the person's legal name or the trade name is disclosed, so long as the disclosure is clear and conspicuous as required by §1026.38(t)(1)(i). For example, if the creditor's legal name is "Alpha Beta Chi Bank and Trust Company, N.A." and its trade name is "ABC Bank," then under §1026.38(r)(1) the full legal name, the trade name, or an abbreviation such as "ABC Bank & Trust Co." may be disclosed. However, the abbreviation "Bank & Trust Co." is not sufficiently distinct to enable a consumer to identify the person, and therefore would not be clear and conspicuous. If the creditor, mortgage broker, seller's real estate broker, consumer's real estate broker, or settlement agent participating in the transaction is a natural person, the natural person's name is listed in the §1026.38(r)(1) and (r)(4) disclosures (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

3. *Address*. The address disclosed under §1026.38(r)(2) is the identified person's place of business where the primary contact for the transaction is located (usually the local office), rather than a general corporate headquarters address. If a natural person's name is to be disclosed under §1026.38(r)(1), *see* comment 38(r)–2, the business address of such natural person is listed (assuming that such natural person is the primary contact for the consumer or seller, as applicable).

4. *NMLSR ID*. Section 1026.38(r)(3) and (5) requires the disclosure of an NMLSR identification (ID) number for each person identified in the table. The NMLSR ID is a unique number or other identifier that is generally assigned by the Nationwide Mortgage Licensing System & Registry (NMLSR) to individuals registered or licensed through NMLSR to provide loan originating services (for more information, see the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE Act) sections 1503(3) and (12) and 1504, 12 U.S.C. 5102(3) and (12) and 5103, and its implementing regulations (*i.e.*, 12 CFR 1007.103(a) and 1008.103(a)(2)). An entity may also have an NMLSR ID. Thus, any NMLSR ID that is obtained by a creditor or mortgage broker entity disclosed under §1026.38(r)(1), as applicable, or a natural person disclosed under §1026.38(r)(4), either as required under the SAFE Act or otherwise, is disclosed. If the creditor, mortgage broker, or natural person has an NMLSR ID and a separate license number or unique identifier issued by the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such entity or person's business activities, both the NMLSR ID and the separate license number or unique identifier may be disclosed. The space in the table is left blank for the disclosures in the columns corresponding to persons that have no NMLSR ID to be disclosed under §1026.38(r)(3) and (5); provided that, the creditor may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. *See* comment 38(r)–1.

5. *License number or unique identifier*. Section 1026.38(r)(3) and (5) requires the disclosure of a license number or unique identifier for each person (including natural persons) identified in the table who does not have a NMLSR ID if the applicable State, locality, or other regulatory body with responsibility for licensing and/or registering such person's business activities has issued a license number or other unique identifier to such person under §1026.38(r)(3) and (5). The space in the table is left blank for the disclosures in the columns corresponding to persons who are not subject to the issuance of such a license number or unique identifier to be disclosed under §1026.38(r)(3) and (5); provided that, the creditor or settlement agent may omit the column from the table or, if necessary, replace the column with the contact information for an additional person. *See* comment 38(r)–1. In addition, under §1026.38(r)(3) and (5), the abbreviation of the State or the jurisdiction or regulatory body that issued such license or registration is required to be included before the word "License" in the label required by §1026.37(r)(3) and (5). If no such license or registration is required to be disclosed, such as if an NMLSR number is

disclosed, the space provided for such an abbreviation in form H–25 of appendix H to this part may be left blank. A creditor complies with the requirements of §1026.38(r)(3) and (5) to disclose the abbreviation of the State by disclosing a U.S. Postal Service State abbreviation, if applicable.

6. *Contact.* Section 1026.38(r)(4) requires the disclosure of the primary contact for the consumer. The primary contact is the natural person employed by the person disclosed under §1026.38(r)(1) who interacts most frequently with the consumer and who has an NMLSR ID or, if none, a license number or other unique identifier to be disclosed under §1026.38(r)(5), as applicable. For example, if the senior loan officer employed by the creditor or mortgage broker disclosed under §1026.38(r)(1) has an NMLSR ID, but the consumer meets with a different loan officer to complete the application and answer questions, the senior loan officer's name is disclosed under §1026.38(r)(4) unless the other loan officer also has an NMLSR ID, in which case the other loan officer's name is disclosed. Further, if the sales agent employed by the consumer's real estate broker disclosed under §1026.38(r)(1) has a State-issued brokers' license number, but the consumer meets with an associate sales agent to tour the property being purchased and complete the sales contract, the sales agent's name is disclosed under §1026.38(r)(4) unless the associate sales agent also has a State-issued license number, in which case the associate sales agent's name is disclosed. Moreover, if the closing attorney employed by the settlement agent disclosed under §1026.38(r)(1) has a State-issued settlement agent license number, but the consumer meets with the attorney's assistant to fill out any necessary documentation prior to the closing and to answer questions, the closing attorney's name is disclosed under §1026.38(r)(4) because the assistant is only performing clerical functions.

7. *Email address and phone number.* Section 1026.38(r)(6) and (7) requires disclosure of the email address and phone number, respectively, for the persons listed in §1026.37(r)(4). Disclosure of a general number or email address for the lender, mortgage broker, real estate broker, or settlement agent, as applicable, satisfies this requirement if no such information is generally available for such person.

38(s) Signature statement.

1. *General requirements.* See the commentary to §1026.37(n) for guidance regarding the optional signature requirements and signature lines for multiple consumers.

38(t) Form of disclosures.

38(t)(1) General requirements.

1. *Clear and conspicuous; segregation.* The clear and conspicuous standard requires that the disclosures required by §1026.38 be legible and in a readily understandable form. The disclosures also must be grouped together and segregated from everything else. As required by §1026.38(t)(3), the disclosures for any transaction that is a federally related mortgage loan under Regulation X, 12 CFR 1024.2, must be made using the standard form H–25 of appendix H to this part. Accordingly, use of that form constitutes compliance with the clear and conspicuous and segregation requirements of §1026.38(t)(1).

2. *Balloon payment financing with leasing characteristics.* In certain credit sale or loan transactions, a consumer may reduce the dollar amount of the payments to be made during the course of the transaction by agreeing to make, at the end of the loan term, a large final payment based on the expected residual value of the property. The consumer may have a number of options with respect to the final payment, including, among other things, retaining the property and making the final payment, refinancing the final payment, or transferring the property to the creditor in lieu of the final payment. Such transactions may have some of the characteristics of lease transactions subject to Regulation M (12 CFR part 1013), but are considered credit transactions where the consumer assumes the indicia of ownership, including the risks, burdens and benefits of ownership, upon consummation. These transactions are governed by the disclosure requirements of this part instead of Regulation M. Under §1026.38(t)(1)(ii), creditors may not include any additional information in the disclosures required by §1026.38. Thus, the disclosures must show the large final payment as a balloon payment in the projected payments table required by §1026.38(c) and should not, for example, reflect the other options available to the consumer at maturity.

38(t)(2) Headings and labels.

1. *Estimated amounts.* Certain amounts are estimated when provided on the disclosure required by §1026.37. When disclosed as required by §1026.38, however, many of the corresponding disclosures must be actual amounts rather than estimates in accordance with the requirements of §1026.19(f), even though the provision of §1026.38 cross-references a counterpart in §1026.37. Section 1026.38(t)(2) provides that, if a master heading, heading, subheading, label, or similar designation contains the word "estimated" in form H–25 of appendix H to this part, that heading, label, or similar designation shall contain the word "estimated." Thus, §1026.38(t)(2) incorporates the "estimated" designations reflected on form H–25 into the requirements of §1026.38. *See* comment 37(o)(2)–1.

38(t)(3) Form.

1. *Non-federally related mortgage loans.* For a transaction that is not a federally related mortgage loan, the creditor is not required to use form H–25 of appendix H to this part, although its use as a model form for such

transactions, if properly completed with accurate content, constitutes compliance with the clear and conspicuous and segregation requirements of §1026.38(t)(1)(i). Even when the creditor elects not to use the model form, §1026.38(t)(1)(ii) requires that the disclosures contain only the information required by §1026.38(a) through (s), and that the creditor make the disclosures in the same order as they occur in form H–25, use the same headings, labels, and similar designations as used in the form (many of which also are expressly required by §1026.38(a) through (s)), and position the disclosures relative to those designations in the same manner as shown in the form. In order to be in a format substantially similar to form H–25, the disclosures required by §1026.38 must be provided on letter size (8.5″ x 11″) paper.

38(t)(4) Rounding.

1. *Generally.* Consistent with §1026.2(b)(4), any amount required to be disclosed by §1026.38 and not required to be rounded by §1026.38(t)(4) must be disclosed as an exact numerical amount using decimal places where applicable, unless otherwise provided. For example, under §1026.38(t)(4), the principal and interest payment disclosed under §1026.37(b)(3) and §1026.38(b) must be disclosed using decimal places even if the amount of cents is zero, in contrast to the loan amount disclosed under §1026.37(b)(1) and §1026.38(b).

2. *Guidance.* For guidance regarding the requirements of §1026.38(t)(4), see the commentary to §1026.37(o)(4).

38(t)(5) Exceptions.

1. *Permissible changes.* The changes required and permitted by §1026.38(t)(5) are permitted for federally related mortgage loans for which the use of form H–25 is required under §1026.38(t)(3). For non-federally related mortgage loans, the changes required or permitted by §1026.38(t)(5), do not affect the substance, clarity, or meaningful sequence of the disclosure and therefore, are permissible. Any changes to the disclosure not specified in §1026.38(t)(5) or not permitted by other provisions of §1026.38 are not permissible for federally related mortgage loans. Creditors in non-federally related mortgage loans making any changes that affect the substance, clarity, or meaningful sequence of the disclosure will lose their protection from civil liability under TILA section 130.

2. *Manual completion.* The creditor, or settlement agent preparing the form, under §1026.19(f)(1)(v) is not required to use a computer, typewriter, or other word processor to complete the disclosure required by §1026.38. The creditor or settlement agent may fill in information and amounts required to be disclosed by §1026.38 on form H–25 of appendix H to this part by hand printing or using any other method, provided the person produces clear and legible text and uses the formatting required by §1026.38, including replicating bold font where required.

3. *Unit-period.* Section 1026.38(t)(5)(i) provides that wherever form H–25 or §1026.38 uses ‘‘monthly’’ to describe the frequency of any payments or uses ‘‘month’’ to describe the applicable unit-period, the creditor is required to substitute the appropriate term to reflect the fact that the transaction's terms provide for other than monthly periodic payments, such as bi-weekly or quarterly payments. For purposes of §1026.38, the term ‘‘unit-period’’ has the same meaning as in appendix J to Regulation Z.

4. *Signature lines.* Section 1026.38(t) does not restrict the addition of signature lines to the disclosure required by §1026.38, provided any signature lines for confirmations of receipt of the disclosure appear only under the ‘‘Confirm Receipt’’ heading required by §1026.38(s) as illustrated by form H–25 of appendix H to this part. If the number of signatures requested by the creditor for confirming receipt of the disclosure requires space for signature lines in excess of that provided on form H–25, an additional page may be added to accommodate the additional signature lines with an appropriate reference to the additional page. Such additional page should also contain the heading and statement required by §1026.38(s) in the format provided on form H–25. Signatures for a purpose other than confirming receipt of the form may be obtained on a separate page, and consistent with §1026.38(t)(1)(i), not on the same page as the information required by §1026.38.

5. *Additional page.* Information required or permitted to be disclosed by §1026.38 on a separate page should be formatted similarly to form H–25 of appendix H to this part, so as not to affect the substance, clarity, or meaningful sequence of the disclosure. In addition, information provided on additional pages should be consolidated on as few pages as necessary so as not to affect the substance, clarity, or meaningful sequence of the disclosure.

6. *Page numbers.* References required by provisions of §1026.38 to information disclosed pursuant to other provisions of the section, as illustrated on form H–25 of appendix H, may be altered to refer to the appropriate page number of the form containing such information.

7. *Translation.* Section 1026.38(t)(5)(viii) permits the translation of form H–25 into languages other than English, similar to §1026.37(o)(5)(ii). Pursuant §1026.38(t)(5)(viii) creditors may modify form H–25 to the extent that translation prevents the headings, labels, designations, and required disclosure items under §1026.38 from fitting in the space provided on form H–25. For example, if the translation of a required label does not fit within the line provided for such label in form H–25, the label may be disclosed over

two lines. See form H–28 of appendix H to this part for Spanish translations of form H–25.

38(t)(5)(iv) Closing Cost Details.

1. *Line numbers; closing cost details.* Section 1026.38(t)(5)(iv)(A) permits the deletion of unused lines from the disclosures required by §1026.38(f)(1) through (3) and (g)(1) through (4), if necessary to allow the addition of lines to other sections that require them for the required disclosures. This provision permits creditors and settlement agents to use the space gained from deleting unused lines for additional lines to accommodate all of the costs that are required to be itemized. For example, if the only origination charge required by §1026.38(f)(1) is points, the remaining seven lines illustrated on form H–25 of appendix H to this part may be deleted and added to the disclosure required by §1026.38(g)(4), if seven lines in addition to those provided on form H–25 are necessary to accommodate such disclosure.

2. *Two pages; closing cost details.* Section 1026.38(t)(5)(iv)(B) permits the disclosure of the information required by §1026.38(f) through (h) over two pages, but only if form H–25 of appendix H to this part, as modified pursuant to §1026.38(t)(5)(iv)(A), does not accommodate all of the costs required to be disclosed on one page. If the deletion of unused lines and the addition of such lines to other sections permits the disclosures required by §1026.38(f) through (h) to fit on one page, modification pursuant to §1026.38(t)(5)(iv)(B) is not permissible.

3. *Separate pages for Loan Costs and Other Costs.* The modification permitted by §1026.38(t)(5)(iv)(B) allows the information required by §1026.38(f) through (h) to be disclosed over two pages, numbered as ''2a'' and ''2b.'' For an example of such a modification, see form H–25(H) of appendix H to this part. Under this modification, the information required by §1026.38(h) must remain on the same page as the information required by §1026.38(g). Accordingly, the Loan Costs section of form H–25 may appear on its own page ''2a,'' but the Other Costs section must appear on the same page as the Total Closing Costs section on page ''2b.'' The modifications permitted by §1026.38(t)(5)(iv)(A) and (B) may be used in conjunction to ensure disclosure of §1026.38(f) on one page and §1026.38(g) and (h) on a separate page.

38(t)(5)(v) Separation of consumer and seller information.

1. *Permissible form modifications to separate consumer and seller information.* The modifications to the form permitted by §1026.38(t)(5)(v) may be made by the creditor in any one of the following ways:

i. Leave the applicable disclosure blank concerning the seller or consumer on the form provided to the other party;

ii. Omit the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party; or

iii. Provide to the seller, or assist the settlement agent in providing to the seller, a modified version of the form under §1026.38(t)(5)(vi), as illustrated by form H–25(I) of appendix H to this part.

2. *Provision of separate disclosure to consumer.* If applicable State law prohibits sharing with the consumer the information disclosed under §1026.38(k), a creditor may provide a separate form to the consumer. A creditor may also provide a separate form to the consumer in any other situation where the creditor in its discretion chooses to do so, such as based on the seller's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)–1.

3. *Provision of separate disclosure to seller.* To separate the information of the consumer and seller under §1026.38(t)(5)(v), a creditor may assist the settlement agent in providing (or provide when acting as a settlement agent) a separate form to the seller where applicable State law prohibits sharing with the seller the information disclosed under §1026.38(a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f), or (g), with respect to closing costs paid by the consumer, or §1026.38(i), (j), (l) through (p), or (r), with respect to closing costs paid by the creditor and mortgage broker. A creditor may also assist the settlement agent in providing (or provide when acting as a settlement agent) a separate form to the seller in any other situation where the creditor in its discretion chooses to do so, such as based on the consumer's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)–1.

38(t)(5)(vi) Modified version of the form for a seller or third-party.

1. For permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)–1.

38(t)(5)(vii) Transaction without a seller or simultaneous subordinate financing transaction.

1. *Alternative tables.* The alternative tables pursuant to §1026.38(d)(2) and (e) are required to be disclosed to use the modification permitted under §1026.38(t)(5)(vii).

2. *Appraised property value.* The modifications permitted by §1026.38(t)(5)(vii) do not specifically refer to the label required by §1026.38(a)(3)(vii)(B) for transactions that do not involve a seller, because the label is required by that section and therefore is not a modification. As required by §1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller and is modified under §1026.38(t)(5)(vii) must contain the label ''Appraised Prop. Value'' or ''Estimated Prop. Value'' where there is no appraisal.

Paragraph 38(t)(5)(vii)(B).

1. *Amounts paid by third parties.* Under §1026.38(t)(5)(vii)(B), the payoffs and payments table itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer, including designees of the consumer. Designees of the consumer for purposes of §1026.38(t)(5)(vii)(B) include third parties who provide funds on behalf of the consumer. Such amounts may be disclosed as credits in the payoffs and payments table. Some examples of amounts paid by third parties that may be disclosed as credits on the payoffs and payments table under §1026.38(t)(5)(vii)(B) include gift funds, grants, proceeds from loans that satisfy the partial exemption criteria in §1026.3(h), and, on the Closing Disclosure for a simultaneous subordinate financing transaction, contributions from a seller for costs associated with the subordinate financing.

2. *Disclosure of subordinate financing.* i. *First-lien Closing Disclosure.* On the Closing Disclosure for a first-lien transaction disclosed with the alternative tables pursuant to §1026.38(d)(2) and (e), such as a refinance transaction, that also has simultaneous subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payments table under §1026.38(t)(5)(vii)(B) by disclosing, as a credit, the principal amount of the subordinate financing, and, if the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds. The creditor may list the principal amount and net proceeds of the subordinate financing on the same line. For example, the creditor may disclose the principal amount of the subordinate financing under the subheading ''To'' with a description of the payment, and the net proceeds of the subordinate financing under the subheading ''Amount.''

ii. *Simultaneous subordinate financing Closing Disclosure.* On the Closing Disclosure for a simultaneous subordinate financing transaction disclosed with the alternative tables pursuant to §1026.38(d)(2) and (e), the proceeds of the subordinate financing applied to the first-lien transaction may be included in the payoffs and payments table under §1026.38(t)(5)(vii)(B).

iii. *Simultaneous subordinate financing—seller contribution.* If a creditor discloses the alternative tables pursuant to §1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure, the creditor must also disclose as a credit in the payoffs and payments table on the simultaneous subordinate financing Closing Disclosure, any contributions from the seller toward the simultaneous subordinate financing. For example, assume the subordinate-lien creditor provides the alternative tables pursuant to §1026.38(d)(2) and (e) on the simultaneous subordinate financing Closing Disclosure and the seller contributes $200.00 toward the closing costs of the simultaneous subordinate financing. The subordinate-lien creditor must disclose the $200.00 contribution as a credit on the simultaneous subordinate financing Closing Disclosure in the payoffs and payments table under §1026.38(t)(5)(vii)(B). See also comments 38(j)–3 and 38(k)(2)(vii)–1 for disclosure requirements applicable to the first-lien transaction when the alternative disclosures are used for a simultaneous subordinate financing transaction and a seller contributes to the costs of the subordinate financing.

3. *Other examples.* For additional examples of items disclosed under §1026.38(t)(5)(vii)(B), see comment 37(h)(2)(iii)–1. See also comment 38–4 for an explanation of how to disclose a principal reduction under §1026.38(t)(5)(vii)(B).

38(t)(5)(ix) Customary recitals and information.

1. *Customary recitals and information.* Section 1026.38(t)(5)(ix) permits an additional page to be added to the disclosure for customary recitals and information used locally in real estate settlements. Examples of such information include a breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred.

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 Disclosures

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 examples, 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.

2. *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).

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.

Paragraph 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.

Paragraph 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(d)(5) Partial payment policy.

1. *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.

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.

Section 1026.40—Requirements for Home-Equity Plans

1. *Coverage*. This section applies to all open-end credit plans secured by the consumer's *dwelling*, as defined in §1026.2(a)(19), and is not limited to plans secured by the consumer's principal dwelling. (See the commentary to §1026.3(a), which discusses whether transactions are consumer or business-purpose credit, for guidance on whether a home equity plan is subject to Regulation Z.)

2. *Changes to home equity plans entered into on or after November 7, 1989*. Section 1026.9(c) applies if, by written agreement under §1026.40(f)(3)(iii), a creditor changes the terms of a home equity plan—entered into on or after November 7, 1989—at or before its scheduled expiration, for example, by renewing a plan on different terms. A new plan results, however, if the plan is renewed (with or without changes to the terms) after the scheduled expiration. The new plan is subject to all open-end credit rules, including §§1026.6, 1026.15, and 1026.40.

3. *Transition rules and renewals of preexisting plans*. The requirements of this section do not apply to home equity plans entered into before November 7, 1989. The requirements of this section also do not apply if the original consumer, on or after November 7, 1989, renews a plan entered into prior to that date (with or without changes to the terms). If, on or after November 7, 1989, a security interest in the consumer's dwelling is added to a line of credit entered into before that date, the substantive restrictions of this section apply for the remainder of the plan, but no new disclosures are required under this section.

4. *Disclosure of repayment phase—applicability of requirements*. Some plans provide in the initial agreement for a period during which no further draws may be taken and repayment of the amount borrowed is made. All of the applicable disclosures in this section must be given for the repayment phase. Thus, for example, a creditor must provide payment information about the repayment phase as well as about the draw period, as required by §1026.40(d)(5). If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an annual percentage rate under §1026.40(d)(6) for that phase. If, however, a creditor uses an index to determine the rate that will apply at the time of conversion to the repayment phase—even if the rate will thereafter be fixed—the creditor must provide the information in §1026.40(d)(12), as applicable.

5. *Payment terms—applicability of closed-end provisions and substantive rules*. All payment terms that are provided for in the initial agreement are subject to the requirements of subpart B and not subpart C of the regulation. Payment terms that are subsequently added to the agreement may be subject to subpart B or to subpart C, depending on the circumstances. The following examples apply these general rules to different situations:

i. If the initial agreement provides for a repayment phase or for other payment terms such as options permitting conversion of part or all of the balance to a fixed rate during the draw period, these terms must be disclosed pursuant to §§1026.6 and 1026.40, and not under subpart C. Furthermore, the creditor must continue to provide periodic statements under §1026.7 and comply with other provisions of subpart B (such as the substantive requirements of §1026.40(f)) throughout the plan, including the repayment phase.

ii. If the consumer and the creditor enter into an agreement during the draw period to repay all or part of the principal balance on different terms (for example, with a fixed rate of interest) and the amount of available credit will be replenished as the principal balance is repaid, the creditor must continue to comply with subpart B. For example, the creditor must continue to provide periodic statements and comply with the substantive requirements of §1026.40(f) throughout the plan.

iii. If the consumer and creditor enter into an agreement during the draw period to repay all or part of the principal balance and the amount of available credit will not be replenished as the principal balance is repaid, the creditor must give closed-end credit disclosures pursuant to subpart C for that new agreement. In such cases, subpart B, including the substantive rules, does not apply to the closed-end credit transaction, although it will continue to apply to any remaining open-end credit available under the plan.

6. *Spreader clause*. When a creditor holds a mortgage or deed of trust on the consumer's dwelling and that mortgage or deed of trust contains a *spreader clause* (also known as a *dragnet* or cross-collateralization clause), subsequent occurrences such as the opening of an open-end plan are subject to the rules applicable to home equity plans to the same degree as if a security interest were taken

directly to secure the plan, unless the creditor effectively waives its security interest under the spreader clause with respect to the subsequent open-end credit extensions.

7. *Appraisals and other valuations.* For consumer credit transactions subject to §1026.40 and secured by the consumer's principal dwelling, creditors and other persons must comply with the requirements for appraisals and other valuations under §1026.42.

40(a) Form of Disclosures

40(a)(1) General

1. *Written disclosures.* The disclosures required under this section must be clear and conspicuous and in writing, but need not be in a form the consumer can keep. (*See* the commentary to §1026.6(a)(3) for special rules when disclosures required under §1026.40(d) are given in a retainable form.)

2. *Disclosure of annual percentage rate—more conspicuous requirement.* As provided in §1026.5(a)(2), when the term *annual percentage rate* is required to be disclosed with a number, it must be more conspicuous than other required disclosures.

3. *Segregation of disclosures.* i. While most of the disclosures must be grouped together and segregated from all unrelated information, the creditor is permitted to include information that explains or expands on the required disclosures, including, for example:

A. Any prepayment penalty.

B. How a substitute index may be chosen.

C. Actions the creditor may take short of terminating and accelerating an outstanding balance.

D. Renewal terms.

E. Rebate of fees.

ii. An example of information that does not explain or expand on the required disclosures and thus cannot be included is the creditor's underwriting criteria, although the creditor could provide such information separately from the required disclosures.

4. *Method of providing disclosures.* A creditor may provide a single disclosure form for all of its home equity plans, as long as the disclosure describes all aspects of the plans. For example, if the creditor offers several payment options, all such options must be disclosed. (See, however, the commentary to §1026.40(d)(5)(iii) and (d)(12) (x) and (xi) for disclosure requirements relating to these provisions.) If any aspects of a plan are linked together, the creditor must disclose clearly the relationship of the terms to each other. For example, if the consumer can only obtain a particular payment option in conjunction with a certain variable-rate feature, this fact must be disclosed. A creditor has the option of providing separate disclosure forms for multiple options or variations in features. For example, a creditor that offers different payment options for the draw period may prepare separate disclosure forms for the two payment options. A creditor using this alternative, however, must include a statement on each disclosure form that the consumer should ask about the creditor's other home equity programs. (This disclosure is required only for those programs available generally to the public. Thus, if the only other programs available are employee preferred-rate plans, for example, the creditor would not have to provide this statement.) A creditor that receives a request for information about other available programs must provide the additional disclosures as soon as reasonably possible.

5. *Form of electronic disclosures provided on or with electronic applications.* Creditors must provide the disclosures required by this section (including the brochure) on or with a blank application that is made available to the consumer in electronic form, such as on a creditor's Internet Web site. Creditors have flexibility in satisfying this requirement. Methods creditors could use to satisfy the requirement include, but are not limited to, the following examples (whatever method is used, a creditor need not confirm that the consumer has read the disclosures):

i. The disclosures could automatically appear on the screen when the application appears;

ii. The disclosures could be located on the same Web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

iii. Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

iv. The disclosures could be located on the same Web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application.

40(a)(2) Precedence of Certain Disclosures

1. *Precedence rule.* The list of conditions provided at the creditor's option under §1026.40(d)(4)(iii) need not precede the other disclosures.

Paragraph 40(a)(3)

1. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a home equity credit line application electronically (other than as described under ii. below), such as online at a home computer, the creditor must provide the disclosures in electronic form (such as with the application form on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application. If the creditor instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the creditor's office, and accesses a home equity credit line application electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the creditor to provide applications to consumers), the creditor may provide disclosures in either electronic or paper form, provided the creditor complies with the timing, delivery, and retainability requirements of the regulation.

40(b) Time of Disclosures

1. *Mail and telephone applications.* If the creditor sends applications through the mail, the disclosures and a brochure must accompany the application. If an application is taken over the telephone, the disclosures and brochure may be delivered or mailed within three business days of taking the application. If an application is mailed to the consumer following a telephone request, however, the creditor also must send the disclosures and a brochure along with the application.

2. *General purpose applications.* The disclosures and a brochure need not be provided when a general purpose application is given to a consumer unless (1) the application or materials accompanying it indicate that it can be used to apply for a home equity plan or (2) the application is provided in response to a consumer's specific inquiry about a home equity plan. On the other hand, if a general purpose application is provided in response to a consumer's specific inquiry only about credit other than a home equity plan, the disclosures and brochure need not be provided even if the application indicates it can be used for a home equity plan, unless it is accompanied by promotional information about home equity plans.

3. *Publicly-available applications.* Some creditors make applications for home equity plans, such as *take-ones,* available without the need for a consumer to request them. These applications must be accompanied by the disclosures and a brochure, such as by attaching the disclosures and brochure to the application form.

4. *Response cards.* A creditor may solicit consumers for its home equity plan by mailing a *response card* which the consumer returns to the creditor to indicate interest in the plan. If the only action taken by the creditor upon receipt of the response card is to send the consumer an application form or to telephone the consumer to discuss the plan, the creditor need not send the disclosures and brochure with the response card.

5. *Denial or withdrawal of application.* In situations where § 1026.40(b) permits the creditor a three-day delay in providing disclosures and the brochure, if the creditor determines within that period that an application will not be approved, the creditor need not provide the consumer with the disclosures or brochure. Similarly, if the consumer withdraws the application within this three-day period, the creditor need not provide the disclosures or brochure.

6. *Intermediary agent or broker.* In determining whether or not an application involves an *intermediary agent or broker* as discussed in § 1026.40(b), creditors should consult the provisions in comment 19(b)–3.

40(c) Duties of Third Parties

1. *Disclosure requirements.* Although third parties who give applications to consumers for home equity plans must provide the brochure required under § 1026.40(e) in all cases, such persons need provide the disclosures required under § 1026.40(d) only in certain instances. A third party has no duty to obtain disclosures about a creditor's home equity plan or to create a set of disclosures based on what it knows about a creditor's plan. If, however, a creditor provides the third party with disclosures along with its application form, the third party must give the disclosures to the consumer with the application form. The duties under this section are those of the third party; the creditor is not responsible for ensuring that a third party complies with those obligations. If an intermediary agent or broker takes an application over the telephone or receives an application contained in a magazine or other publication, § 1026.40(c) permits that person to mail the disclosures and brochure within three business days of receipt of the application. (See the commentary to § 1026.40(h) about imposition of nonrefundable fees.)

40(d) Content of Disclosures

1. *Disclosures given as applicable.* The disclosures required under this section need be made only as applicable. Thus, for example, if negative amortization cannot occur in a home equity plan, a reference to it need not be made.

2. *Duty to respond to requests for information.* If the consumer, prior to the opening of a plan, requests information as suggested in the disclosures (such as the current index value or margin), the creditor must provide this information as soon as reasonably possible after the request.

40(d)(1) Retention of Information

1. *When disclosure not required.* The creditor need not disclose that the consumer should make or otherwise retain a copy of the disclosures if they are retainable—for example, if the disclosures are not part of an application that must be returned to the creditor to apply for the plan.

40(d)(2) Conditions for Disclosed Terms

Paragraph 40(d)(2)(i)

1. *Guaranteed terms.* The requirement that the creditor disclose the time by which an application must be submitted to obtain the disclosed terms does not require the creditor to guarantee any terms. If a creditor chooses not to guarantee any terms, it must disclose that all of the terms are subject to change prior to opening the plan. The creditor also is permitted to guarantee some terms and not others, but must indicate which terms are subject to change.

2. *Date for obtaining disclosed terms.* The creditor may disclose either a specific date or a time period for obtaining the disclosed terms. If the creditor discloses a time period, the consumer must be able to determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms. For example, the disclosure might read, "To obtain the following terms, you must submit your application within 60 days after the date appearing on this disclosure," provided the disclosure form also shows the date.

Paragraph 40(d)(2)(ii)

1. *Relation to other provisions.* Creditors should consult the rules in §1026.40(g) regarding refund of fees.

40(d)(4) Possible Actions by Creditor

Paragraph 40(d)(4)(i)

1. *Fees imposed upon termination.* This disclosure applies only to fees (such as penalty or prepayment fees) that the creditor imposes if it terminates the plan prior to normal expiration. The disclosure does not apply to fees that are imposed either when the plan expires in accordance with the agreement or if the consumer terminates the plan prior to its scheduled maturity. In addition, the disclosure does not apply to fees associated with collection of the debt, such as attorneys fees and court costs, or to increases in the annual percentage rate linked to the consumer's failure to make payments. The actual amount of the fee need not be disclosed.

2. *Changes specified in the initial agreement.* If changes may occur pursuant to §1026.40(f)(3)(i), a creditor must state that certain changes will be implemented as specified in the initial agreement.

Paragraph 40(d)(4)(iii)

1. *Disclosure of conditions.* In making this disclosure, the creditor may provide a highlighted copy of the document that contains such information, such as the contract or security agreement. The relevant items must be distinguished from the other information contained in the document. For example, the creditor may provide a cover sheet that specifically points out which contract provisions contain the information, or may mark the relevant items on the document itself. As an alternative to disclosing the conditions in this manner, the creditor may simply describe the conditions using the language in §§1026.40(f)(2)(i)–(iii), 1026.40(f)(3)(i) (regarding freezing the line when the maximum annual percentage rate is reached), and 1026.40(f)(3)(vi) or language that is substantially similar. The condition contained in §1026.40(f)(2)(iv) need not be stated. In describing specified changes that may be implemented during the plan, the creditor may provide a disclosure such as "Our agreement permits us to make certain changes to the terms of the line at specified times or upon the occurrence of specified events."

2. *Form of disclosure.* The list of conditions under §1026.40(d)(4)(iii) may appear with the segregated disclosures or apart from them. If the creditor elects to provide the list of conditions with the segregated disclosures, the list need not comply with the precedence rule in §1026.40(a)(2).

40(d)(5) Payment Terms

Paragraph 40(d)(5)(i)

1. *Length of the plan.* The combined length of the draw period and any repayment period need not be stated. If the length of the repayment phase cannot be determined because, for example, it depends on the balance outstanding at the beginning of the repayment period, the creditor must state that the length is determined by the size of the balance. If the length of the plan is indefinite (for example, because there is no time limit on the period during which the consumer can take advances), the creditor must state that fact.

2. *Renewal provisions.* If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to renew or extend the draw period of the plan, the possibility of renewal or extension—regardless of its likelihood—should be ignored for purposes of the disclosures. For example, if an agreement provides that the draw period is five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. (See the commentary accompanying

§1026.9(c)(1) dealing with change in terms requirements.)

Paragraph 40(d)(5)(ii)

1. *Determination of the minimum periodic payment.* This disclosure must reflect how the minimum periodic payment is determined, but need only describe the principal and interest components of the payment. Other charges that may be part of the payment (as well as the balance computation method) may, but need not, be described under this provision.

2. *Fixed rate and term payment options during draw period.* If the home equity plan permits the consumer to repay all or part of the balance during the draw period at a fixed rate (rather than a variable rate) and over a specified time period, this feature must be disclosed. To illustrate, a variable-rate plan may permit a consumer to elect during a ten-year draw period to repay all or a portion of the balance over a three-year period at a fixed rate. The creditor must disclose the rules relating to this feature including the period during which the option can be selected, the length of time over which repayment can occur, any fees imposed for such a feature, and the specific rate or a description of the index and margin that will apply upon exercise of this choice. For example, the index and margin disclosure might state: ''If you choose to convert any portion of your balance to a fixed rate, the rate will be the highest prime rate published in the 'Wall Street Journal' that is in effect at the date of conversion plus a margin.'' If the fixed rate is to be determined according to an index, it must be one that is outside the creditor's control and is publicly available in accordance with §1026.40(f)(1). The effect of exercising the option should not be reflected elsewhere in the disclosures, such as in the historical example required in §1026.40(d)(12)(xi).

3. *Balloon payments.* In programs where the occurrence of a balloon payment is possible, the creditor must disclose the possibility of a balloon payment even if such a payment is uncertain or unlikely. In such cases, the disclosure might read, ''Your minimum payments may not be sufficient to fully repay the principal that is outstanding on your line. If they are not, you will be required to pay the entire outstanding balance in a single payment.'' In programs where a balloon payment will occur, such as programs with interest-only payments during the draw period and no repayment period, the disclosures must state that fact. For example, the disclosure might read, ''Your minimum payments will not repay the principal that is outstanding on your line. You will be required to pay the entire outstanding balance in a single payment.'' In making this disclosure, the creditor is not required to use the term ''balloon payment.'' The creditor also is not required to disclose the amount of the balloon payment. (See, however, the requirement under §1026.40(d)(5)(iii).) The balloon payment disclosure does not apply in cases where repayment of the entire outstanding balance would occur only as a result of termination and acceleration. The creditor also need not make a disclosure about balloon payments if the final payment could not be more than twice the amount of other minimum payments under the plan.

Paragraph 40(d)(5)(iii)

1. *Minimum periodic payment example.* In disclosing the payment example, the creditor may assume that the credit limit as well as the outstanding balance is $10,000 if such an assumption is relevant to calculating payments. (If the creditor only offers lines of credit for less than $10,000, the creditor may assume an outstanding balance of $5,000 instead of $10,000 in making this disclosure.) The example should reflect the payment comprised only of principal and interest. Creditors may provide an additional example reflecting other charges that may be included in the payment, such as credit insurance premiums. Creditors may assume that all months have an equal number of days, that payments are collected in whole cents, and that payments will fall on a business day even though they may be due on a non-business day. For variable-rate plans, the example must be based on the last rate in the historical example required in §1026.40(d)(12)(xi), or a more recent rate. In cases where the last rate shown in the historical example is different from the index value and margin (for example, due to a rate cap), creditors should calculate the rate by using the index value and margin. A discounted rate may not be considered a more recent rate in calculating this payment example for either variable- or fixed-rate plans.

2. *Representative examples.* i. In plans with multiple payment options within the draw period or within any repayment period, the creditor may provide representative examples as an alternative to providing examples for each payment option. The creditor may elect to provide representative payment examples based on three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges (*interest only* plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2% of the balance or 1/180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements

within one of these three categories even if other features exist, such as varying lengths of a draw or repayment period, required payment of past due amounts, late charges, and minimum dollar amounts. The creditor may use a single example within each category to represent the payment options in that category. For example, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the example required under §1026.40(d)(5)(iii) for that option alone.

ii. The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. (See the commentary to §1026.40(d)(12)(x) and (xi) for a discussion of the use of representative examples for making those disclosures. Creditors using a representative example within each category must use the same example for purposes of the disclosures under §1026.40(d)(5)(iii) and (d)(12)(x) and (xi).) Creditors may use representative examples under §1026.40(d)(5) only with respect to the payment example required under paragraph (d)(5)(iii). Creditors must provide a full narrative description of all payment options under §1026.40(d)(5)(i) and (ii).

3. *Examples for draw and repayment periods.* Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods. In setting forth payment examples for any repayment period under this section (and the historical example under §1026.40(d)(12)(xi)), creditors should assume a $10,000 advance is taken at the beginning of the draw period and is reduced according to the terms of the plan. Creditors should not assume an additional advance is taken at any time, including at the beginning of any repayment period.

4. *Reverse mortgages.* Reverse mortgages, also known as reverse annuity or home equity conversion mortgages, in addition to permitting the consumer to obtain advances, may involve the disbursement of monthly advances to the consumer for a fixed period or until the occurrence of an event such as the consumer's death. Repayment of the reverse mortgage (generally a single payment of principal and accrued interest) may be required to be made at the end of the disbursements or, for example, upon the death of the consumer. In disclosing these plans, creditors must apply the following rules, as applicable:

i. If the reverse mortgage has a specified period for advances and disbursements but repayment is due only upon occurrence of a future event such as the death of the consumer, the creditor must assume that disbursements will be made until they are scheduled to end. The creditor must assume repayment will occur when disbursements end (or within a period following the final disbursement which is not longer than the regular interval between disbursements). This assumption should be used even though repayment may occur before or after the disbursements are scheduled to end. In such cases, the creditor may include a statement such as "The disclosures assume that you will repay the line at the time the draw period and our payments to you end. As provided in your agreement, your repayment may be required at a different time." The single payment should be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under §1026.40(d)(5)(iii) should assume a single $10,000 draw.

ii. If the reverse mortgage has neither a specified period for advances or disbursements nor a specified repayment date and these terms will be determined solely by reference to future events, including the consumer's death, the creditor may assume that the draws and disbursements will end upon the consumer's death (estimated by using actuarial tables, for example) and that repayment will be required at the same time (or within a period following the date of the final disbursement which is not longer than the regular interval for disbursements). Alternatively, the creditor may base the disclosures upon another future event it estimates will be most likely to occur first. (If terms will be determined by reference to future events which do not include the consumer's death, the creditor must base the disclosures upon the occurrence of the event estimated to be most likely to occur first.)

iii. In making the disclosures, the creditor must assume that all draws and disbursements and accrued interest will be paid by the consumer. For example, if the note has a non-recourse provision providing that the consumer is not obligated for an amount greater than the value of the house, the creditor must nonetheless assume that the full amount to be drawn or disbursed will be repaid. In this case, however, the creditor may include a statement such as "The disclosures assume full repayment of the amount advanced plus accrued interest, although the amount you may be required to pay is limited by your agreement."

iv. Some reverse mortgages provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. The creditor must disclose the appreciation feature, including describing how the creditor's share will be determined, any limitations, and when the feature may be exercised.

40(d)(6) Annual Percentage Rate

1. *Preferred-rate plans.* If a creditor offers a preferential fixed-rate plan in which the rate

will increase a specified amount upon the occurrence of a specified event, the creditor must disclose the specific amount the rate will increase.

40(d)(7) Fees Imposed by Creditor

1. *Applicability.* The fees referred to in §1026.40(d)(7) include items such as application fees, points, annual fees, transaction fees, fees to obtain checks to access the plan, and fees imposed for converting to a repayment phase that is provided for in the original agreement. This disclosure includes any fees that are imposed by the creditor to use or maintain the plan, whether the fees are kept by the creditor or a third party. For example, if a creditor requires an annual credit report on the consumer and requires the consumer to pay this fee to the creditor or directly to the third party, the fee must be specifically stated. Third party fees to open the plan that are initially paid by the consumer to the creditor may be included in this disclosure or in the disclosure under §1026.40(d)(8).

2. *Manner of describing fees.* Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit. The creditor may provide a stepped fee schedule in which a fee will increase a specified amount at a specified date. (See the discussion contained in the commentary to §1026.40(f)(3)(i).)

3. *Fees not required to be disclosed.* Fees that are not imposed to open, use, or maintain a plan, such as fees for researching an account, photocopying, paying late, stopping payment, having a check returned, exceeding the credit limit, or closing out an account do not have to be disclosed under this section. Credit report and appraisal fees imposed to investigate whether a condition permitting a freeze continues to exist—as discussed in the commentary to §1026.40(f)(3)(vi)—are not required to be disclosed under this section or §1026.40(d)(8).

4. *Rebates of closing costs.* If closing costs are imposed they must be disclosed, regardless of whether such costs may be rebated later (for example, rebated to the extent of any interest paid during the first year of the plan).

5. *Terms used in disclosure.* Creditors need not use the terms *finance charge* or *other charge* in describing the fees imposed by the creditor under this section or those imposed by third parties under §1026.40(d)(8).

40(d)(8) Fees Imposed by Third Parties to Open a Plan

1. *Applicability.* Section 1026.40(d)(8) applies only to fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee imposed by a government agency at the end of a plan to release a security interest. Fees to be disclosed include appraisal, credit report, government agency, and attorneys fees. In cases where property insurance is required by the creditor, the creditor either may disclose the amount of the premium or may state that property insurance is required. For example, the disclosure might state, ''You must carry insurance on the property that secures this plan.''

2. *Itemization of third-party fees.* In all cases creditors must state the total of third-party fees as a single dollar amount or a range except that the total need not include costs for property insurance if the creditor discloses that such insurance is required. A creditor has two options with regard to providing the more detailed information about third party fees. Creditors may provide a statement that the consumer may request more specific cost information about third party fees from the creditor. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures. Any itemization provided upon the consumer's request need not include a disclosure about property insurance.

3. *Manner of describing fees.* A good faith estimate of the amount of fees must be provided. Creditors may provide, based on a typical or representative amount of credit, a range for such fees or state the dollar amount of such fees. Fees may be expressed on a unit cost basis, for example, $5 per $1,000 of credit.

4. *Rebates of third party fees.* Even if fees imposed by third parties may be rebated, they must be disclosed. (See the commentary to §1026.40(d)(7).)

40(d)(9) Negative Amortization

1. *Disclosure required.* In transactions where the minimum payment will not or may not be sufficient to cover the interest that accrues on the outstanding balance, the creditor must disclose that negative amortization will or may occur. This disclosure is required whether or not the unpaid interest is added to the outstanding balance upon which interest is computed. A disclosure is not required merely because a loan calls for non-amortizing or partially amortizing payments.

40(d)(10) Transaction Requirements

1. *Applicability.* A limitation on automated teller machine usage need not be disclosed under this paragraph unless that is the only means by which the consumer can obtain funds.

40(d)(12) Disclosures for Variable-Rate Plans

1. *Variable-rate provisions.* Sample forms in appendix G–14 provide illustrative guidance on the variable-rate rules.

Paragraph 40(d)(12)(iv)

1. *Determination of annual percentage rate.* If the creditor adjusts its index through the addition of a margin, the disclosure might read, "Your annual percentage rate is based on the index plus a margin." The creditor is not required to disclose a specific value for the margin.

Paragraph 40(d)(12)(viii)

1. *Preferred-rate provisions.* This paragraph requires disclosure of preferred-rate provisions, where the rate will increase upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ or the consumer closing an existing deposit account with the creditor.

2. *Provisions on conversion to fixed rates.* The commentary to § 1026.40(d)(5)(ii) discusses the disclosure requirements for options permitting the consumer to convert from a variable rate to a fixed rate.

Paragraph 40(d)(12)(ix)

1. *Periodic limitations on increases in rates.* The creditor must disclose any annual limitations on increases in the annual percentage rate. If the creditor bases its rate limitation on 12 monthly billing cycles, such a limitation should be treated as an annual cap. Rate limitations imposed on less than an annual basis must be stated in terms of a specific amount of time. For example, if the creditor imposes rate limitations on only a semiannual basis, this must be expressed as a rate limitation for a six-month time period. If the creditor does not impose periodic limitations (annual or shorter) on rate increases, the fact that there are no annual rate limitations must be stated.

2. *Maximum limitations on increases in rates.* The maximum annual percentage rate that may be imposed under each payment option over the term of the plan (including the draw period and any repayment period provided for in the initial agreement) must be provided. The creditor may disclose this rate as a specific number (for example, 18%) or as a specific amount above the initial rate. For example, this disclosure might read, "The maximum annual percentage rate that can apply to your line will be 5 percentage points above your initial rate." If the creditor states the maximum rate as a specific amount above the initial rate, the creditor must include a statement that the consumer should inquire about the rate limitations that are currently available. If an initial discount is not taken into account in applying maximum rate limitations, that fact must be disclosed. If separate overall limitations apply to rate increases resulting from events such as the exercise of a fixed-rate conversion option or leaving the creditor's employ, those limitations also must be stated. Limitations do not include legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations.

3. *Form of disclosures.* The creditor need not disclose each periodic or maximum rate limitation that is currently available. Instead, the creditor may disclose the range of the lowest and highest periodic and maximum rate limitations that may be applicable to the creditor's home equity plans. Creditors using this alternative must include a statement that the consumer should inquire about the rate limitations that are currently available.

Paragraph 40(d)(12)(x)

1. *Maximum rate payment example.* In calculating the payment creditors should assume the maximum rate is in effect. Any discounted or premium initial rates or periodic rate limitations should be ignored for purposes of this disclosure. If a range is used to disclose the maximum cap under § 1026.40(d)(12)(ix), the highest rate in the range must be used for the disclosure under this paragraph. As an alternative to making disclosures based on each payment option, the creditor may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the commentary to § 1026.40(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods. Creditors should calculate the example for the repayment period based on an assumed $10,000 balance. (See the commentary to § 1026.40(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

2. *Time the maximum rate could be reached.* In stating the date or time when the maximum rate could be reached, creditors should assume the rate increases as rapidly as possible under the plan. In calculating the date or time, creditors should factor in any discounted or premium initial rates and periodic rate limitations. This disclosure must be provided for the draw phase and any repayment phase. Creditors should assume the index and margin shown in the last year of the historical example (or a more recent rate) is in effect at the beginning of each phase.

Paragraph 40(d)(12)(xi)

1. *Index movement.* Index values and annual percentage rates must be shown for the entire 15 years of the historical example and must be based on the most recent 15 years. The example must be updated annually to reflect the most recent 15 years of index values as soon as reasonably possible after the new index value becomes available. If the values for an index have not been available for 15 years, a creditor need only go back as far as

the values have been available and may start the historical example at the year for which values are first available.

2. *Selection of index values.* The historical example must reflect the method of choosing index values for the plan. For example, if an average of index values is used in the plan, averages must be used in the example, but if an index value as of a particular date is used, a single index value must be shown. The creditor is required to assume one date (or one period, if an average is used) within a year on which to base the history of index values. The creditor may choose to use index values as of any date or period as long as the index value as of this date or period is used for each year in the example. Only one index value per year need be shown, even if the plan provides for adjustments to the annual percentage rate or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the annual percentage rate and payment.

3. *Selection of margin.* A value for the margin must be assumed in order to prepare the example. A creditor may select a representative margin that it has used with the index during the six months preceding preparation of the disclosures and state that the margin is one that it has used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values.

4. *Amount of discount or premium.* In reflecting any discounted or premium initial rate, the creditor may select a discount or premium that it has used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. The creditor may assume that a discount or premium that would have been in effect for any part of a year was in effect for the full year for purposes of reflecting it in the historical example.

5. *Rate limitations.* Limitations on both periodic and maximum rates must be reflected in the historical example. If ranges of rate limitations are provided under §1026.40(d)(12)(ix), the highest rates provided in those ranges must be used in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2% annual cap.

6. *Assumed advances.* The creditor should assume that the $10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan, and that the consumer takes no subsequent draws. As discussed in the commentary to §1026.40(d)(5), creditors should not assume an additional advance is taken at the beginning of any repayment period. If applicable, the creditor may assume the $10,000 is both the advance and the credit limit. (See the commentary to §1026.40(d)(5) for a discussion of the circumstances in which a creditor may use a lower outstanding balance.)

7. *Representative payment options.* The creditor need not provide an historical example for all of its various payment options, but may select a representative payment option within each of the three categories of payments upon which to base its disclosure. (See the commentary to §1026.40(d)(5).)

8. *Payment information.* i. The payment figures in the historical example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted initial rate, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have applied to the plan. The historical example should include payments for as much of the length of the plan as would occur during a 15-year period. For example:

A. If the draw period is 10 years and the repayment period is 15 years, the example should illustrate the entire 10-year draw period and the first 5 years of the repayment period.

B. If the length of the draw period is 15 years and there is a 15-year repayment phase, the historical example must reflect the payments for the 15-year draw period and would not show any of the repayment period. No additional historical example would be required to reflect payments for the repayment period.

C. If the length of the plan is less than 15 years, payments in the historical example need only be shown for the number of years in the term. In such cases, however, the creditor must show the index values, margin and annual percentage rates and continue to reflect all significant plan terms such as rate limitations for the entire 15 years.

ii. A creditor need show only a single payment per year in the example, even though payments may vary during a year. The calculations should be based on the actual payment computation formula, although the creditor may assume that all months have an equal number of days. The creditor may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date, but must be consistent in the manner in which the period used to illustrate payment information is selected. Information about balloon payments and remaining balance may, but need not, be reflected in the example.

9. *Disclosures for repayment period.* The historical example must reflect all features of

the repayment period, including the appropriate index values, margin, rate limitations, length of the repayment period, and payments. For example, if different indices are used during the draw and repayment periods, the index values for that portion of the 15 years that reflect the repayment period must be the values for the appropriate index.

10. *Reverse mortgages.* The historical example for reverse mortgages should reflect 15 years of index values and annual percentage rates, but the payment column should be blank until the year that the single payment will be made, assuming that payment is estimated to occur within 15 years. (See the commentary to §1026.40(d)(5) for a discussion of reverse mortgages.)

40(e) Brochure

1. *Substitutes.* A brochure is a suitable substitute for the home equity brochure, ''What You Should Know About Home Equity Lines of Credit,'' (available on the Bureau's Web site) if it is, at a minimum, comparable to that brochure in substance and comprehensiveness. Creditors are permitted to provide more detailed information than is contained in that brochure.

2. *Effect of third party delivery of brochure.* If a creditor determines that a third party has provided a consumer with the required brochure pursuant to §1026.40(c), the creditor need not give the consumer a second brochure.

40(f) Limitations on Home Equity Plans

1. *Coverage.* Section 1026.40(f) limits both actions that may be taken and language that may be included in contracts, and applies to any assignee or holder as well as to the original creditor. The limitations apply to the draw period and any repayment period, and to any renewal or modification of the original agreement.

Paragraph 40(f)(1)

1. *External index.* A creditor may change the annual percentage rate for a plan only if the change is based on an index outside the creditor's control. Thus, a creditor may not make rate changes based on its own prime rate or cost of funds and may not reserve a contractual right to change rates at its discretion. A creditor is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the bank's own prime rate is one of several rates used to establish the published rate.

2. *Publicly available.* The index must be available to the public. A publicly available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify rates imposed under the plan.

3. *Provisions not prohibited.* This paragraph does not prohibit rate changes that are specifically set forth in the agreement. For example, stepped-rate plans, in which specified rates are imposed for specified periods, are permissible. In addition, preferred-rate provisions, in which the rate increases by a specified amount upon the occurrence of a specified event, also are permissible.

Paragraph 40(f)(2)

1. *Limitations on termination and acceleration.* In general, creditors are prohibited from terminating and accelerating payment of the outstanding balance before the scheduled expiration of a plan. However, creditors may take these actions in the four circumstances specified in §1026.40(f)(2). Creditors are not permitted to specify in their contracts any other events that allow termination and acceleration beyond those permitted by the regulation. Thus, for example, an agreement may not provide that the balance is payable on demand nor may it provide that the account will be terminated and the balance accelerated if the rate cap is reached.

2. *Other actions permitted.* If an event permitting termination and acceleration occurs, a creditor may instead take actions short of terminating and accelerating. For example, a creditor could temporarily or permanently suspend further advances, reduce the credit limit, change the payment terms, or require the consumer to pay a fee. A creditor also may provide in its agreement that a higher rate or higher fees will apply in circumstances under which it would otherwise be permitted to terminate the plan and accelerate the balance. A creditor that does not immediately terminate an account and accelerate payment or take another permitted action may take such action at a later time, provided one of the conditions permitting termination and acceleration exists at that time.

Paragraph 40(f)(2)(i)

1. *Fraud or material misrepresentation.* A creditor may terminate a plan and accelerate the balance if there has been fraud or material misrepresentation by the consumer in connection with the plan. This exception includes fraud or misrepresentation at any time, either during the application process or during the draw period and any repayment period. What constitutes fraud or misrepresentation is determined by applicable state law and may include acts of omission as well as overt acts, as long as any necessary intent on the part of the consumer exists.

Paragraph 40(f)(2)(ii)

1. *Failure to meet repayment terms.* A creditor may terminate a plan and accelerate the

balance when the consumer fails to meet the repayment terms provided for in the agreement. However, a creditor may terminate and accelerate under this provision only if the consumer actually fails to make payments. For example, a creditor may not terminate and accelerate if the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. If a consumer files for or is placed in bankruptcy, the creditor may terminate and accelerate under this provision if the consumer fails to meet the repayment terms of the agreement. This section does not override any state or other law that requires a right-to-cure notice, or otherwise places a duty on the creditor before it can terminate a plan and accelerate the balance.

Paragraph 40(f)(2)(iii)

1. *Impairment of security.* A creditor may terminate a plan and accelerate the balance if the consumer's action or inaction adversely affects the creditor's security for the plan, or any right of the creditor in that security. Action or inaction by third parties does not, in itself, permit the creditor to terminate and accelerate.

2. *Examples.* i. A creditor may terminate and accelerate, for example, if:

A. The consumer transfers title to the property or sells the property without the permission of the creditor.

B. The consumer fails to maintain required insurance on the dwelling.

C. The consumer fails to pay taxes on the property.

D. The consumer permits the filing of a lien senior to that held by the creditor.

E. The sole consumer obligated on the plan dies.

F. The property is taken through eminent domain.

G. A prior lienholder forecloses.

ii. By contrast, the filing of a judgment against the consumer would permit termination and acceleration only if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. If the consumer commits waste or otherwise destructively uses or fails to maintain the property such that the action adversely affects the security, the plan may be terminated and the balance accelerated. Illegal use of the property by the consumer would permit termination and acceleration if it subjects the property to seizure. If one of two consumers obligated on a plan dies the creditor may terminate the plan and accelerate the balance if the security is adversely affected. If the consumer moves out of the dwelling that secures the plan and that action adversely affects the security, the creditor may terminate a plan and accelerate the balance.

Paragraph 40(f)(3)

1. *Scope of provision.* In general, a creditor may not change the terms of a plan after it is opened. For example, a creditor may not increase any fee or impose a new fee once the plan has been opened, even if the fee is charged by a third party, such as a credit reporting agency, for a service. The change of terms prohibition applies to all features of a plan, not only those required to be disclosed under this section. For example, this provision applies to charges imposed for late payment, although this fee is not required to be disclosed under §1026.40(d)(7).

2. *Charges not covered.* There are three charges not covered by this provision. A creditor may pass on increases in taxes since such charges are imposed by a governmental body and are beyond the control of the creditor. In addition, a creditor may pass on increases in premiums for property insurance that are excluded from the finance charge under §1026.4(d)(2), since such insurance provides a benefit to the consumer independent of the use of the line and is often maintained notwithstanding the line. A creditor also may pass on increases in premiums for credit insurance that are excluded from the finance charge under §1026.4(d)(1), since the insurance is voluntary and provides a benefit to the consumer.

Paragraph 40(f)(3)(i)

1. *Changes provided for in agreement.* A creditor may provide in the initial agreement that further advances will be prohibited or the credit line reduced during any period in which the maximum annual percentage rate is reached. A creditor also may provide for other specific changes to take place upon the occurrence of specific events. Both the triggering event and the resulting modification must be stated with specificity. For example, in home equity plans for employees, the agreement could provide that a specified higher rate or margin will apply if the borrower's employment with the creditor ends. A contract could contain a stepped-rate or stepped-fee schedule providing for specified changes in the rate or the fees on certain dates or after a specified period of time. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific appreciation share and the specific circumstances which require the payment of it are set forth. A contract may permit a consumer to switch among minimum payment options during the plan.

2. *Prohibited provisions.* A creditor may not include a general provision in its agreement permitting changes to any or all of the terms of the plan. For example, creditors may not include ''boilerplate'' language in the agreement stating that they reserve the right to

change the fees imposed under the plan. In addition, a creditor may not include any ''triggering events'' or responses that the regulation expressly addresses in a manner different from that provided in the regulation. For example, an agreement may not provide that the margin in a variable-rate plan will increase if there is a material change in the consumer's financial circumstances, because the regulation specifies that temporarily freezing the line or lowering the credit limit is the permissible response to a material change in the consumer's financial circumstances. Similarly a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decline in property value since the regulation allows that response only for a significant decline.

Paragraph 40(f)(3)(ii)

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

Paragraph 40(f)(3)(iii)

1. *Changes by written agreement.* A creditor may change the terms of a plan if the consumer expressly agrees in writing to the change at the time it is made. For example, a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance. The provisions of any such agreement are governed by the limitations in §1026.40(f). For example, a mutual agreement could not provide for future annual percentage rate changes based on the movement of an index controlled by the creditor or for termination and acceleration under circumstances other than those specified in the regulation. By contrast, a consumer could agree to a new credit limit for the plan, although the agreement could not permit the creditor to later change the credit limit except by a subsequent written agreement or in the circumstances described in §1026.40(f)(3)(vi).

2. *Written agreement.* The change must be agreed to in writing by the consumer. Creditors are not permitted to assume consent because the consumer uses an account, even if use of an account would otherwise constitute acceptance of a proposed change under state law.

Paragraph 40(f)(3)(iv)

1. *Beneficial changes.* After a plan is opened, a creditor may make changes that unequivocally benefit the consumer. Under this provision, a creditor may offer more options to consumers, as long as existing options remain. For example, a creditor may offer the consumer the option of making lower monthly payments or could increase the credit limit. Similarly, a creditor wishing to extend the length of the plan on the same terms may do so. Creditors are permitted to temporarily reduce the rate or fees charged during the plan (though a change in terms notice may be required under §1026.9(c) when the rate or fees are returned to their original level). Creditors also may offer an additional means of access to the line, even if fees are associated with using the device, provided the consumer retains the ability to use prior access devices on the original terms.

Paragraph 40(f)(3)(v)

1. *Insignificant changes.* A creditor is permitted to make insignificant changes after a plan is opened. This rule accommodates operational and similar problems, such as changing the address of the creditor for purposes of sending payments. It does not permit a creditor to change a term such as a fee charged for late payments.

2. *Examples of insignificant changes.* Creditors may make minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are measured to determine changes to the rate for variable-rate plans. A creditor also may change its rounding practice in accordance with the tolerance rules set forth in §1026.14 (for example, stating an exact APR of 14.3333 percent as 14.3 percent, even if it had previously been stated as 14.33 percent). A creditor may change the balance computation method it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the average daily balance method (including new transactions) to the daily balance method (including new transactions).

Paragraph 40(f)(3)(vi)

1. *Suspension of credit privileges or reduction of credit limit.* A creditor may prohibit additional extensions of credit or reduce the credit limit in the circumstances specified in this section of the regulation. In addition, as discussed under §1026.40(f)(3)(i), a creditor may contractually reserve the right to take such actions when the maximum annual percentage rate is reached. A creditor may not

take these actions under other circumstances, unless the creditor would be permitted to terminate the line and accelerate the balance as described in §1026.40(f)(2). The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment.

2. *Temporary nature of suspension or reduction.* Creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only while one of the designated circumstances exists. When the circumstance justifying the creditor's action ceases to exist, credit privileges must be reinstated, assuming that no other circumstance permitting such action exists at that time.

3. *Imposition of fees.* If not prohibited by state law, a creditor may collect only bona fide and reasonable appraisal and credit report fees if such fees are actually incurred in investigating whether the condition permitting the freeze continues to exist. A creditor may not, in any circumstances, impose a fee to reinstate a credit line once the condition has been determined not to exist.

4. *Reinstatement of credit privileges.* Creditors are responsible for ensuring that credit privileges are restored as soon as reasonably possible after the condition that permitted the creditor's action ceases to exist. One way a creditor can meet this responsibility is to monitor the line on an ongoing basis to determine when the condition ceases to exist. The creditor must investigate the condition frequently enough to assure itself that the condition permitting the freeze continues to exist. The frequency with which the creditor must investigate to determine whether a condition continues to exist depends upon the specific condition permitting the freeze. As an alternative to such monitoring, the creditor may shift the duty to the consumer to request reinstatement of credit privileges by providing a notice in accordance with §1026.9(c)(1)(iii). A creditor may require a reinstatement request to be in writing if it notifies the consumer of this requirement on the notice provided under §1026.9(c)(1)(iii). Once the consumer requests reinstatement, the creditor must promptly investigate to determine whether the condition allowing the freeze continues to exist. Under this alternative, the creditor has a duty to investigate only upon the consumer's request.

5. *Suspension of credit privileges following request by consumer.* A creditor may honor a specific request by a consumer to suspend credit privileges. If the consumer later requests that the creditor reinstate credit privileges, the creditor must do so provided no other circumstance justifying a suspension exists at that time. If two or more consumers are obligated under a plan and each has the ability to take advances, the agreement may permit any of the consumers to direct the creditor not to make further advances. A creditor may require that all persons obligated under a plan request reinstatement.

6. *Significant decline defined.* What constitutes a significant decline for purposes of §1026.40(f)(3)(vi)(A) will vary according to individual circumstances. In any event, if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by fifty percent, this constitutes a significant decline in the value of the dwelling for purposes of §1026.40(f)(3)(vi)(A). For example, assume that a house with a first mortgage of $50,000 is appraised at $100,000 and the credit limit is $30,000. The difference between the credit limit and the available equity is $20,000, half of which is $10,000. The creditor could prohibit further advances or reduce the credit limit if the value of the property declines from $100,000 to $90,000. This provision does not require a creditor to obtain an appraisal before suspending credit privileges although a significant decline must occur before suspension can occur.

7. *Material change in financial circumstances.* Two conditions must be met for §1026.40(f)(3)(vi)(B) to apply. First, there must be a ''material change'' in the consumer's financial circumstances, such as a significant decrease in the consumer's income. Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. A creditor may, but does not have to, rely on specific evidence (such as the failure to pay other debts) in concluding that the second part of the test has been met. A creditor may prohibit further advances or reduce the credit limit under this section if a consumer files for or is placed in bankruptcy.

8. *Default of a material obligation.* Creditors may specify events that would qualify as a default of a material obligation under §1026.40(f)(3)(vi)(C). For example, a creditor may provide that default of a material obligation will exist if the consumer moves out of the dwelling or permits an intervening lien to be filed that would take priority over future advances made by the creditor.

9. *Government limits on the annual percentage rate.* Under §1026.40(f)(3)(vi)(D), a creditor may prohibit further advances or reduce the credit limit if, for example, a state usury law is enacted which prohibits a creditor from imposing the agreed-upon annual percentage rate.

40(g) Refund of Fees

1. *Refund of fees required.* If any disclosed term, including any term provided upon request pursuant to §1026.40(d), changes between the time the early disclosures are provided to the consumer and the time the plan is opened, and the consumer as a result decides to not enter into the plan, a creditor must refund all fees paid by the consumer in connection with the application. All fees, including credit report fees and appraisal fees, must be refunded whether such fees are paid to the creditor or directly to third parties. A consumer is entitled to a refund of fees under these circumstances whether or not terms are guaranteed by the creditor under §1026.40(d)(2)(i).

2. *Variable-rate plans.* The right to a refund of fees does not apply to changes in the annual percentage rate resulting from fluctuations in the index value in a variable-rate plan. Also, if the maximum annual percentage rate is expressed as an amount over the initial rate, the right to refund of fees would not apply to changes in the cap resulting from fluctuations in the index value.

3. *Changes in terms.* If a term, such as the maximum rate, is stated as a range in the early disclosures, and the term ultimately applicable to the plan falls within that range, a change does not occur for purposes of this section. If, however, no range is used and the term is changed (for example, a rate cap of 6 rather than 5 percentage points over the initial rate), the change would permit the consumer to obtain a refund of fees. If a fee imposed by the creditor is stated in the early disclosures as an estimate and the fee changes, the consumer could elect to not enter into the agreement and would be entitled to a refund of fees. On the other hand, if fees imposed by third parties are disclosed as estimates and those fees change, the consumer is not entitled to a refund of fees paid in connection with the application. Creditors must, however, use the best information reasonably available in providing disclosures about such fees.

4. *Timing of refunds and relation to other provisions.* The refund of fees must be made as soon as reasonably possible after the creditor is notified that the consumer is not entering into the plan because of the changed term, or that the consumer wants a refund of fees. The fact that an application fee may be refunded to some applicants under this provision does not render such fees finance charges under §1026.4(c)(1) of the regulation.

40(h) Imposition of Nonrefundable Fees

1. *Collection of fees after consumer receives disclosures.* A fee may be collected after the consumer receives the disclosures and brochure and before the expiration of three days, although the fee must be refunded if, within three days of receiving the required information, the consumer decides to not enter into the agreement. In such a case, the consumer must be notified that the fee is refundable for three days. The notice must be clear and conspicuous and in writing, and may be included with the disclosures required under §1026.40(d) or as an attachment to them. If disclosures and brochure are mailed to the consumer, §1026.40(h) provides that a nonrefundable fee may not be imposed until six business days after the mailing.

2. *Collection of fees before consumer receives disclosures.* An application fee may be collected before the consumer receives the disclosures and brochure (for example, when an application contained in a magazine is mailed in with an application fee) provided that it remains refundable until three business days after the consumer receives the §1026.40 disclosures. No other fees except a refundable membership fee may be collected until after the consumer receives the disclosures required under §1026.40.

3. *Relation to other provisions.* A fee collected before disclosures are provided may become nonrefundable except that, under §1026.40(g), it must be refunded if the consumer elects to not enter into the plan because of a change in terms. (Of course, all fees must be refunded if the consumer later rescinds under §1026.15.)

Section 1026.41—Periodic Statements for Residential Mortgage Loans

41(a) In general.

1. *Recipient of periodic statement.* When two consumers are joint obligors with primary liability on a closed-end consumer credit transaction secured by a dwelling subject to §1026.41, the periodic statement may be sent to either one of them. For example, if spouses jointly own a home, the servicer need not send statements to both spouses; a single statement may be sent.

2. *Billing cycles shorter than a 31-day period.* If a loan has a billing cycle shorter than a period of 31 days (for example, a bi-weekly billing cycle), a periodic statement covering an entire month may be used. Such statement would separately list the upcoming payment due dates and amounts due, as required by §1026.20(d)(1), and list all transaction activity that occurred during the related time period, as required by paragraph (d)(4). Such statement may aggregate the information for the explanation of amount due, as required by paragraph (d)(2), and past payment breakdown, as required by paragraph (d)(3).

3. *One statement per billing cycle.* The periodic statement requirement in §1026.41 applies to the ''creditor, assignee, or servicer as applicable.'' The creditor, assignee, and servicer are all subject to this requirement

(*but see* comment 41(a)–4), but only one statement must be sent to the consumer each billing cycle. When two or more parties are subject to this requirement, they may decide among themselves which of them will send the statement.

4. *Opting out.* A consumer may not opt out of receiving periodic statements altogether. However, consumers who have demonstrated the ability to access statements online may opt out of receiving notifications that statements are available. Such an ability may be demonstrated, for example, by the consumer receiving notification that the statements is available, going to the Web site where the information is available, viewing the information about their account and selecting a link or option there to indicate they no longer would like to receive notifications when new statements are available.

41(b) Timing of the periodic statement.

1. *Reasonably prompt time.* Section 1026.41(b) requires that the periodic statement be delivered or placed in the mail no later than a reasonably prompt time after the payment due date or the end of any courtesy period. Delivering, emailing or placing the periodic statement in the mail within four days of the close of the courtesy period of the previous billing cycle generally would be considered reasonably prompt.

2. *Courtesy period.* The meaning of ''courtesy period'' is explained in comment 7(b)(11)–1.

41(c) Form of the periodic statement.

1. *Clear and conspicuous standard.* The ''clear and conspicuous'' standard generally requires that disclosures be in a reasonably understandable form. Except where otherwise provided, the standard does not prohibit adding to the required disclosures, as long as the additional information does not overwhelm or obscure the required disclosures. For example, while certain information about the escrow account (such as the account balance) is not required on the periodic statement, this information may be included.

2. *Additional information; disclosures required by other laws.* Nothing in §1026.41 prohibits a servicer from including additional information or combining disclosures required by other laws with the disclosures required by this subpart, unless such prohibition is expressly set forth in this subpart, or other applicable law.

3. *Electronic distribution.* The periodic statement may be provided electronically if the consumer agrees. The consumer must give affirmative consent to receive statements electronically. If statements are provided electronically, the creditor, assignee, or servicer may send a notification that a consumer's statement is available, with a link to where the statement can be accessed, in place of the statement itself.

4. *Presumed consent.* Any consumer who is currently receiving disclosures for any account (for example, a mortgage or checking account) electronically from their servicer shall be deemed to have consented to receiving e-statements in place of paper statements.

5. *Permissible changes.* Servicers may modify the sample forms for periodic statements provided in appendix H–30 of this part to remove language that could suggest liability under the mortgage loan agreement if such language is not applicable. For example, in the case of a confirmed successor in interest who has not assumed the mortgage loan obligation under State law and is not otherwise liable on the mortgage loan obligation, a servicer may modify the forms to:

i. Use ''this mortgage'' or ''the mortgage'' instead of ''your mortgage.''

ii. Use ''The payments on this mortgage are late'' instead of ''You are late on your mortgage payments.''

iii. Use ''This is the amount needed to bring the loan current'' instead of ''You must pay this amount to bring your loan current.''

41(d) Content and layout of the periodic statement.

1. *Close proximity.* Section 1026.41(d) requires several disclosures to be provided in close proximity to one another. To meet this requirement, the items to be provided in close proximity must be grouped together, and set off from other groupings of items. This may be accomplished in a variety of ways, for example, by presenting the information in boxes, or by arranging the items on the document and including spacing between the groupings. Items in close proximity may not have any unrelated text between them. Text is unrelated if it does not explain or expand upon the required disclosures.

2. *Not applicable.* If an item required by paragraph (d) or (e) of this section is not applicable to the loan, it may be omitted from the periodic statement or coupon book. For example, if there is no prepayment penalty associated with a loan, the prepayment penalty disclosures need not be provided on the periodic statement.

3. *Terminology.* A servicer may use terminology other than that found on the sample periodic statements in appendix H–30, so long as the new terminology is commonly understood. For example, servicers may take into consideration regional differences in terminology and refer to the account for the collection of taxes and insurance, referred to in §1026.41(d) as the ''escrow account,'' as an ''impound account.''

4. *Temporary loss mitigation programs.* If the consumer has agreed to a temporary loss mitigation program, the disclosures required by §1026.41(d)(2), (3), and (5) regarding how payments were and will be applied must

identify how payments are applied according to the loan contract, regardless of the temporary loss mitigation program.

5. *First statement after exemption terminates.* Section 1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) requires the disclosure of the total sum of any fees or charges imposed since the last statement, the total of all payments received since the last statement, including a breakdown of how payments were applied, and a list of all transaction activity since the last statement. For purposes of the first periodic statement provided to the consumer following termination of an exemption under §1026.41(e), the disclosures required by §1026.41(d)(2)(ii), (d)(3)(i), and (d)(4) may be limited to account activity since the last payment due date that occurred while the exemption was in effect. For example, if mortgage loan payments are due on the first of each month and the servicer's exemption under §1026.41(e) terminated on January 15, the first statement provided to the consumer after January 15 may be limited to the total sum of any fees or charges imposed, the total of all payments received, a breakdown of how the payments were applied, and a list of all transaction activity since January 1.

41(d)(1) Amount due.

1. *Acceleration.* If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the amount due under §1026.41(d)(1) must identify only the lesser amount that will be accepted to reinstate the loan. The periodic statement must be accurate when provided and should indicate, if applicable, that the amount due is accurate only for a specified period of time. For example, the statement may include language such as ''as of [date]'' or ''good through [date]'' and provide an amount due that will reinstate the loan as of that date or good through that date, respectively.

2. *Temporary loss mitigation programs.* If the consumer has agreed to a temporary loss mitigation program, the amount due under §1026.41(d)(1) may identify either the payment due under the temporary loss mitigation program or the amount due according to the loan contract.

3. *Permanent loan modifications.* If the loan contract has been permanently modified, the amount due under §1026.41(d)(1) must identify only the amount due under the modified loan contract.

41(d)(2) Explanation of amount due.

1. *Acceleration.* If the balance of a mortgage loan has been accelerated but the servicer will accept a lesser amount to reinstate the loan, the explanation of amount due under §1026.41(d)(2) must list both the reinstatement amount that is disclosed as the amount due and the accelerated amount but not the monthly payment amount that would otherwise be required under §1026.41(d)(2)(i). The periodic statement must also include an explanation that the reinstatement amount will be accepted to reinstate the loan through the ''as of [date]'' or ''good through [date],'' as applicable, along with any special instructions for submitting the payment. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement. The explanation may include related information, such as a statement that the amount disclosed is ''not a payoff amount.''

2. *Temporary loss mitigation programs.* If the consumer has agreed to a temporary loss mitigation program and the amount due identifies the payment due under the temporary loss mitigation program, the explanation of amount due under §1026.41(d)(2) must include both the amount due according to the loan contract and the payment due under the temporary loss mitigation program. The statement must also include an explanation that the amount due is being disclosed as a different amount because of the temporary loss mitigation program. The explanation should be on the front page of the statement or, alternatively, may be included on a separate page enclosed with the periodic statement or in a separate letter.

41(d)(3) Past payment breakdown.

1. *Partial payments.* The disclosure of any partial payments received since the previous statement that were sent to a suspense or unapplied funds account as required by §1026.41(d)(3)(i) should reflect any funds that were received in the time period covered by the current statement and that were placed in such account. The disclosure of any portion of payments since the beginning of the calendar year that was sent to a partial payment or suspense account as required by §1026.41(d)(3)(ii) should reflect all funds that are currently held in a suspense or unapplied funds account. For example:

i. Suppose a payment of $1,000 is due, but the consumer sends in only $600 on January 1, which is held in a suspense account. Further assume there are no fees charged on this account. Assuming there are no other funds in the suspense account, the January statement should reflect: Unapplied funds since last statement—$600. Unapplied funds YTD—$600.

ii. Assume the same facts as in the preceding paragraph, except that during February the consumer sends in $300 and this too is held in the suspense account. The statement should reflect: Unapplied funds since last statement—$300. Unapplied funds YTD—$900.

iii. Assume the same facts as in the preceding paragraph, except that during March the consumer sends in $400. Of this payment, $100 completes a full periodic payment when added to the $900 in funds already held in the suspense account. This $1,000 is applied to the January payment, and the remaining

$300 remains in the suspense account. The statement should reflect: Unapplied funds since last statement—$300. Unapplied Funds YTD—$300.

41(d)(4) Transaction Activity.

1. *Meaning.* Transaction activity includes any transaction that credits or debits the amount currently due. This is the same amount that is required to be disclosed under § 1026.41(d)(1)(iii). Examples of such transactions include, without limitation:

i. Payments received and applied;

ii. Payments received and held in a suspense account;

iii. The imposition of any fees (for example late fees); and

iv. The imposition of any charges (for example, private mortgage insurance).

2. *Description of late fees.* The description of any late fee charges includes the date of the late fee, the amount of the late fee, and the fact that a late fee was imposed.

3. *Partial payments.* If a partial payment is sent to a suspense or unapplied funds account, this fact must be in the transaction description along with the date and amount of the payment.

41(d)(8) Delinquency information.

1. *Length of delinquency.* For purposes of § 1026.41(d)(8), the length of a consumer's delinquency is measured as of the date of the periodic statement or the date of the written notice provided under § 1026.41(e)(3)(iv). A consumer's delinquency begins on the date an amount sufficient to cover a periodic payment of principal, interest, and escrow, if applicable, becomes due and unpaid, even if the consumer is afforded a period after the due date to pay before the servicer assesses a late fee. A consumer is delinquent if one or more periodic payments of principal, interest, and escrow, if applicable, are due and unpaid.

2. *Application of funds.* For purposes of § 1026.41(d)(8), if a servicer applies payments to the oldest outstanding periodic payment, a payment by a delinquent consumer advances the date the consumer's delinquency began. For example, assume a mortgage loan obligation under which a consumer's periodic payment is due on the first of each month. A consumer fails to make a payment on January 1 but makes a periodic payment on February 3. The servicer applies the payment received on February 3 to the outstanding January payment. On February 4, the consumer is three days delinquent, and the next periodic statement should disclose the length of the consumer's delinquency using February 2 as the first day of delinquency.

41(e) Exemptions.

41(e)(3) Coupon book exemption.

1. *Fixed rate.* For guidance on the meaning of "fixed rate" for purposes of § 1026.41(e)(3), see § 1026.18(s)(7)(iii) and its commentary.

2. *Coupon book.* A coupon book is a booklet provided to the consumer with a page for each billing cycle during a set period of time (often covering one year). These pages are designed to be torn off and returned to the servicer with a payment for each billing cycle. Additional information about the loan is often included on or inside the front or back cover, or on filler pages in the coupon book.

3. *Information location.* The information required by paragraph (e)(3)(ii) need not be provided on each coupon, but should be provided somewhere in the coupon book. Such information could be located, e.g., on or inside the front or back cover, or on filler pages in the coupon book.

4. *Outstanding principal balance.* Paragraph (e)(3)(ii)(A) requires the information listed in paragraph (d)(7) to be included in the coupon book. Paragraph (d)(7)(i) requires the disclosure of the outstanding principal balance. If the servicer makes use of a coupon book and the exemption in § 1026.41(e)(3), the servicer need only disclose the principal balance at the beginning of the time period covered by the coupon book.

41(e)(4) Small servicers.

41(e)(4)(ii) Small servicer defined.

1. *Mortgage loans considered.* Pursuant to § 1026.41(a)(1), the mortgage loans considered in determining status as a small servicer are closed-end consumer credit transactions secured by a dwelling, subject to the exclusions in § 1026.41(e)(4)(iii).

2. *Services, together with affiliates, 5,000 or fewer mortgage loans.* To qualify as a small servicer, under § 1026.41(e)(4)(ii)(A), a servicer must service, together with any affiliates, 5,000 or fewer mortgage loans, for all of which the servicer (or an affiliate) is the creditor or assignee. There are two elements to satisfying § 1026.41(e)(4)(ii)(A). First, a servicer, together with any affiliates, must service 5,000 or fewer mortgage loans. Second, a servicer must service only mortgage loans for which the servicer (or an affiliate) is the creditor or assignee. To be the creditor or assignee of a mortgage loan, the servicer (or an affiliate) must either currently own the mortgage loan or must have been the entity to which the mortgage loan obligation was initially payable (that is, the originator of the mortgage loan). A servicer is not a small servicer under § 1026.41(e)(4)(ii)(A) if it services any mortgage loans for which the servicer or an affiliate is not the creditor or assignee (that is, for which the servicer or an affiliate is not the owner or was not the originator). The following two examples demonstrate circumstances in which a servicer would not qualify as a small servicer under § 1026.41(e)(4)(ii)(A) because it did not meet both requirements under § 1026.41(e)(4)(ii)(A) for determining a servicer's status as a small servicer:

i. A servicer services 3,000 mortgage loans, all of which it or an affiliate owns or originated. An affiliate of the servicer services 4,000 other mortgage loans, all of which it or an affiliate owns or originated. Because the number of mortgage loans serviced by a servicer is determined by counting the mortgage loans serviced by a servicer together with any affiliates, both of these servicers are considered to be servicing 7,000 mortgage loans and neither servicer is a small servicer.

ii. A service services 3,100 mortgage loans—3,000 mortgage loans it owns or originated and 100 mortgage loans it neither owns nor originated, but for which it owns the mortgage servicing rights. The servicer is not a small servicer because it services mortgage loans for which the servicer (or an affiliate) is not the creditor or assignee, notwithstanding that the servicer services fewer than 5,000 mortgage loans.

3. *Master servicing and subservicing.* A servicer that qualifies as a small servicer does not lose its small servicer status if it retains a subservicer, as that term is defined in 12 CFR 1024.31, to service any of its mortgage loans. A subservicer can gain the benefit of the small servicer exemption only if (1) the master servicer, as that term is defined in 12 CFR 1024.31, is a small servicer and (2) the subservicer is a small servicer. A subservicer generally will not qualify as a small servicer because it does not own or did not originate the mortgage loans it subservices—unless it is an affiliate of a master servicer that qualifies as a small servicer. The following examples demonstrate the application of the small servicer exemption for different forms of servicing relationships:

i. A credit union services 4,000 mortgage loans, all of which it originated or owns. The credit union retains a credit union service organization, that is not an affiliate, to subservice 1,000 of the mortgage loans. The credit union is a small servicer and, thus, can gain the benefit of the small servicer exemption for the 3,000 mortgage loans the credit union services itself. The credit union service organization is not a small servicer because it services mortgage loans it does not own or did not originate. Accordingly, the credit union service organization does not gain the benefit of the small servicer exemption and, thus, must comply with any applicable mortgage servicing requirements for the 1,000 mortgage loans it subservices.

ii. A bank holding company, through a lender subsidiary, owns or originated 4,000 mortgage loans. All mortgage servicing rights for the 4,000 mortgage loans are owned by a wholly owned master servicer subsidiary. Servicing for the 4,000 mortgage loans is conducted by a wholly owned subservicer subsidiary. The bank holding company controls all of these subsidiaries and, thus, they are affiliates of the bank holding company pursuant 12 CFR 1026.32(b)(2). Because the master servicer and subservicer service 5,000 or fewer mortgage loans, and because all the mortgage loans are owned or originated by an affiliate, the master servicer and the subservicer both qualify for the small servicer exemption for all 4,000 mortgage loans.

iii. A nonbank servicer services 4,000 mortgage loans, all of which it originated or owns. The servicer retains a ''component servicer'' to assist it with servicing functions. The component servicer is not engaged in ''servicing'' as defined in 12 CFR 1024.2; that is, the component servicer does not receive any scheduled periodic payments from a borrower pursuant to the terms of any mortgage loan, including amounts for escrow accounts, and does not make the payments to the owner of the loan or other third parties of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the mortgage servicing loan documents or servicing contract. The component servicer is not a subservicer pursuant to 12 CFR 1024.31 because it is not engaged in servicing, as that term is defined in 12 CFR 1024.2. The nonbank servicer is a small servicer and, thus, can gain the benefit of the small servicer exemption with regard to all 4,000 mortgage loans it services.

4. *Nonprofit entity that services 5,000 or fewer mortgage loans.* To qualify as a small servicer under §1026.41(e)(4)(ii)(C), a servicer must be a nonprofit entity that services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, for all of which the servicer or an associated nonprofit entity is the creditor. There are two elements to satisfying §1026.41(e)(4)(ii)(C). First, a nonprofit entity must service 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities. For each associated nonprofit entity, the small servicer determination is made separately, without consideration of the number of loans serviced by another associated nonprofit entity. Second, a nonprofit entity must service only mortgage loans for which the servicer (or an associated nonprofit entity) is the creditor. To be the creditor, the servicer (or an associated nonprofit entity) must have been the entity to which the mortgage loan obligation was initially payable (that is, the originator of the mortgage loan). A nonprofit entity is not a small servicer under §1026.41(e)(4)(ii)(C) if it services any mortgage loans for which the servicer (or an associated nonprofit entity) is not the creditor (that is, for which the servicer or an associated nonprofit entity was not the originator). The first of the following two examples demonstrates circumstances in which a nonprofit entity would qualify as a small servicer under §1026.41(e)(4)(ii)(C) because it meets both requirements for determining a

nonprofit entity's status as a small servicer under §1026.41(e)(4)(ii)(C). The second example demonstrates circumstances in which a nonprofit entity would not qualify as a small servicer under §1026.41(e)(4)(ii)(C) because it does not meet both requirements under §1026.41(e)(4)(ii)(C).

i. Nonprofit entity A services 3,000 of its own mortgage loans, and 1,500 mortgage loans on behalf of associated nonprofit entity B. All 4,500 mortgage loans were originated by A or B. Associated nonprofit entity C services 2,500 mortgage loans, all of which it originated. Because the number of mortgage loans serviced by a nonprofit entity is determined by counting the number of mortgage loans serviced by the nonprofit entity (including mortgage loans serviced on behalf of associated nonprofit entities) but not counting any mortgage loans serviced by an associated nonprofit entity, A and C are both small servicers.

ii. A nonprofit entity services 4,500 mortgage loans—3,000 mortgage loans it originated, 1,000 mortgage loans originated by associated nonprofit entities, and 500 mortgage loans neither it nor an associated nonprofit entity originated. The nonprofit entity is not a small servicer because it services mortgage loans for which neither it nor an associated nonprofit entity is the creditor, notwithstanding that it services fewer than 5,000 mortgage loans.

41(e)(4)(iii) Small servicer determination.

1. *Loans obtained by merger or acquisition.* Any mortgage loans obtained by a servicer or an affiliate as part of a merger or acquisition, or as part of the acquisition of all of the assets or liabilities of a branch office of a creditor, should be considered mortgage loans for which the servicer or an affiliate is the creditor to which the mortgage loan is initially payable. A branch office means either an office of a depository institution that is approved as a branch by a Federal or State supervisory agency or an office of a for-profit mortgage lending institution (other than a depository institution) that takes applications from the public for mortgage loans.

2. *Timing for small servicer exemption.* The following examples demonstrate when a servicer either is considered or is no longer considered a small servicer under §1026.41(e)(4)(ii)(A) and (C):

i. Assume a servicer (that as of January 1 of the current year qualifies as a small servicer) begins servicing more than 5,000 mortgage loans on October 1, and services more than 5,000 mortgage loans as of January 1 of the following year. The servicer would no longer be considered a small servicer on January 1 of the following year and would have to comply with any requirements from which it is no longer exempt as a small servicer on April 1 of the following year.

ii. Assume a servicer (that as of January 1 of the current year qualifies as a small servicer) begins servicing more than 5,000 mortgage loans on February 1, and services more than 5,000 mortgage loans as of January 1 of the following year. The servicer would no longer be considered a small servicer on January 1 of the following year and would have to comply with any requirements from which it is no longer exempt as a small servicer on that same January 1.

iii. Assume a servicer (that as of January 1 of the current year qualifies as a small servicer) begins servicing more than 5,000 mortgage loans on February 1, but services fewer than 5,000 mortgage loans as of January 1 of the following year. The servicer is considered a small servicer for the following year.

3. *Mortgage loans not considered in determining whether a servicer is a small servicer.* Mortgage loans that are not considered pursuant to §1026.41(e)(4)(iii) in applying §1026.41(e)(4)(ii)(A) are not considered either for determining whether a servicer (together with any affiliates) services 5,000 or fewer mortgage loans or whether a servicer is servicing only mortgage loans that it (or an affiliate) owns or originated. For example, assume a servicer services 5,400 mortgage loans. Of these mortgage loans, the servicer owns or originated 4,800 mortgage loans, voluntarily services 300 mortgage loans that neither it (nor an affiliate) owns or originated and for which the servicer does not receive any compensation or fees, and services 300 reverse mortgage transactions. The voluntarily serviced mortgage loans and reverse mortgage loans are not considered in determining whether the servicer qualifies as a small servicer pursuant to §1026.41(e)(4)(iii)(A). Thus, because only the 4,800 mortgage loans owned or originated by the servicer are considered in determining whether the servicer qualifies as a small servicer, the servicer satisfies §1026.41(e)(4)(ii)(A) with regard to all 5,400 mortgage loans it services.

4. *Mortgage loans not considered in determining whether a nonprofit entity is a small servicer.* Mortgage loans that are not considered pursuant to §1026.41(e)(4)(iii) in applying §1026.41(e)(4)(ii)(C) are not considered either for determining whether a nonprofit entity services 5,000 or fewer mortgage loans, including any mortgage loans serviced on behalf of associated nonprofit entities, or whether a nonprofit entity is servicing only mortgage loans that it or an associated nonprofit entity originated. For example, assume a servicer that is a nonprofit entity services 5,400 mortgage loans. Of these mortgage loans, the nonprofit entity originated 2,800 mortgage loans and associated nonprofit entities originated 2,000 mortgage loans. The nonprofit entity receives compensation for servicing the loans originated

by associated nonprofits. The nonprofit entity also voluntarily services 600 mortgage loans that were originated by an entity that is not an associated nonprofit entity, and receives no compensation or fees for servicing these loans. The voluntarily serviced mortgage loans are not considered in determining whether the servicer qualifies as a small servicer. Thus, because only the 4,800 mortgage loans originated by the nonprofit entity or associated nonprofit entities are considered in determining whether the servicer qualifies as a small servicer, the servicer satisfies §1026.41(e)(4)(ii)(C) with regard to all 5,400 mortgage loans it services.

5. *Limited role of voluntarily serviced mortgage loans.* Reverse mortgages and mortgage loans secured by consumers' interests in timeshare plans, in addition to not being considered in determining small servicer qualification, are also exempt from the requirements of §1026.41. In contrast, although voluntarily serviced mortgage loans, as defined by §1026.41(e)(4)(iii)(A), are likewise not considered in determining small servicer status, they are not exempt from the requirements of §1026.41. Thus, a servicer that does not qualify as a small servicer would not have to provide periodic statements for reverse mortgages and timeshare plans because they are exempt from the rule, but would have to provide periodic statements for mortgage loans it voluntarily services.

41(e)(5) Certain consumers in bankruptcy.

1. *Consumer's representative.* If an agent of the consumer, such as the consumer's bankruptcy counsel, submits a request under §1026.41(e)(5)(i)(B)(*1*) or (e)(5)(ii), the request is deemed to be submitted by the consumer.

2. *Multiple requests.* A consumer's most recent written request under §1026.41(e)(5)(i)(B)(*1*) or (e)(5)(ii) that the servicer cease or continue, as applicable, providing a periodic statement or coupon book determines whether the exemption in §1026.41(e)(5)(i) applies.

3. *Effective upon receipt.* A consumer's written request under §1026.41(e)(5)(i)(B)(*1*) or (e)(5)(ii) is effective as of the date of receipt by the servicer.

4. *Bankruptcy case revived.* If a consumer's bankruptcy case is revived, for example, if the court reinstates a previously dismissed case or reopens a case, §1026.41(e)(5) may apply again, including the timing requirements in §1026.41(e)(5)(iv).

41(e)(5)(i) Exemption.

1. *Multiple obligors.* When two or more consumers are joint obligors with primary liability on a mortgage loan subject to §1026.41, §1026.41(e)(5)(i) applies if any one of the consumers meets its criteria. For example, assume that two spouses jointly own a home and are primary obligors on the mortgage loan. One spouse files for chapter 13 bankruptcy and has a bankruptcy plan that provides for surrendering the dwelling that secures the mortgage loan. In part, §1026.41(e)(5)(i) exempts the servicer from providing a periodic statement with regard to that mortgage loan, unless one of the spouses requests in writing that the servicer provide a periodic statement or coupon book pursuant to §1026.41(e)(5)(ii). If either spouse, including the one who is not a debtor in bankruptcy, submits a written request to receive a periodic statement or coupon book, the servicer must provide a periodic statement or coupon book for that mortgage loan account.

Paragraph 41(e)(5)(i)(B)(2).

1. *Bankruptcy plan.* For purposes of §1026.41(e)(5)(i)(B)(*2*), bankruptcy plan refers to the consumer's most recently filed bankruptcy plan under the applicable provisions of title 11 of the United States Code, regardless of whether the court overseeing the consumer's bankruptcy case has confirmed or approved the plan.

Paragraph 41(e)(5)(i)(B)(4).

1. *Statement of intention.* For purposes of §1026.41(e)(5)(i)(B)(*4*), the statement of intention refers to the consumer's most recently filed statement of intention. For example, if a consumer files a statement of intention on June 1 identifying an intent to surrender the dwelling securing the mortgage loan but files an amended statement of intention on June 15 identifying an intent to retain the dwelling, the consumer's June 15 statement of intention is the relevant filing for purposes of §1026.41(e)(5)(i)(B)(*4*).

41(e)(5)(ii) Reaffirmation or consumer request to receive statement or coupon book.

1. *Form of periodic statement or coupon book.* Section 1026.41(e)(5)(ii) generally requires a servicer, notwithstanding §1026.41(e)(5)(i), to resume providing a periodic statement or coupon book if the consumer in bankruptcy reaffirms personal liability for the mortgage loan or any consumer on the mortgage loan requests in writing that the servicer provide a periodic statement or coupon book. Whether a servicer provides a periodic statement or coupon book as modified by §1026.41(f) or an unmodified periodic statement or coupon book depends on whether or not §1026.41(f) applies to that mortgage loan at that time. For example, §1026.41(f) does not apply with respect to a mortgage loan once the consumer has reaffirmed personal liability; therefore, following a consumer's reaffirmation, a servicer generally would provide a periodic statement or coupon book that complies with §1026.41 but without the modifications set forth in §1026.41(f). *See* comment 41(f)–6. Section 1026.41(f) does apply, however, with respect to a mortgage loan following a consumer's written request to receive a periodic statement or coupon book, so long as any consumer on the mortgage loan remains in bankruptcy or has discharged personal liability for the mortgage loan; accordingly, following that written request, a servicer

must provide a periodic statement or coupon book that includes the modifications set forth in §1026.41(f).

41(e)(5)(iv) Timing of compliance following transition.

41(e)(5)(iv)(A) Triggering events for transitioning to modified and unmodified periodic statements.

1. *Section 1026.41(f) becomes applicable or ceases to apply.* Section 1026.41(e)(5)(iv) sets forth the time period in which a servicer must provide a periodic statement or coupon book for the first time after a mortgage loan either becomes subject to the requirements of §1026.41(f) or ceases to be subject to the requirements of §1026.41(f). A mortgage loan becomes subject to the requirements of §1026.41(f) when, for example, any consumer on the mortgage loan becomes a debtor in bankruptcy or discharges personal liability for the mortgage loan. A mortgage loan may cease to be subject to the requirements of §1026.41(f) when, for example, the consumer in bankruptcy reaffirms personal liability for a mortgage loan or the consumer's bankruptcy case is closed or dismissed without the consumer having discharged personal liability for the mortgage loan. *See* comment 41(f)–6.

2. *Servicer ceases to qualify for an exemption.* Section 1026.41(e)(5)(iv) sets forth the time period in which a servicer must provide a periodic statement or coupon book for the first time after a servicer ceases to qualify for an exemption pursuant to §1026.41(e)(5)(i) with respect to a mortgage loan. A servicer ceases to qualify for an exemption pursuant to §1026.41(e)(5)(i) with respect to a mortgage loan when, for example:

i. The consumer's bankruptcy case is dismissed or closed without the consumer having discharged personal liability for the mortgage loan;

ii. The consumer files an amended bankruptcy plan or statement of intention that provides, as applicable, for the maintenance of payments due under the mortgage loan and the payment of pre-petition arrearage or that the consumer will retain the dwelling securing the mortgage loan;

iii. A consumer makes a partial or periodic payment on the mortgage loan despite the consumer in bankruptcy having filed a statement of intention identifying an intent to surrender the dwelling securing the mortgage loan, thus making §1026.41(e)(5)(i)(B)(*4*) inapplicable;

iv. The consumer in bankruptcy reaffirms personal liability for the mortgage loan; or

v. The consumer submits a written request pursuant to §1026.41(e)(ii) that the servicer resume providing a periodic statement or coupon book.

41(e)(5)(iv)(B) Single-Statement Exemption.

1. *Timing.* The exemption in §1026.41(e)(5)(iv)(B) applies with respect to a single periodic statement or coupon book following an event listed in §1026.41(e)(5)(iv)(A). For example, assume that a mortgage loan has a monthly billing cycle, each payment due date is on the first day of the month following its respective billing cycle, and each payment due date has a 15-day courtesy period. In this scenario:

i. If an event listed in §1026.41(e)(5)(iv)(A) occurs on October 6, before the end of the 15-day courtesy period provided for the October 1 payment due date, and the servicer has not yet provided a periodic statement or coupon book for the billing cycle with a November 1 payment due date, the servicer is exempt from providing a periodic statement or coupon book for that billing cycle. The servicer is required thereafter to resume providing periodic statements or coupon books that comply with the requirements of §1026.41 by providing a modified or unmodified periodic statement or coupon book for the billing cycle with a December 1 payment due date within a reasonably prompt time after November 1 or the end of the 15-day courtesy period provided for the November 1 payment due date. *See* §1026.41(b).

ii. If an event listed in §1026.41(e)(5)(iv)(A) occurs on October 20, after the end of the 15-day courtesy period provided for the October 1 payment due date, and the servicer timely provided a periodic statement or coupon book for the billing cycle with the November 1 payment due date, the servicer is not required to correct the periodic statement or coupon book already provided and is exempt from providing the next periodic statement or coupon book, which is the one that would otherwise be required for the billing cycle with a December 1 payment due date. The servicer is required thereafter to resume providing periodic statements or coupon books that comply with the requirements of §1026.41 by providing a modified or unmodified periodic statement or coupon book for the billing cycle with a January 1 payment due date within a reasonably prompt time after December 1 or the end of the 15-day courtesy period provided for the December 1 payment due date. *See* §1026.41(b).

2. *Duplicate coupon books not required.* If a servicer provides a coupon book instead of a periodic statement under §1026.41(e)(3), §1026.41 requires the servicer to provide a new coupon book after one of the events listed in §1026.41(e)(5)(iv)(A) occurs only to the extent the servicer has not previously provided the consumer with a coupon book that covers the upcoming billing cycle.

3. *Subsequent triggering events.* The single-statement exemption in §1026.41(e)(5)(iv)(B) might apply more than once over the life of a loan. For example, assume the exemption applies beginning on April 14 because the consumer files for bankruptcy on that date and the bankruptcy plan provides that the consumer will surrender the dwelling, such that the mortgage loan becomes subject to

the requirements of §1026.41(f). *See* §1026.41(e)(5)(iv)(A)(*1*). If the consumer later exits bankruptcy on November 2 and has not discharged personal liability for the mortgage loan pursuant to 11 U.S.C. 727, 1141, 1228, or 1328, such that the mortgage loan ceases to be subject to the requirements of §1026.41(f), the single-statement exemption would apply again beginning on November 2. *See* §1026.41(e)(5)(iv)(A)(*2*).

41(e)(6) Charged-off loans.

1. *Change in ownership.* If a charged-off mortgage loan is subsequently purchased, assigned, or transferred, §1026.39(b) requires a covered person, as defined in §1026.39(a)(1), to provide mortgage transfer disclosures. *See* §1026.39.

2. *Change in servicing.* A servicer may take advantage of the exemption in §1026.41(e)(6)(i), subject to the requirements of that paragraph, and may rely on a prior servicer's provision to the consumer of a periodic statement pursuant to §1026.41(e)(6)(i)(B) unless the servicer provided the consumer a periodic statement pursuant to §1026.41(a).

Paragraph 41(e)(6)(i)(B).

1. *Clearly and conspicuously.* Section 1026.41(e)(6)(i)(B) requires that the periodic statement be clearly and conspicuously labeled ''Suspension of Statements & Notice of Charge Off—Retain This Copy for Your Records'' and that it clearly and conspicuously provide certain explanations to the consumer, as applicable, but no minimum type size or other technical requirements are imposed. The clear and conspicuous standard generally requires that disclosures be in a reasonably understandable form and readily noticeable to the consumer. *See* comment 41(c)–1.

41(f) Modified periodic statements and coupon books for certain consumers in bankruptcy.

1. *Compliance after the bankruptcy case ends.* Except as provided in §1026.41(e)(5), §1026.41(f) applies with regard to a mortgage loan for which any consumer with primary liability is a debtor in a case under title 11 of the United States Code. After the debtor exits bankruptcy, §1026.41(f) continues to apply if the consumer has discharged personal liability for the mortgage loan, but §1026.41(f) does not apply if the consumer has reaffirmed personal liability for the mortgage loan or otherwise has not discharged personal liability for the mortgage loan.

2. *Terminology.* With regard to a periodic statement provided under §1026.41(f), a servicer may use terminology other than that found on the sample periodic statements in appendix H–30, so long as the new terminology is commonly understood. *See* comment 41(d)–3. For example, a servicer may take into account terminology appropriate for consumers in bankruptcy and refer to the ''amount due'' identified in §1026.41(d)(1), as the ''payment amount.'' Similarly, a servicer may refer to an amount past due identified in §1026.41(d)(2)(iii) as ''past unpaid amount.'' Additionally, a servicer may refer to the delinquency information required by §1026.41(d)(8) as an ''account history,'' and to the amount needed to bring the loan current, referred to in §1026.41(d)(8)(vi) as ''the total payment amount needed to bring the account current,'' as ''unpaid amount.''

3. *Other periodic statement requirements continue to apply.* The requirements of §1026.41, including the content and layout requirements of §1026.41(d), apply unless modified expressly by §1026.41(e)(5) or (f). For example, the requirement under §1026.41(d)(3) to disclose a past payment breakdown applies without modification with respect to a periodic statement provided to a consumer in bankruptcy.

4. *Further modifications.* A periodic statement or coupon book provided under §1026.41(f) may be modified as necessary to facilitate compliance with title 11 of the United States Code, the Federal Rules of Bankruptcy Procedure, court orders, and local rules, guidelines, and standing orders. For example, a periodic statement or coupon book may include additional disclosures or disclaimers not required under §1026.41(f) but that are related to the consumer's status as a debtor in bankruptcy or that advise the consumer how to submit a written request under §1026.41(e)(5)(i)(B)(*1*). *See* comment 41(f)(3)–1.ii for a discussion of the treatment of a bankruptcy plan that modifies the terms of the mortgage loan, such as by reducing the outstanding balance of the mortgage loan or altering the applicable interest rate.

5. *Commencing compliance.* A servicer must begin to provide a periodic statement or coupon book that complies with paragraph (f) of this section within the timeframe set forth in §1026.41(e)(5)(iv).

6. *Reaffirmation.* For purposes of §1026.41(f), a consumer who has reaffirmed personal liability for a mortgage loan is not considered to be a debtor in bankruptcy.

41(f)(3) Chapter 12 and chapter 13 consumers.

1. *Pre-petition payments and post-petition payments.* i. For purposes of §1026.41(f)(3), pre-petition payments are payments made to cure the consumer's pre-bankruptcy defaults, and post-petition payments are payments made to satisfy the mortgage loan's periodic payments as they come due after the bankruptcy case is filed. For example, assume a consumer is $3,600 in arrears as of the bankruptcy filing date on a mortgage loan requiring monthly periodic payments of $2,000. The consumer's most recently filed bankruptcy plan requires the consumer to make payments of $100 each month for 36 months to pay the pre-bankruptcy arrearage, and $2,000 each month to satisfy the monthly periodic payments. Assuming the consumer makes the payments according to the plan,

the $100 payments are the pre-petition payments and the $2,000 payments are the post-petition payments for purposes of the disclosures required under §1026.41(f)(3).

ii. If a consumer is a debtor in a case under chapter 12 or if a consumer's bankruptcy plan modifies the terms of the mortgage loan, such as by reducing the outstanding balance of the mortgage loan or altering the applicable interest rate, the disclosures under §1026.41(d)(1) and (2) and (f)(3)(ii) and (iii) may disclose either the amount payable under the original terms of the mortgage loan, the amount payable under the remaining secured portion of the adjusted mortgage loan, or a statement that the consumer should contact the trustee or the consumer's attorney with any questions about the amount payable. In such cases, the remaining disclosures under §1026.41(d) or (f)(3), as applicable, may be limited to how payments are applied to the remaining secured portion of the adjusted mortgage loan.

2. *Post-petition fees and charges.* For purposes of §1026.41(f)(3), post-petition fees and charges are those fees and charges imposed after the bankruptcy case is filed. To the extent that the court overseeing the consumer's bankruptcy case requires such fees and charges to be included as an amendment to a servicer's proof of claim, a servicer may include such fees and charges in the balance of the pre-petition arrearage under §1026.41(f)(3)(v)(C) rather than treating them as post-petition fees and charges for purposes of §1026.41(f)(3).

3. *First statement after exemption terminates.* Section §1026.41(f)(3)(iii) through (v) requires, in part, the disclosure of certain information regarding account activity that has occurred since the last statement. For purposes of the first periodic statement provided to the consumer following termination of an exemption under §1026.41(e), those disclosures regarding account activity that has occurred since the last statement may be limited to account activity since the last payment due date that occurred while the exemption was in effect. *See* comment 41(d)–5.

41(f)(3)(ii) Amount due.

1. *Amount due.* The amount due under §1026.41(d)(1) is not required to include any amounts other than post-petition payments the consumer is required to make under the terms of a bankruptcy plan, including any past due post-petition payments, and post-petition fees and charges that a servicer has imposed. The servicer is not required to include in the amount due any pre-petition payments due under a bankruptcy plan or other amounts payable pursuant to a court order. The servicer is not required to include in the amount due any post-petition fees and charges that the servicer has not imposed. A servicer that defers collecting a fee or charge until after complying with the Federal Rule of Bankruptcy Procedure 3002.1 procedures, and thus after a potential court determination on whether the fee or charge is allowed, is not required to disclose the fee or charge until complying with such procedures. However, a servicer may include in the amount due other amounts due to the servicer that are not post-petition payments or fees or charges, such as amounts due under an agreed order, provided those other amounts are also disclosed in the explanation of amount due and transaction activity.

41(f)(3)(iii) Explanation of amount due.

1. *Explanation of amount due.* The explanation of amount due under §1026.41(d)(2) is not required to include any amounts other than the post-petition payments, including the amount of any past due post-petition payments and post-petition fees and charges that a servicer has imposed. Consistent with §1026.41(d)(3)(i), the post-petition payments must be broken down by the amount, if any, that will be applied to principal, interest, and escrow. The servicer is not required to disclose, as part of the explanation of amount due, any pre-petition payments or the amount of the consumer's pre-bankruptcy arrearage. However, a servicer may identify other amounts due to the servicer provided those amounts are also disclosed in the amount due and transaction activity. *See* comment 41(d)–4.

41(f)(3)(v) Pre-petition arrearage.

1. *Pre-petition arrearage.* If the pre-petition arrearage is subject to dispute, or has not yet been determined by the servicer, the periodic statement may include a statement acknowledging the unresolved amount of the pre-petition arrearage. A servicer may omit the information required by §1026.41(f)(3)(v) from the periodic statement until such time as the servicer has had a reasonable opportunity to determine the amount of the pre-petition arrearage. The servicer may not omit the information required by §1026.41(f)(3)(v) from the periodic statement after the date that the bankruptcy court has fixed for filing proofs of claim in the consumer's bankruptcy case.

41(f)(4) Multiple obligors.

1. *Modified statements.* When two or more consumers are joint obligors with primary liability on a mortgage loan subject to §1026.41, a servicer may send the periodic statement to any one of the primary obligors. *See* comment 41(a)–1. Section 1026.41(f)(4) provides that a servicer may provide a modified statement under §1026.41(f), if applicable, to any or all of the primary obligors, even if a primary obligor to whom the servicer provides the modified statement is not a debtor in bankruptcy. The servicer need not provide an unmodified statement to any of the primary obligors. For example, assume that two spouses jointly own a home and are both primarily liable on the mortgage loan. One spouse files for chapter 13

bankruptcy, and that spouse's chapter 13 bankruptcy plan provides that the same spouse will retain the home by making pre-petition and post-petition payments. The servicer complies with § 1026.41 by providing the modified periodic statement under § 1026.41(f) to either spouse.

2. *Obligors in different chapters of bankruptcy.* If two or more consumers are joint obligors with primary liability on a mortgage loan subject to § 1026.41 and are debtors under different chapters of bankruptcy, only one of which is subject to § 1026.41(f)(3), a servicer may, but need not, include the modifications set forth in § 1026.41(f)(3). For example, assume one joint obligor is a debtor in a case under chapter 7 and another joint obligor is a debtor in a case under chapter 13, and that the servicer is not exempt from the periodic statement requirement under § 1026.41(e)(5). The periodic statement or coupon book is subject to the modifications set forth in § 1026.41(f)(1) and (2), but the servicer may determine whether it is appropriate to include the modifications set forth in § 1026.41(f)(3).

Section 1026.42—Valuation Independence

42(a) Scope

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.

42(b) Definitions

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.

42(c) Valuation for consumer's principal dwelling

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.

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(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.

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

42(d)(5)(i) Loan Production Function

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.

42(e) When Extension of Credit Prohibited

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.

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.

Paragraph 42(f)(2)(i)

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 CFR 225.66(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).

42(f)(4) Definitions

42(f)(4)(i) Fee Appraiser

1. *Organization.* The term ''organization'' in paragraph 42(f)(4)(i)(B) includes a corporation, partnership, proprietorship, association, cooperative, or other business entity and does not include a natural person.

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 in section 3(3) of the Real Estate Settlement Procedures Act (12 U.S.C. 2602(3)) and the implementing regulation at 12 CFR 1024.2. *See* §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 1026.43—Minimum Standards for Transactions Secured by a Dwelling

1. *Record retention.* See §1026.25(c)(3) and comments 25(c)(3)–1 and –2 for guidance on the required retention of records as evidence of compliance with §1026.43.

2. *General QM Amendments Effective on March 1, 2021.* The Bureau's revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments) apply with respect to transactions for which a creditor received an application on or after March 1, 2021 (effective date). Compliance with the 2021 General QM Amendments is mandatory with respect to transactions for which a creditor received an application on or after October 1, 2022 (mandatory compliance date). For a given transaction for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022, a person has the option of complying either: With 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the 2021 General QM Amendments. For transactions subject to §1026.19(e), (f), or (g), creditors determine the date the creditor received the consumer's application, for purposes of this comment, in accordance with §1026.2(a)(3)(ii). For transactions that are not subject to §1026.19(e), (f), or (g), creditors can determine the date the creditor received the consumer's application, for purposes of this comment, in accordance with either §1026.2(a)(3)(i) or (ii).

43(a) Scope.

1. *Consumer credit.* In general, §1026.43 applies to consumer credit transactions secured by a dwelling, but certain dwelling-secured consumer credit transactions are exempt or partially exempt from coverage under §1026.43(a)(1) through (3). (See §1026.2(a)(12) for the definition of "consumer credit.") Section 1026.43 does not apply to an extension of credit primarily for a business, commercial, or agricultural purpose, even if it is secured by a dwelling. See §1026.3 and associated commentary for guidance in determining the primary purpose of an extension of credit. In addition, §1026.43 does not apply to any change to an existing loan that is not treated as a refinancing under §1026.20(a).

2. *Real property.* "Dwelling" means a residential structure that contains one to four units, whether or not the structure is attached to real property. *See* §1026.2(a)(19). For purposes of §1026.43, the term "dwelling" includes any real property to which the residential structure is attached that also secures the covered transaction. For example, for purposes of §1026.43(c)(2)(i), the value of the dwelling that secures the covered transaction includes the value of any real property to which the residential structure is attached that also secures the covered transaction.

Paragraph 43(a)(3).

1. *Renewable temporary or "bridge" loan.* Under §1026.43(a)(3)(ii), a temporary or "bridge" loan with a term of 12 months or less is exempt from §1026.43(c) through (f). Examples of such a loan are a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months and a loan to finance the initial construction of a dwelling. Where a temporary or "bridge loan" is renewable, the loan term does not include any additional period of time that could result from a renewal provision provided that any renewal possible under the loan contract is for one year or less. For example, if a construction loan has an initial loan term of 12 months but is renewable for another 12-month loan term, the loan is exempt from §1026.43(c) through (f) because the initial loan term is 12 months.

2. *Construction phase of a construction-to-permanent loan.* Under §1026.43(a)(3)(iii), a construction phase of 12 months or less of a construction-to-permanent loan is exempt from §1026.43(c) through (f). A construction-to-permanent loan is a potentially multiple-advance loan to finance the construction, rehabilitation, or improvement of a dwelling that may be permanently financed by the same creditor. For such a loan, the construction phase and the permanent phase may be treated as separate transactions for the purpose of compliance with §1026.43(c) through (f), and the construction phase of the loan is exempt from §1026.43(c) through (f), provided the initial term is 12 months or less. See §1026.17(c)(6)(ii), allowing similar treatment for disclosures. Where the construction phase of a construction-to-permanent loan is renewable for a period of one year or less, the term of that construction phase does not include any additional period of time that could result from a renewal provision. For example, if the construction phase of a construction-to-permanent loan has an initial term of 12 months but is renewable for another 12-month term before permanent financing begins, the construction phase is exempt from §1026.43(c) through (f) because the initial term is 12 months. Any renewal of one year or less also qualifies for the exemption. The permanent phase of the loan is treated as a separate transaction and is not exempt under §1026.43(a)(3)(iii). It may be a qualified mortgage if it satisfies the appropriate requirements.

Paragraph 43(a)(3)(iv).

1. *General.* The requirements of §1026.43(c) through (f) do not apply to an extension of credit made pursuant to a program administered by a Housing Finance Agency, as defined under 24 CFR 266.5. Under the exemption, the requirements of §1026.43(c) through (f) do not apply to extensions of credit made by housing finance agencies and extensions of credit made by intermediaries (*e.g.*, private creditors) pursuant to a program administered by a housing finance agency. For example, if a creditor is extending credit, including a subordinate-lien covered transaction, that will be made pursuant to a program administered by a housing finance agency, the creditor is exempt from the requirements of §1026.43(c) through (f). Similarly, the creditor is exempt from the requirements of §1026.43(c) through (f) regardless of whether the program administered by a housing finance agency is funded by Federal, State, or other sources.

Paragraph 43(a)(3)(v)(D).

1. *General.* An extension of credit is exempt from the requirements of §1026.43(c) through (f) if the credit is extended by a creditor described in §1026.43(a)(3)(v)(D), provided the conditions specified in that section are satisfied. The conditions specified in §1026.43(a)(3)(v)(D)(*1*) and (*2*) are determined according to activity that occurred in the calendar year preceding the calendar year in which the consumer's application was received. Section 1026.43(a)(3)(v)(D)(*2*) provides that, during the preceding calendar year, the creditor must have extended credit only to consumers with income that did not exceed the limit then in effect for low- and moderate-income households, as specified in regulations prescribed by the U.S. Department of Housing and Urban Development pursuant to 24 CFR 570.3. For example, a creditor has satisfied the requirement in §1026.43(a)(3)(v)(D)(*2*) if the creditor extended credit only to consumers with incomes that did not exceed the limit in effect on the dates the creditor received each consumer's individual application. The condition specified in §1026.43(a)(3)(v)(D)(*3*), which relates to the current extension of credit, provides that the extension of credit must be to a consumer with income that does not exceed the limit specified in §1026.43(a)(3)(v)(D)(*2*) in effect on the date the creditor received the consumer's application. For example, assume that a creditor with a tax exemption ruling under section 501(c)(3) of the Internal Revenue Code of 1986 has satisfied the conditions identified in §1026.43(a)(3)(v)(D)(*1*) and (*2*). If, on May 21, 2014, the creditor in this example extends credit secured by a dwelling to a consumer whose application reflected income in excess of the limit identified in §1026.43(a)(3)(v)(D)(*2*) in effect on the date the creditor received that consumer's application, the creditor has not satisfied the condition in §1026.43(a)(3)(v)(D)(*3*) and this extension of credit is not exempt from the requirements of §1026.43(c) through (f).

Paragraph 43(a)(3)(vi).

1. *General.* The requirements of §1026.43(c) through (f) do not apply to a mortgage loan modification made in connection with a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008. If a creditor is underwriting an extension of credit that is a refinancing, as defined by §1026.20(a), that will be made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, the creditor also need not comply with §1026.43(c) through (f). A creditor need not determine whether the mortgage loan modification is considered a refinancing under §1026.20(a) for purposes of determining applicability of §1026.43; if the transaction is made in connection with these programs, the requirements of §1026.43(c) through (f) do not apply. In addition, if a creditor underwrites a new extension of credit, such as a subordinate-lien mortgage loan, that will be made pursuant to a program authorized by sections 101 and 109 of the Emergency Economic Stabilization Act of 2008, the creditor need not comply with the requirements of §1026.43(c) through (f).

Paragraph 43(a)(3)(vii).

1. *Requirements of exclusion.* Section 1026.43(a)(3)(vii) excludes certain transactions from the credit extension limit set forth in §1026.43(a)(3)(v)(D)(*1*), provided a transaction meets several conditions. The terms of the credit contract must satisfy the conditions that the transaction not require the payment of interest under §1026.43(a)(3)(vii)(C) and that repayment of the amount of credit extended be forgiven or deferred in accordance with §1026.43(a)(3)(vii)(D). The other requirements of §1026.43(a)(3)(vii) 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, the creditor must have information reflecting that the total of closing costs imposed in connection with the transaction is less than 1 percent of the amount of credit extended and include no charges other than recordation, application, and housing counseling fees, in accordance with §1026.43(a)(3)(vii)(E). Unless an itemization of the amount financed sufficiently details this requirement, the creditor must establish compliance with §1026.43(a)(3)(vii)(E) by some other written document and retain it in accordance with §1026.25(a).

43(b) Definitions.

43(b)(1) Covered transaction.

1. The definition of covered transaction restates the scope of the rule as described at §1026.43(a).

43(b)(3) Fully indexed rate.

1. *Discounted and premium adjustable-rate transactions.* In some adjustable-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. In some cases, the initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula that will apply after recast, as determined at consummation (*i.e.,* a ''discounted rate''). In other cases, the initial rate may be higher (*i.e.,* a ''premium rate''). For purposes of determining the fully indexed rate where the initial interest rate is not determined using the index or formula for subsequent interest rate adjustments, the creditor must use the interest rate that would have applied had the creditor used such index or formula plus margin at the time of consummation. That is, in determining the fully indexed rate, the creditor must not take into account any discounted or premium rate. To illustrate, assume an adjustable-rate transaction where the initial interest rate is not based on an index or formula, or is based on an index or formula that will not apply after recast, and is set at 5 percent for the first five years. The loan agreement provides that future interest rate adjustments will be calculated based on a specific index plus a 3 percent margin. If the value of the index at consummation is 5 percent, the interest rate that would have been applied at consummation had the creditor based the initial rate on this index is 8 percent (5 percent plus 3 percent margin). For purposes of §1026.43(b)(3), the fully indexed rate is 8 percent. For discussion of payment calculations based on the greater of the fully indexed rate or premium rate for purposes of the repayment ability determination under §1026.43(c), see §1026.43(c)(5)(i) and comment 43(c)(5)(i)–2.

2. *Index or formula value at consummation.* The value at consummation of the index or formula need not be used if the contract provides for a delay in the implementation of changes in an index value or formula. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, the creditor may use any index value in effect during the 45 days before consummation in calculating the fully indexed rate.

3. *Interest rate adjustment caps.* If the terms of the legal obligation contain a periodic interest rate adjustment cap that would prevent the initial rate, at the time of the first adjustment, from changing to the rate determined using the index or formula value at consummation (*i.e.,* the fully indexed rate), the creditor must not give any effect to that rate cap when determining the fully indexed rate. That is, a creditor must determine the fully indexed rate without taking into account any periodic interest rate adjustment cap that may limit how quickly the fully indexed rate may be reached at any time during the loan term under the terms of the legal obligation. To illustrate, assume an adjustable-rate mortgage has an initial fixed rate of 5 percent for the first three years of the loan, after which the rate will adjust annually to a specified index plus a margin of 3 percent. The loan agreement provides for a 2 percent annual interest rate adjustment cap, and a lifetime maximum interest rate of 10 percent. The index value in effect at consummation is 4.5 percent; the fully indexed rate is 7.5 percent (4.5 percent plus 3 percent), regardless of the 2 percent annual interest rate adjustment cap that would limit when the fully indexed rate would take effect under the terms of the legal obligation.

4. *Lifetime maximum interest rate.* A creditor may choose, in its sole discretion, to take into account the lifetime maximum interest rate provided under the terms of the legal obligation when determining the fully indexed rate. To illustrate, assume an adjustable-rate mortgage has an initial fixed rate of 5 percent for the first three years of the loan, after which the rate will adjust annually to a specified index plus a margin of 3 percent. The loan agreement provides for a 2 percent annual interest rate adjustment cap and a lifetime maximum interest rate of 7

percent. The index value in effect at consummation is 4.5 percent; under the generally applicable rule, the fully indexed rate is 7.5 percent (4.5 percent plus 3 percent). Nevertheless, the creditor may choose to use the lifetime maximum interest rate of 7 percent as the fully indexed rate, rather than 7.5 percent, for purposes of §1026.43(b)(3). Furthermore, if the creditor chooses to use the lifetime maximum interest rate and the loan agreement provides a range for the maximum interest rate, then the creditor complies by using the highest rate in that range as the maximum interest rate for purposes of §1026.43(b)(3).

5. *Step-rate and fixed-rate mortgages.* Where the interest rate offered under the terms of the legal obligation is not based on, and does not vary with, an index or formula (*i.e.*, there is no fully indexed rate), the creditor must use the maximum interest rate that may apply at any time during the loan term. To illustrate:

i. Assume a step-rate mortgage with an interest rate fixed at 6.5 percent for the first two years of the loan, 7 percent for the next three years, and 7.5 percent thereafter for the remainder of loan term. For purposes of this section, the creditor must use 7.5 percent, which is the maximum rate that may apply during the loan term. ''Step-rate mortgage'' is defined in §1026.18(s)(7)(ii).

ii. Assume a fixed-rate mortgage with an interest rate at consummation of 7 percent that is fixed for the 30-year loan term. For purposes of this section, the maximum interest rate that may apply during the loan term is 7 percent, which is the interest rate that is fixed at consummation. ''Fixed-rate mortgage'' is defined in §1026.18(s)(7)(iii).

43(b)(4) Higher-Priced Covered Transaction

1. *Average prime offer rate.* The average prime offer rate is defined in §1026.35(a)(2). For further explanation of the meaning of ''average prime offer rate,'' and additional guidance on determining the average prime offer rate, *see* comments 35(a)(2)–1 through –4.

2. *Comparable transaction.* A higher-priced covered transaction is a consumer credit transaction that is secured by the consumer's dwelling with an annual percentage rate that exceeds by the specified amount the average prime offer rate for a comparable transaction as of the date the interest rate is set. The published tables of average prime offer rates indicate how to identify a comparable transaction. *See* comment 35(a)(2)–2.

3. *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.

4. *Determining the annual percentage rate for certain loans for which the interest rate may or will change.* Provisions in subpart C of this part, including the commentary to §1026.17(c)(1), address how to determine the annual percentage rate disclosures for closed-end credit transactions. Provisions in §1026.32(a)(3) address how to determine the annual percentage rate to determine coverage under §1026.32(a)(1)(i). Section 1026.43(b)(4) requires, only for the purposes of a qualified mortgage under §1026.43(e)(2), a different determination of the annual percentage rate for purposes of §1026.43(b)(4) for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. *See* comment 43(e)(2)(vi)–4 for how to determine the annual percentage rate of such a loan.

43(b)(5) Loan amount.

1. *Disbursement of the loan amount.* The definition of ''loan amount'' requires the creditor to use the entire loan amount as reflected in the loan contract or promissory note, even though the loan amount may not be fully disbursed at consummation. For example, assume the consumer enters into a loan agreement where the consumer is obligated to repay the creditor $200,000 over 15 years, but only $100,000 is disbursed at consummation and the remaining $100,000 will be disbursed during the year following consummation in a series of advances ($25,000 each quarter). For purposes of this section, the creditor must use the loan amount of $200,000, even though the loan agreement provides that only $100,000 will be disbursed to the consumer at consummation. Generally, creditors should rely on §1026.17(c)(6) and associated commentary regarding treatment of multiple-advance and construction-to-permanent loans as single or multiple transactions. *See also* comment 43(a)(3)–2.

43(b)(6) Loan term.

1. *General.* The loan term is the period of time it takes to repay the loan amount in full. For example, a loan with an initial discounted rate that is fixed for the first two years, and that adjusts periodically for the next 28 years has a loan term of 30 years, which is the amortization period on which the periodic amortizing payments are based.

43(b)(7) Maximum loan amount.

1. *Calculation of maximum loan amount.* For purposes of §1026.43(c)(2)(iii) and (c)(5)(ii)(C), a creditor must determine the maximum loan amount for a negative amortization loan by using the loan amount plus any increase in principal balance that can result from negative amortization based on the terms of the legal obligation. In determining the maximum loan amount, a creditor must assume that the consumer makes the minimum periodic payment permitted under the

loan agreement for as long as possible, until the consumer must begin making fully amortizing payments; and that the interest rate rises as quickly as possible after consummation under the terms of the legal obligation. Thus, creditors must assume that the consumer makes the minimum periodic payment until any negative amortization cap is reached or until the period permitting minimum periodic payments expires, whichever occurs first. ''Loan amount'' is defined in §1026.43(b)(5); ''negative amortization loan'' is defined in §1026.18(s)(7)(v).

2. *Assumed interest rate.* In calculating the maximum loan amount for an adjustable-rate mortgage that is a negative amortization loan, the creditor must assume that the interest rate will increase as rapidly as possible after consummation, taking into account any periodic interest rate adjustment caps provided in the loan agreement. For an adjustable-rate mortgage with a lifetime maximum interest rate but no periodic interest rate adjustment cap, the creditor must assume that the interest rate increases to the maximum lifetime interest rate at the first adjustment.

3. *Examples.* The following are examples of how to determine the maximum loan amount for a negative amortization loan (all amounts shown are rounded, and all amounts are calculated using non-rounded values):

i. *Adjustable-rate mortgage with negative amortization.* A. Assume an adjustable-rate mortgage in the amount of $200,000 with a 30-year loan term. The loan agreement provides that the consumer can make minimum monthly payments that cover only part of the interest accrued each month until the principal balance reaches 115 percent of its original balance (*i.e.*, a negative amortization cap of 115 percent) or for the first five years of the loan (60 monthly payments), whichever occurs first. The introductory interest rate at consummation is 1.5 percent. One month after the first day of the first full calendar month following consummation, the interest rate adjusts and will adjust monthly thereafter based on the specified index plus a margin of 3.5 percent. The maximum lifetime interest rate is 10.5 percent; there are no other periodic interest rate adjustment caps that limit how quickly the maximum lifetime rate may be reached. The minimum monthly payment for the first year is based on the initial interest rate of 1.5 percent. After that, the minimum monthly payment adjusts annually, but may increase by no more than 7.5 percent over the previous year's payment. The minimum monthly payment is $690 in the first year, $742 in the second year, and $797 in the first part of the third year.

B. To determine the maximum loan amount, assume that the initial interest rate increases to the maximum lifetime interest rate of 10.5 percent at the first adjustment (*i.e.*, the due date of the first periodic monthly payment) and accrues at that rate until the loan is recast. Assume the consumer makes the minimum monthly payments as scheduled, which are capped at 7.5 percent from year-to-year. As a result, the consumer's minimum monthly payments are less than the interest accrued each month, resulting in negative amortization (*i.e.*, the accrued but unpaid interest is added to the principal balance). Thus, assuming that the consumer makes the minimum monthly payments for as long as possible and that the maximum interest rate of 10.5 percent is reached at the first rate adjustment (*i.e.*, the due date of the first periodic monthly payment), the negative amortization cap of 115 percent is reached on the due date of the 27th monthly payment and the loan is recast. The maximum loan amount as of the due date of the 27th monthly payment is $229,251.

ii. *Fixed-rate, graduated payment mortgage with negative amortization.* A loan in the amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate of 7.5 percent, and requires the consumer to make minimum monthly payments during the first year, with payments increasing 12.5 percent over the previous year every year for four years. The payment schedule provides for payments of $943 in the first year, $1,061 in the second year, $1,193 in the third year, $1,343 in the fourth year, and $1,511 for the remaining term of the loan. During the first three years of the loan, the payments are less than the interest accrued each month, resulting in negative amortization. Assuming that the consumer makes the minimum periodic payments for as long as possible, the maximum loan amount is $207,662, which is reached at the end of the third year of the loan (on the due date of the 36th monthly payment). See comment 43(c)(5)(ii)(C)–3 providing examples of how to determine the consumer's repayment ability for a negative amortization loan.

43(b)(8) Mortgage-related obligations.

1. *General.* Section 1026.43(b)(8) defines mortgage-related obligations, which must be considered in determining a consumer's ability to repay pursuant to §1026.43(c). Section 1026.43(b)(8) includes, in the evaluation of mortgage-related obligations, fees and special assessments owed to a condominium, cooperative, or homeowners association. Section 1026.43(b)(8) includes ground rent and leasehold payments in the definition of mortgage-related obligations. See commentary to §1026.43(c)(2)(v) regarding the requirement to take into account any mortgage-related obligations for purposes of determining a consumer's ability to repay.

2. *Property taxes.* Section 1026.43(b)(8) includes property taxes in the evaluation of mortgage-related obligations. Obligations that are related to the ownership or use of real property and paid to a taxing authority,

whether on a monthly, quarterly, annual, or other basis, are property taxes for purposes of §1026.43(b)(8). Section 1026.43(b)(8) includes obligations that are equivalent to property taxes, even if such obligations are not denominated as ''taxes.'' For example, governments may establish or allow independent districts with the authority to impose levies on properties within the district to fund a special purpose, such as a local development bond district, water district, or other public purpose. These levies may be referred to as taxes, assessments, surcharges, or by some other name. For purposes of §1026.43(b)(8), these are property taxes and are included in the determination of mortgage-related obligations.

3. *Insurance premiums and similar charges.* Section 1026.43(b)(8) includes in the evaluation of mortgage-related obligations premiums and similar charges identified in §1026.4(b)(5), (7), (8), or (10) that are required by the creditor. This includes all premiums or charges related to coverage protecting the creditor against a consumer's default, credit loss, collateral loss, or similar loss, if the consumer is required to pay the premium or charge. For example, if Federal law requires flood insurance to be obtained in connection with the mortgage loan, the flood insurance premium is a mortgage-related obligation for purposes of §1026.43(b)(8). Section 1026.43(b)(8) does not include premiums or similar charges identified in §1026.4(b)(5), (7), (8), or (10) that are not required by the creditor and that the consumer purchases voluntarily. For example:

i. If a creditor does not require earthquake insurance to be obtained in connection with the mortgage loan, but the consumer voluntarily chooses to purchase such insurance, the earthquake insurance premium is not a mortgage-related obligation for purposes of §1026.43(b)(8).

ii. If a creditor requires a minimum amount of coverage for homeowners' insurance and the consumer voluntarily chooses to purchase a more comprehensive amount of coverage, the portion of the premium allocated to the required minimum coverage is a mortgage-related obligation for purposes of §1026.43(b)(8), while the portion of the premium allocated to the more comprehensive coverage voluntarily purchased by the consumer is not a mortgage-related obligation for purposes of §1026.43(b)(8).

iii. If the consumer purchases insurance or similar coverage not required by the creditor at consummation without having requested the specific non-required insurance or similar coverage and without having agreed to the premium or charge for the specific non-required insurance or similar coverage prior to consummation, the premium or charge is not voluntary for purposes of §1026.43(b)(8) and is a mortgage-related obligation.

4. *Mortgage insurance, guarantee, or similar charges.* Section 1026.43(b)(8) includes in the evaluation of mortgage-related obligations premiums or charges protecting the creditor against the consumer's default or other credit loss. This includes all premiums or similar charges, whether denominated as mortgage insurance, guarantee, or otherwise, as determined according to applicable State or Federal law. For example, monthly ''private mortgage insurance'' payments paid to a non-governmental entity, annual ''guarantee fee'' payments required by a Federal housing program, and a quarterly ''mortgage insurance'' payment paid to a State agency administering a housing program are all mortgage-related obligations for purposes of §1026.43(b)(8). Section 1026.43(b)(8) includes these charges in the definition of mortgage-related obligations if the creditor requires the consumer to pay them, even if the consumer is not legally obligated to pay the charges under the terms of the insurance program. For example, if a mortgage insurance program obligates the creditor to make recurring mortgage insurance payments, and the creditor requires the consumer to reimburse the creditor for such recurring payments, the consumer's payments are mortgage-related obligations for purposes of §1026.43(b)(8). However, if a mortgage insurance program obligates the creditor to make recurring mortgage insurance payments, and the creditor does not require the consumer to reimburse the creditor for the cost of the mortgage insurance payments, the recurring mortgage insurance payments are not mortgage-related obligations for purposes of §1026.43(b)(8).

5. *Relation to the finance charge.* Section 1026.43(b)(8) includes in the evaluation of mortgage-related obligations premiums and similar charges identified in §1026.4(b)(5), (7), (8), or (10) that are required by the creditor. These premiums and similar charges are mortgage-related obligations regardless of whether the premium or similar charge is excluded from the finance charge pursuant to §1026.4(d). For example, a premium for insurance against loss or damage to the property written in connection with the credit transaction is a premium identified in §1026.4(b)(8). If this premium is required by the creditor, the premium is a mortgage-related obligation pursuant to §1026.43(b)(8), regardless of whether the premium is excluded from the finance charge pursuant to §1026.4(d)(2).

43(b)(11) Recast.

1. *Date of the recast.* The term ''recast'' means, for an adjustable-rate mortgage, the expiration of the period during which payments based on the introductory fixed rate are permitted; for an interest-only loan, the expiration of the period during which the interest-only payments are permitted; and, for a negative amortization loan, the expiration

of the period during which negatively amortizing payments are permitted. For adjustable-rate mortgages, interest-only loans, and negative amortization loans, the date on which the recast is considered to occur is the due date of the last monthly payment based on the introductory fixed rate, the interest-only payment, or the negatively amortizing payment, respectively. To illustrate: A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate and permits interest-only payments for the first five years of the loan (60 months). The loan is recast on the due date of the 60th monthly payment. Thus, the term of the loan remaining as of the date the loan is recast is 25 years (300 months).

43(b)(12) Simultaneous loan.

1. *General.* Section 1026.43(b)(12) defines a simultaneous loan as another covered transaction or a home equity line of credit (HELOC) subject to §1026.40 that will be secured by the same dwelling and made to the same consumer at or before consummation of the covered transaction, whether it is made by the same creditor or a third-party creditor. (As with all of §1026.43, the term "dwelling" includes any real property attached to a dwelling.) For example, assume a consumer will enter into a legal obligation that is a covered transaction with Creditor A. Immediately prior to consummation of the covered transaction with Creditor A, the consumer opens a HELOC that is secured by the same dwelling with Creditor B. For purposes of this section, the loan extended by Creditor B is a simultaneous loan. See commentary to §1026.43(c)(2)(iv) and (c)(6), discussing the requirement to consider the consumer's payment obligation on any simultaneous loan for purposes of determining the consumer's ability to repay the covered transaction subject to this section.

2. *Same consumer.* For purposes of the definition of "simultaneous loan," the term "same consumer" includes any consumer, as that term is defined in §1026.2(a)(11), that enters into a loan that is a covered transaction and also enters into another loan (*e.g.*, second-lien covered transaction or HELOC) secured by the same dwelling. Where two or more consumers enter into a legal obligation that is a covered transaction, but only one of them enters into another loan secured by the same dwelling, the "same consumer" includes the person that has entered into both legal obligations. For example, assume Consumer A and Consumer B will both enter into a legal obligation that is a covered transaction with a creditor. Immediately prior to consummation of the covered transaction, Consumer B opens a HELOC that is secured by the same dwelling with the same creditor; Consumer A is not a signatory to the HELOC. For purposes of this definition, Consumer B is the same consumer and the creditor must include the HELOC as a simultaneous loan.

43(b)(13) Third-party record.

1. *Electronic records.* Third-party records include records transmitted electronically. For example, to verify a consumer's credit history using third-party records as required by §1026.43(c)(2)(viii) and 1026.43(c)(3), a creditor may use a credit report prepared by a consumer reporting agency that is transmitted electronically.

2. *Forms.* A record prepared by a third party includes a form a creditor gives to a third party to provide information, even if the creditor completes parts of the form unrelated to the information sought. For example, if a creditor gives a consumer's employer a form for verifying the consumer's employment status and income, the creditor may fill in the creditor's name and other portions of the form unrelated to the consumer's employment status or income.

Paragraph 43(b)(13)(i).

1. *Reviewed record.* Under §1026.43(b)(13)(i), a third-party record includes a document or other record prepared by the consumer, the creditor, the mortgage broker, or the creditor's or mortgage broker's agent, if the record is reviewed by an appropriate third party. For example, a profit-and-loss statement prepared by a self-employed consumer and reviewed by a third-party accountant is a third-party record under §1026.43(b)(13)(i). In contrast, a profit-and-loss statement prepared by a self-employed consumer and reviewed by the consumer's non-accountant spouse is not a third-party record under §1026.43(b)(13)(i).

Paragraph 43(b)(13)(iii).

1. *Creditor's records.* Section 1026.43(b)(13)(iii) provides that a third-party record includes a record the creditor maintains for an account of the consumer held by the creditor. Examples of such accounts include checking accounts, savings accounts, and retirement accounts. Examples of such accounts also include accounts related to a consumer's outstanding obligations to a creditor. For example, a third-party record includes the creditor's records for a first-lien mortgage to a consumer who applies for a subordinate-lien home equity loan.

43(c) Repayment ability.

43(c)(1) General requirement.

1. *Reasonable and good faith determination. i. General.* Creditors generally are required by §1026.43(c)(1) to make reasonable and good faith determinations of consumers' ability to repay. Section 1026.43(c) and the accompanying commentary describe certain requirements for making this ability-to-repay determination, but do not provide comprehensive underwriting standards to which creditors must adhere. For example, the rule and commentary do not specify how much income is needed to support a particular level of debt or how credit history should be

weighed against other factors. So long as creditors consider the factors set forth in §1026.43(c)(2) according to the requirements of §1026.43(c), creditors are permitted to develop their own underwriting standards and make changes to those standards over time in response to empirical information and changing economic and other conditions. Whether a particular ability-to-repay determination is reasonable and in good faith will depend not only on the underwriting standards adopted by the creditor, but on the facts and circumstances of an individual extension of credit and how a creditor's underwriting standards were applied to those facts and circumstances. A consumer's statement or attestation that the consumer has the ability to repay the loan is not indicative of whether the creditor's determination was reasonable and in good faith.

ii. *Considerations.* A. The following may be evidence that a creditor's ability-to-repay determination was reasonable and in good faith:

1. The consumer demonstrated actual ability to repay the loan by making timely payments, without modification or accommodation, for a significant period of time after consummation or, for an adjustable-rate, interest-only, or negative-amortization mortgage, for a significant period of time after recast;

2. The creditor used underwriting standards that have historically resulted in comparatively low rates of delinquency and default during adverse economic conditions; or

3. The creditor used underwriting standards based on empirically derived, demonstrably and statistically sound models.

B. In contrast, the following may be evidence that a creditor's ability-to-repay determination was not reasonable or in good faith:

1. The consumer defaulted on the loan a short time after consummation or, for an adjustable-rate, interest-only, or negative-amortization mortgage, a short time after recast;

2. The creditor used underwriting standards that have historically resulted in comparatively high levels of delinquency and default during adverse economic conditions;

3. The creditor applied underwriting standards inconsistently or used underwriting standards different from those used for similar loans without reasonable justification;

4. The creditor disregarded evidence that the underwriting standards it used are not effective at determining consumers' repayment ability;

5. The creditor disregarded evidence that the consumer may have insufficient residual income to cover other recurring obligations and expenses, taking into account the consumer's assets other than the property securing the loan, after paying his or her monthly payments for the covered transaction, any simultaneous loans, mortgage-related obligations, and any current debt obligations; or

6. The creditor disregarded evidence that the consumer would have the ability to repay only if the consumer subsequently refinanced the loan or sold the property securing the loan.

C. All of the considerations listed in paragraphs (A) and (B) above may be relevant to whether a creditor's ability-to-repay determination was reasonable and in good faith. However, these considerations are not requirements or prohibitions with which creditors must comply, nor are they elements of a claim that a consumer must prove to establish a violation of the ability-to-repay requirements. For example, creditors are not required to validate their underwriting criteria using mathematical models. These considerations also are not absolute in their application; instead they exist on a continuum and may apply to varying degrees. For example, the longer a consumer successfully makes timely payments after consummation or recast the less likely it is that the creditor's determination of ability to repay was unreasonable or not in good faith. Finally, each of these considerations must be viewed in the context of all facts and circumstances relevant to a particular extension of credit. For example, in some cases inconsistent application of underwriting standards may indicate that a creditor is manipulating those standards to approve a loan despite a consumer's inability to repay. The creditor's ability-to-repay determination therefore may be unreasonable or in bad faith. However, in other cases inconsistently applied underwriting standards may be the result of, for example, inadequate training and may nonetheless yield a reasonable and good faith ability-to-repay determination in a particular case. Similarly, although an early payment default on a mortgage will often be persuasive evidence that the creditor did not have a reasonable and good faith belief in the consumer's ability to repay (and such evidence may even be sufficient to establish a prima facie case of an ability-to-repay violation), a particular ability-to-repay determination may be reasonable and in good faith even though the consumer defaulted shortly after consummation if, for example, the consumer experienced a sudden and unexpected loss of income. In contrast, an ability-to-repay determination may be unreasonable or not in good faith even though the consumer made timely payments for a significant period of time if, for example, the consumer was able to make those payments only by foregoing necessities such as food and heat.

2. *Repayment ability at consummation.* Section 1026.43(c)(1) requires the creditor to determine, at or before the time the loan is consummated, that a consumer will have a reasonable ability to repay the loan. A

change in the consumer's circumstances after consummation (for example, a significant reduction in income due to a job loss or a significant obligation arising from a major medical expense) that cannot be reasonably anticipated from the consumer's application or the records used to determine repayment ability is not relevant to determining a creditor's compliance with the rule. However, if the application or records considered at or before consummation indicate there will be a change in a consumer's repayment ability after consummation (for example, if a consumer's application states that the consumer plans to retire within 12 months without obtaining new employment or that the consumer will transition from full-time to part-time employment), the creditor must consider that information under the rule.

3. *Interaction with Regulation B.* Section 1026.43(c)(1) does not require or permit the creditor to make inquiries or verifications prohibited by Regulation B, 12 CFR part 1002.

43(c)(2) Basis for determination.

1. *General.* Section 1026.43(c)(2) sets forth factors creditors must consider when making the ability-to-repay determination required under §1026.43(c)(1) and the accompanying commentary provides guidance regarding these factors. Creditors must conform to these requirements and may rely on guidance provided in the commentary. However, §1026.43(c) and the accompanying commentary do not provide comprehensive guidance on definitions and other technical underwriting criteria necessary for evaluating these factors in practice. So long as a creditor complies with the provisions of §1026.43(c), the creditor is permitted to use its own definitions and other technical underwriting criteria. A creditor may, but is not required to, look to guidance issued by entities such as the Federal Housing Administration, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, or Fannie Mae or Freddie Mac while operating under the conservatorship of the Federal Housing Finance Agency. For example, a creditor may refer to such guidance to classify particular inflows, obligations, or property as ''income,'' ''debt,'' or ''assets.'' Similarly, a creditor may refer to such guidance to determine what information to use when evaluating the income of a self-employed or seasonally employed consumer or what information to use when evaluating the credit history of a consumer who has obtained few or no extensions of traditional ''credit'' as defined in §1026.2(a)(14). These examples are illustrative, and creditors are not required to conform to guidance issued by these or other such entities. However, as required by §1026.43(c)(1), a creditor must ensure that its underwriting criteria, as applied to the facts and circumstances of a particular extension of credit, result in a reasonable, good faith determination of a consumer's ability to repay. For example, a definition used in underwriting that is reasonable in isolation may lead to ability-to-repay determinations that are unreasonable or not in good faith when considered in the context of a creditor's underwriting standards or when adopted or applied in bad faith. Similarly, an ability-to-repay determination is not unreasonable or in bad faith merely because the underwriting criteria used included a definition that was by itself unreasonable.

Paragraph 43(c)(2)(i).

1. *Income or assets generally.* A creditor may base its determination of repayment ability on current or reasonably expected income from employment or other sources, assets other than the dwelling that secures the covered transaction, or both. The creditor may consider any type of current or reasonably expected income, including, for example, the following: salary; wages; self-employment income; military or reserve duty income; bonus pay; tips; commissions; interest payments; dividends; retirement benefits or entitlements; rental income; royalty payments; trust income; public assistance payments; and alimony, child support, and separate maintenance payments. The creditor may consider any of the consumer's assets, other than the value of the dwelling that secures the covered transaction, including, for example, the following: funds in a savings or checking account, amounts vested in a retirement account, stocks, bonds, certificates of deposit, and amounts available to the consumer from a trust fund. (As stated in §1026.43(a), the value of the dwelling includes the value of the real property to which the residential structure is attached, if the real property also secures the covered transaction.)

2. *Income or assets relied on.* A creditor need consider only the income or assets necessary to support a determination that the consumer can repay the covered transaction. For example, if a consumer's loan application states that the consumer earns an annual salary from both a full-time job and a part-time job and the creditor reasonably determines that the consumer's income from the full-time job is sufficient to repay the loan, the creditor need not consider the consumer's income from the part-time job. Further, a creditor need verify only the income (or assets) relied on to determine the consumer's repayment ability. *See* comment 43(c)(4)–1.

3. *Reasonably expected income.* If a creditor relies on expected income in excess of the consumer's income, either in addition to or instead of current income, the expectation that the income will be available for repayment must be reasonable and verified with third-party records that provide reasonably reliable evidence of the consumer's expected income. For example, if the creditor relies

on an expectation that a consumer will receive an annual bonus, the creditor may verify the basis for that expectation with records that show the consumer's past annual bonuses, and the expected bonus must bear a reasonable relationship to the past bonuses. Similarly, if the creditor relies on a consumer's expected salary from a job the consumer has accepted and will begin after receiving an educational degree, the creditor may verify that expectation with a written statement from an employer indicating that the consumer will be employed upon graduation at a specified salary.

4. *Seasonal or irregular income.* A creditor reasonably may determine that a consumer can make periodic loan payments even if the consumer's income, such as self-employment income, is seasonal or irregular. For example, assume a consumer receives seasonal income from the sale of crops or from agricultural employment. Each year, the consumer's income arrives during only a few months. If the creditor determines that the consumer's annual income divided equally across 12 months is sufficient for the consumer to make monthly loan payments, the creditor reasonably may determine that the consumer can repay the loan, even though the consumer may not receive income during certain months.

5. *Multiple applicants.* When two or more consumers apply for an extension of credit as joint obligors with primary liability on an obligation, §1026.43(c)(2)(i) does not require the creditor to consider income or assets that are not needed to support the creditor's repayment ability determination. If the income or assets of one applicant are sufficient to support the creditor's repayment ability determination, the creditor is not required to consider the income or assets of the other applicant. For example, if a husband and wife jointly apply for a loan and the creditor reasonably determines that the wife's income is sufficient to repay the loan, the creditor is not required to consider the husband's income.

Paragraph 43(c)(2)(ii).

1. *Employment status and income.* Employment status need not be full-time, and employment need not occur at regular intervals. If, in determining the consumer's repayment ability, the creditor relies on income from the consumer's employment, then that employment may be, for example, full-time, part-time, seasonal, irregular, military, or self-employment, so long as the creditor considers those characteristics of the employment. Under §1026.43(c)(2)(ii), a creditor must verify a consumer's current employment status only if the creditor relies on the consumer's employment income in determining the consumer's repayment ability. For example, if a creditor relies wholly on a consumer's investment income to determine repayment ability, the creditor need not verify or document employment status. See comments 43(c)(2)(i)–5 and 43(c)(4)–2 for guidance on which income to consider when multiple consumers apply jointly for a loan.

Paragraph 43(c)(2)(iii).

1. *General.* For purposes of the repayment ability determination required under §1026.43(c)(2), a creditor must consider the consumer's monthly payment on a covered transaction that is calculated as required under §1026.43(c)(5).

Paragraph 43(c)(2)(iv).

1. *Home equity lines of credit.* For purposes of §1026.43(c)(2)(iv), a simultaneous loan includes any covered transaction or home equity line of credit (HELOC) subject to §1026.40 that will be made to the same consumer at or before consummation of the covered transaction and secured by the same dwelling that secures the covered transaction. A HELOC that is a simultaneous loan that the creditor knows or has reason to know about must be considered as a mortgage obligation in determining a consumer's ability to repay the covered transaction even though the HELOC is not a covered transaction subject to §1026.43. See §1026.43(a) discussing the scope of this section. ''Simultaneous loan'' is defined in §1026.43(b)(12). For further explanation of ''same consumer,'' see comment 43(b)(12)–2.

2. *Knows or has reason to know.* In determining a consumer's repayment ability for a covered transaction under §1026.43(c)(2), a creditor must consider the consumer's payment obligation on any simultaneous loan that the creditor knows or has reason to know will be or has been made at or before consummation of the covered transaction. For example, where a covered transaction is a home purchase loan, the creditor must consider the consumer's periodic payment obligation for any ''piggyback'' second-lien loan that the creditor knows or has reason to know will be used to finance part of the consumer's down payment. The creditor complies with this requirement where, for example, the creditor follows policies and procedures that are designed to determine whether at or before consummation the same consumer has applied for another credit transaction secured by the same dwelling. To illustrate, assume a creditor receives an application for a home purchase loan where the requested loan amount is less than the home purchase price. The creditor's policies and procedures must require the consumer to state the source of the down payment and provide verification. If the creditor determines the source of the down payment is another extension of credit that will be made to the same consumer at or before consummation and secured by the same dwelling, the creditor knows or has reason to know of the simultaneous loan and must consider the simultaneous loan. Alternatively, if the creditor has information that

suggests the down payment source is the consumer's existing assets, the creditor would be under no further obligation to determine whether a simultaneous loan will be extended at or before consummation of the covered transaction. The creditor is not obligated to investigate beyond reasonable underwriting policies and procedures to determine whether a simultaneous loan will be extended at or before consummation of the covered transaction.

3. *Scope of timing.* For purposes of §1026.43(c)(2)(iv), a simultaneous loan includes a loan that comes into existence concurrently with the covered transaction subject to §1026.43(c). A simultaneous loan does not include a credit transaction that occurs after consummation of the covered transaction that is subject to this section. However, any simultaneous loan that specifically covers closing costs of the covered transaction, but is scheduled to be extended after consummation must be considered for the purposes of §1026.43(c)(2)(iv).

Paragraph 43(c)(2)(v).

1. *General.* A creditor must include in its repayment ability assessment the consumer's monthly payment for mortgage-related obligations, such as the expected property taxes and premiums or similar charges identified in §1026.4(b)(5), (7), (8), or (10) that are required by the creditor. See §1026.43(b)(8) defining the term "mortgage-related obligations." Mortgage-related obligations must be included in the creditor's determination of repayment ability regardless of whether the amounts are included in the monthly payment or whether there is an escrow account established. Section 1026.43(c)(2)(v) includes only payments that occur on an ongoing or recurring basis in the evaluation of the consumer's monthly payment for mortgage-related obligations. One-time charges, or obligations satisfied at or before consummation, are not ongoing or recurring, and are therefore not part of the consumer's monthly payment for purposes of §1026.43(c)(2)(v). For example:

i. Assume that a consumer will be required to pay property taxes, as described in comment 43(b)(8)–2, on a quarterly, annual, or other basis after consummation. Section 1026.43(c)(2)(v) includes these recurring property taxes in the evaluation of the consumer's monthly payment for mortgage-related obligations. However, if the consumer will incur a one-time charge to satisfy property taxes that are past due, §1026.43(c)(2)(v) does not include this one-time charge in the evaluation of the consumer's monthly payment for mortgage-related obligations.

ii. Assume that a consumer will be required to pay mortgage insurance premiums, as described in comment 43(b)(8)–2, on a monthly, annual, or other basis after consummation. Section 1026.43(c)(2)(v) includes these recurring mortgage insurance payments in the evaluation of the consumer's monthly payment for mortgage-related obligations. However, if the consumer will incur a one-time fee or charge for mortgage insurance or similar purposes, such as an up-front mortgage insurance premium imposed at consummation, §1026.43(c)(2)(v) does not include this up-front mortgage insurance premium in the evaluation of the consumer's monthly payment for mortgage-related obligations.

2. *Obligations to an association, other than special assessments.* Section 1026.43(b)(8) defines mortgage-related obligations to include obligations owed to a condominium, cooperative, or homeowners association. However, §1026.43(c)(2)(v) does not require a creditor to include in the evaluation of the consumer's monthly payment for mortgage-related obligations payments to such associations imposed in connection with the extension of credit, or imposed as an incident to the transfer of ownership, if such obligations are fully satisfied at or before consummation. For example, if a homeowners association imposes a one-time transfer fee on the transaction, and the consumer will pay the fee at or before consummation, §1026.43(c)(2)(v) does not require the creditor to include this one-time transfer fee in the evaluation of the consumer's monthly payment for mortgage-related obligations. Section 1026.43(c)(2)(v) also does not require the creditor to include this fee in the evaluation of the consumer's monthly payment for mortgage-related obligations if the consumer finances the fee in the loan amount. However, if the consumer incurs the obligation and will satisfy the obligation with recurring payments after consummation, regardless of whether the obligation is escrowed, §1026.43(c)(2)(v) requires the creditor to include the transfer fee in the evaluation of the consumer's monthly payment for mortgage-related obligations.

3. *Special assessments imposed by an association.* Section 1026.43(b)(8) defines mortgage-related obligations to include special assessments imposed by a condominium, cooperative, or homeowners association. Section 1026.43(c)(2)(v) does not require a creditor to include special assessments in the evaluation of the consumer's monthly payment for mortgage-related obligations if the special assessments are fully satisfied at or before consummation. For example, if a homeowners association imposes a special assessment that the consumer will have to pay in full at or before consummation, §1026.43(c)(2)(v) does not include the special assessment in the evaluation of the consumer's monthly payment for mortgage-related obligations. Section 1026.43(c)(2)(v) does not require a creditor to include special assessments in the evaluation of the consumer's monthly payment for mortgage-related obligations if the special assessments

are imposed as a one-time charge. For example, if a homeowners association imposes a special assessment that the consumer will have to satisfy in one payment, §1026.43(c)(2)(v) does not include this one-time special assessment in the evaluation of the consumer's monthly payment for mortgage-related obligations. However, if the consumer will pay the special assessment on a recurring basis after consummation, regardless of whether the consumer's payments for the special assessment are escrowed, §1026.43(c)(2)(v) requires the creditor to include this recurring special assessment in the evaluation of the consumer's monthly payment for mortgage-related obligations.

4. *Pro rata amount.* For purposes of §1026.43(c)(2)(v), the creditor may divide the recurring payments for mortgage-related obligations into monthly, pro rata amounts. In considering a mortgage-related obligation that is not paid monthly, if the mortgage loan is originated pursuant to a government program the creditor may determine the pro rata monthly amount of the mortgage-related obligation in accordance with the specific requirements of that program. If the mortgage loan is originated pursuant to a government program that does not contain specific standards for determining the pro rata monthly amount of the mortgage-related obligation, or if the mortgage loan is not originated pursuant to a government program, the creditor complies with §1026.43(c)(2)(v) by dividing the total amount of a particular non-monthly mortgage-related obligation by no more than the number of months from the month that the non-monthly mortgage-related obligation was due prior to consummation until the month that the non-monthly mortgage-related obligation will be due after consummation. When determining the pro rata monthly payment amount, the creditor may also consider comment 43(c)(2)(v)–5, which explains that the creditor need not project potential changes. The following examples further illustrate how a creditor may determine the pro rata monthly amount of mortgage-related obligations, pursuant to §1026.43(c)(2)(v):

i. Assume that a consumer applies for a mortgage loan on February 1st. Assume further that the subject property is located in a jurisdiction where property taxes are paid in arrears on the first day of October. The creditor complies with §1026.43(c)(2)(v) by determining the annual property tax amount owed in the prior October, dividing the amount by 12, and using the resulting amount as the pro rata monthly property tax payment amount for the determination of the consumer's monthly payment for mortgage-related obligations. The creditor complies even if the consumer will likely owe more in the next year than the amount owed the prior October because the jurisdiction normally increases the property tax rate annually, provided that the creditor does not have knowledge of an increase in the property tax rate at the time of underwriting. See also comment 43(c)(2)(v)–5 regarding estimates of mortgage-related obligations.

ii. Assume that a subject property is located in a special water district, the assessments for which are billed separately from local property taxes. The creditor complies with §1026.43(c)(2)(v) by dividing the full amount that will be owed by the number of months in the assessment period, and including the resulting amount in the calculation of monthly mortgage-related obligations. However, §1026.43(c)(2)(v) does not require a creditor to adjust the monthly amount to account for potential deviations from the average monthly amount. For example, assume in this example that the special water assessment is billed every eight months, that the consumer will have to pay the first water district bill four months after consummation, and that the seller will not provide the consumer with any funds to pay for the seller's obligation (*i.e.*, the four months prior to consummation). Although the consumer will be required to budget twice the average monthly amount to pay the first water district bill, §1026.43(c)(2)(v) does not require the creditor to use the increased amount; the creditor complies with §1026.43(c)(2)(v) by using the average monthly amount.

iii. Assume that the subject property is located in an area where flood insurance is required by Federal law, and assume further that the flood insurance policy premium is paid every three years following consummation. The creditor complies with §1026.43(c)(2)(v) by dividing the three-year premium by 36 months and including the resulting amount in the determination of the consumer's monthly payment for mortgage-related obligations. The creditor complies even if the consumer will not establish a monthly escrow for flood insurance.

iv. Assume that the subject property is part of a homeowners association that has imposed upon the seller a special assessment of $1,200. Assume further that this special assessment will become the consumer's obligation upon consummation of the transaction, that the consumer is permitted to pay the special assessment in twelve $100 installments after consummation, and that the mortgage loan will not be originated pursuant to a government program that contains specific requirements for prorating special assessments. The creditor complies with §1026.43(c)(2)(v) by dividing the $1,200 special assessment by 12 months and including the resulting $100 monthly amount in the determination of the consumer's monthly payment for mortgage-related obligations. The creditor complies by using this calculation even if the consumer intends to pay the special assessment in a manner other than that used by the creditor in determining the monthly pro rata amount, such as where the consumer intends to pay six $200 installments.

5. *Estimates.* Estimates of mortgage-related obligations should be based upon information that is known to the creditor at the time the creditor underwrites the mortgage obligation. Information is known if it is reasonably available to the creditor at the time of underwriting the loan. Creditors may rely on guidance provided under comment 17(c)(2)(i)–1 in determining if information is reasonably available. For purposes of this section, the creditor need not project potential changes, such as by estimating possible increases in taxes and insurance. See comment 43(c)(2)(v)–4 for additional examples discussing the projection of potential changes. The following examples further illustrate the requirements of §1026.43(c)(2)(v):

i. Assume that the property is subject to a community governance association, such as a homeowners association. The creditor complies with §1026.43(c)(2)(v) by relying on an estimate of mortgage-related obligations prepared by the homeowners association. In accordance with the guidance provided under comment 17(c)(2)(i)–1, the creditor need only exercise due diligence in determining mortgage-related obligations, and complies with §1026.43(c)(2)(v) by relying on the representations of other reliable parties in preparing estimates.

ii. Assume that the homeowners association has imposed a special assessment on the seller, but the seller does not inform the creditor of the special assessment, the homeowners association does not include the special assessment in the estimate of expenses prepared for the creditor, and the creditor is unaware of the special assessment. The creditor complies with §1026.43(c)(2)(v) if it does not include the special assessment in the determination of mortgage-related obligations. The creditor may rely on the representations of other reliable parties, in accordance with the guidance provided under comment 17(c)(2)(i)–1.

iii. Assume that the homeowners association imposes a special assessment after the creditor has completed underwriting, but prior to consummation. The creditor does not violate §1026.43(c)(2)(v) if the creditor does not include the special assessment in the determination of the consumer's monthly payment for mortgage-related obligations, provided the homeowners association does not inform the creditor about the special assessment during underwriting. Section 1026.43(c)(2)(v) does not require the creditor to re-underwrite the loan. The creditor has complied with §1026.43(c)(2)(v) by including the obligations known to the creditor at the time the loan is underwritten, even if the creditor learns of new mortgage-related obligations before the transaction is consummated.

Paragraph 43(c)(2)(vi).

1. *Consideration of current debt obligations.* Section 1026.43(c)(2)(vi) requires creditors to consider a consumer's current debt obligations and any alimony or child support the consumer is required to pay. Examples of current debt obligations include student loans, automobile loans, revolving debt, and existing mortgages that will not be paid off at or before consummation. Creditors have significant flexibility to consider current debt obligations in light of attendant facts and circumstances, including that an obligation is likely to be paid off soon after consummation. For example, a creditor may take into account that an existing mortgage is likely to be paid off soon after consummation because there is an existing contract for sale of the property that secures that mortgage. Similarly, creditors should consider whether debt obligations in forbearance or deferral at the time of underwriting are likely to affect the consumer's ability to repay based on the payment for which the consumer will be liable upon expiration of the forbearance or deferral period and other relevant facts and circumstances, such as when the forbearance or deferral period will expire.

2. *Multiple applicants.* When two or more consumers apply for an extension of credit as joint obligors with primary liability on an obligation, §1026.43(c)(2)(vi) requires a creditor to consider the debt obligations of all such joint applicants. For example, if a co-applicant is repaying a student loan at the time of underwriting, the creditor complies with §1026.43(c)(2)(vi) by considering the co-applicant's student loan obligation. If one consumer is merely a surety or guarantor, §1026.43(c)(2)(vi) does not require a creditor to consider the debt obligations of such surety or guarantor. The requirements of §1026.43(c)(2)(vi) do not affect the disclosure requirements of this part, such as, for example, §§1026.17(d), 1026.23(b), 1026.31(e), 1026.39(b)(3), and 1026.46(f).

Paragraph 43(c)(2)(vii).

1. *Monthly debt-to-income ratio and residual income.* See §1026.43(c)(7) and its associated commentary regarding the definitions and calculations for the monthly debt-to-income ratio and residual income.

Paragraph 43(c)(2)(viii).

1. *Consideration of credit history.* ''Credit history'' may include factors such as the number and age of credit lines, payment history, and any judgments, collections, or bankruptcies. Section 1026.43(c)(2)(viii) does not require creditors to obtain or consider a consolidated credit score or prescribe a minimum credit score that creditors must apply. The rule also does not specify which aspects of credit history a creditor must consider or

how various aspects of credit history should be weighed against each other or against other underwriting factors. Some aspects of a consumer's credit history, whether positive or negative, may not be directly indicative of the consumer's ability to repay. A creditor therefore may give various aspects of a consumer's credit history as much or as little weight as is appropriate to reach a reasonable, good faith determination of ability to repay. Where a consumer has obtained few or no extensions of traditional ''credit,'' as defined in §1026.2(a)(14), a creditor may, but is not required to, look to nontraditional credit references, such as rental payment history or utility payments.

2. *Multiple applicants.* When two or more consumers apply for an extension of credit as joint obligors with primary liability on an obligation, §1026.43(c)(2)(viii) requires a creditor to consider the credit history of all such joint applicants. If a consumer is merely a surety or guarantor, §1026.43(c)(2)(viii) does not require a creditor to consider the credit history of such surety or guarantor. The requirements of §1026.43(c)(2)(viii) do not affect the disclosure requirements of this part, such as, for example, §§1026.17(d), 1026.23(b), 1026.31(e), 1026.39(b)(3), and 1026.46(f).

43(c)(3) Verification using third-party records.

1. *Records specific to the individual consumer.* Records a creditor uses for verification under §1026.43(c)(3) and (4) must be specific to the individual consumer. Records regarding average incomes in the consumer's geographic location or average wages paid by the consumer's employer, for example, are not specific to the individual consumer and are not sufficient for verification.

2. *Obtaining records.* To conduct verification under §1026.43(c)(3) and (4), a creditor may obtain records from a third-party service provider, such as a party the consumer's employer uses to respond to income verification requests, as long as the records are reasonably reliable and specific to the individual consumer. A creditor also may obtain third-party records directly from the consumer, likewise as long as the records are reasonably reliable and specific to the individual consumer. For example, a creditor using payroll statements to verify the consumer's income, as allowed under §1026.43(c)(4)(iii), may obtain the payroll statements from the consumer.

3. *Credit report as a reasonably reliable third-party record.* A credit report generally is considered a reasonably reliable third-party record under §1026.43(c)(3) for purposes of verifying items customarily found on a credit report, such as the consumer's current debt obligations, monthly debts, and credit history. Section 1026.43(c)(3) generally does not require creditors to obtain additional reasonably reliable third-party records to verify information contained in a credit report. For example, if a credit report states the existence and amount of a consumer's debt obligation, the creditor is not required to obtain additional verification of the existence or amount of that obligation. In contrast, a credit report does not serve as a reasonably reliably third-party record for purposes of verifying items that do not appear on the credit report. For example, certain monthly debt obligations, such as legal obligations like alimony or child support, may not be reflected on a credit report. Thus, a credit report that does not list a consumer's monthly alimony obligation does not serve as a reasonably reliable third-party record for purposes of verifying that obligation. If a credit report reflects a current debt obligation that a consumer has not listed on the application, the creditor complies with §1026.43(c)(3) if the creditor considers the existence and amount of the debt obligation as it is reflected in the credit report. However, in some cases a creditor may know or have reason to know that a credit report may be inaccurate in whole or in part. For example, a creditor may have information indicating that a credit report is subject to a fraud alert, extended alert, active duty alert, or similar alert identified in 15 U.S.C. 1681c–1 or that a debt obligation listed on a credit report is subject to a statement of dispute pursuant to 15 U.S.C. 1681i(b). A creditor may also have other reasonably reliable third-party records or other information or evidence that the creditor reasonably finds to be reliable that contradict the credit report or otherwise indicate that the credit report is inaccurate. If a creditor knows or has reason to know that a credit report may be inaccurate in whole or in part, the creditor complies with §1026.43(c)(3) by disregarding an inaccurate or disputed item, items, or credit report, but does not have to obtain additional third-party records. The creditor may also, but is not required, to obtain other reasonably reliable third-party records to verify information with respect to which the credit report, or item therein, may be inaccurate. For example, the creditor might obtain statements or bank records regarding a particular debt obligation subject to a statement of dispute. See also comment 43(c)(3)–6, which describes a situation in which a consumer reports a debt obligation that is not listed on a credit report.

4. *Verification of simultaneous loans.* Although a credit report may be used to verify current obligations, it will not reflect a simultaneous loan that has not yet been consummated and may not reflect a loan that has just recently been consummated. If the creditor knows or has reason to know that there will be a simultaneous loan extended at or before consummation, the creditor may verify the simultaneous loan by obtaining third-party verification from the third-party creditor of the simultaneous loan. For example, the creditor may obtain a copy of the

promissory note or other written verification from the third-party creditor. For further guidance, see comments 43(c)(3)–1 and –2 discussing verification using third-party records.

5. *Verification of mortgage-related obligations.* Creditors must make the repayment ability determination required under §1026.43(c)(2) based on information verified from reasonably reliable records. For general guidance regarding verification see comments 43(c)(3)–1 and –2, which discuss verification using third-party records. With respect to the verification of mortgage-related obligations that are property taxes required to be considered under §1026.43(c)(2)(v), a record is reasonably reliable if the information in the record was provided by a governmental organization, such as a taxing authority or local government. The creditor complies with §1026.43(c)(2)(v) by relying on property taxes referenced in the title report if the source of the property tax information was a local taxing authority. With respect to other information in a record provided by an entity assessing charges, such as a homeowners association, the creditor complies with §1026.43(c)(2)(v) if it relies on homeowners association billing statements provided by the seller. Records are also reasonably reliable if the information in the record was obtained from a valid and legally executed contract. For example, the creditor complies with §1026.43(c)(2)(v) by relying on the amount of monthly ground rent referenced in the ground rent agreement currently in effect and applicable to the subject property. Records, other than those discussed above, may be reasonably reliable for purposes of §1026.43(c)(2)(v) if the source provided the information objectively.

6. *Verification of current debt obligations.* Section 1026.43(c)(3) does not require creditors to obtain additional records to verify the existence or amount of obligations shown on a consumer's credit report or listed on the consumer's application, absent circumstances described in comment 43(c)(3)–3. Under §1026.43(c)(3)(iii), if a creditor relies on a consumer's credit report to verify a consumer's current debt obligations and the consumer's application lists a debt obligation not shown on the credit report, the creditor may consider the existence and amount of the obligation as it is stated on the consumer's application. The creditor is not required to further verify the existence or amount of the obligation, absent circumstances described in comment 43(c)(3)–3.

7. *Verification of credit history.* To verify credit history, a creditor may, for example, look to credit reports from credit bureaus or to reasonably reliable third-party records that evidence nontraditional credit references, such as evidence of rental payment history or public utility payments.

8. *Verification of military employment.* A creditor may verify the employment status of military personnel by using a military Leave and Earnings Statement or by using the electronic database maintained by the Department of Defense to facilitate identification of consumers covered by credit protections provided pursuant to 10 U.S.C. 987.

43(c)(4) Verification of Income or Assets

1. *Income or assets relied on.* A creditor need consider, and therefore need verify, only the income or assets the creditor relies on to evaluate the consumer's repayment ability. *See* comment 43(c)(2)(i)–2. For example, if a consumer's application states that the consumer earns a salary and is paid an annual bonus and the creditor relies on only the consumer's salary to evaluate the consumer's repayment ability, the creditor need verify only the salary. *See also* comments 43(c)(3)–1 and –2.

2. *Multiple applicants.* If multiple consumers jointly apply for a loan and each lists income or assets on the application, the creditor need verify only the income or assets the creditor relies on in determining repayment ability. *See* comment 43(c)(2)(i)–5.

3. *Tax-return transcript.* Under §1026.43(c)(4), a creditor may verify a consumer's income using an Internal Revenue Service (IRS) tax-return transcript, which summarizes the information in a consumer's filed tax return, another record that provides reasonably reliable evidence of the consumer's income, or both. A creditor may obtain a copy of a tax-return transcript or a filed tax return directly from the consumer or from a service provider. A creditor need not obtain the copy directly from the IRS or other taxing authority. *See* comment 43(c)(3)–2.

4. *Unidentified funds.* A creditor does not meet the requirements of §1026.43(c)(4) if it observes an inflow of funds into the consumer's account without confirming that the funds are income. For example, a creditor would not meet the requirements of §1026.43(c)(4) where it observes an unidentified $5,000 deposit in the consumer's account but fails to take any measures to confirm or lacks any basis to conclude that the deposit represents the consumer's personal income and not, for example, proceeds from the disbursement of a loan.

Paragraph 43(c)(4)(vi).

1. *Government benefits.* In verifying a consumer's income, a creditor may use a written or electronic record from a government agency of the amount of any benefit payments or awards, such as a ''proof of income letter'' issued by the Social Security Administration (also known as a ''budget letter,'' ''benefits letter,'' or ''proof of award letter'').

43(c)(5) Payment calculation.

43(c)(5)(i) General rule.

1. *General.* For purposes of §1026.43(c)(2)(iii), a creditor must determine

the consumer's ability to repay the covered transaction using the payment calculation methods set forth in §1026.43(c)(5). The payment calculation methods differ depending on the type of credit extended. The payment calculation method set forth in §1026.43(c)(5)(i) applies to any covered transaction that does not have a balloon payment, or that is not an interest-only or negative amortization loan, whether such covered transaction is a fixed-rate, adjustable-rate or step-rate mortgage. The terms ''fixed-rate mortgage,'' ''adjustable-rate mortgage,'' ''step-rate mortgage,'' ''interest-only loan'' and ''negative amortization loan'' are defined in §1026.18(s)(7)(iii), (i), (ii), (iv) and (v), respectively. For the meaning of the term ''balloon payment,'' see §1026.18(s)(5)(i). The payment calculation methods set forth in §1026.43(c)(5)(ii) apply to any covered transaction that is a loan with a balloon payment, interest-only loan, or negative amortization loan. See comment 43(c)(5)(i)–5 and the commentary to §1026.43(c)(5)(ii), which provide examples for calculating the monthly payment for purposes of the repayment ability determination required under §1026.43(c)(2)(iii).

2. *Greater of the fully indexed rate or introductory rate; premium adjustable-rate transactions.* A creditor must determine a consumer's repayment ability for the covered transaction using substantially equal, monthly, fully amortizing payments that are based on the greater of the fully indexed rate or any introductory interest rate. In some adjustable-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. Sometimes, this initial rate charged to consumers is lower than the rate would be if it were determined by using the index plus margin, or formula (*i.e.*, fully indexed rate). However, an initial rate that is a premium rate is higher than the rate based on the index or formula. In such cases, creditors must calculate the fully amortizing payment based on the initial ''premium'' rate. ''Fully indexed rate'' is defined in §1026.43(b)(3).

3. *Monthly, fully amortizing payments.* Section 1026.43(c)(5)(i) does not prescribe the terms or loan features that a creditor may choose to offer or extend to a consumer, but establishes the calculation method a creditor must use to determine the consumer's repayment ability for a covered transaction. For example, the terms of the loan agreement may require that the consumer repay the loan in quarterly or bi-weekly scheduled payments, but for purposes of the repayment ability determination, the creditor must convert these scheduled payments to monthly payments in accordance with §1026.43(c)(5)(i)(B). Similarly, the loan agreement may not require the consumer to make fully amortizing payments, but for purposes of the repayment ability determination under §1026.43(c)(5)(i), the creditor must convert any non-amortizing payments to fully amortizing payments.

4. *Substantially equal.* In determining whether monthly, fully amortizing payments are substantially equal, creditors should disregard minor variations due to payment-schedule irregularities and odd periods, such as a long or short first or last payment period. That is, monthly payments of principal and interest that repay the loan amount over the loan term need not be equal, but the monthly payments should be substantially the same without significant variation in the monthly combined payments of both principal and interest. For example, where no two monthly payments vary from each other by more than 1 percent (excluding odd periods, such as a long or short first or last payment period), such monthly payments would be considered substantially equal for purposes of this section. In general, creditors should determine whether the monthly, fully amortizing payments are substantially equal based on guidance provided in §1026.17(c)(3) (discussing minor variations), and §1026.17(c)(4)(i) through (iii) (discussing payment-schedule irregularities and measuring odd periods due to a long or short first period) and associated commentary.

5. *Examples.* The following are examples of how to determine the consumer's repayment ability based on substantially equal, monthly, fully amortizing payments as required under §1026.43(c)(5)(i) (all amounts shown are rounded, and all amounts are calculated using non-rounded values):

i. *Fixed-rate mortgage.* A loan in an amount of $200,000 has a 30-year loan term and a fixed interest rate of 7 percent. For purposes of §1026.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a payment of $1,331, which is the substantially equal, monthly, fully amortizing payment that will repay $200,000 over 30 years using the fixed interest rate of 7 percent.

ii. *Adjustable-rate mortgage with discount for five years.* A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 6 percent that is fixed for an initial period of five years, after which the interest rate will adjust annually based on a specified index plus a margin of 3 percent, subject to a 2 percent annual periodic interest rate adjustment cap. The index value in effect at consummation is 4.5 percent; the fully indexed rate is 7.5 percent (4.5 percent plus 3 percent). Even though the scheduled monthly payment required for the first five years is $1199, for purposes of §1026.43(c)(2)(iii) the creditor must determine the consumer's ability to repay the loan based on a payment of $1,398, which is the substantially equal, monthly, fully amortizing payment that will repay

$200,000 over 30 years using the fully indexed rate of 7.5 percent.

iii. *Step-rate mortgage.* A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides that the interest rate will be 6.5 percent for the first two years of the loan, 7 percent for the next three years of the loan, and 7.5 percent thereafter. Accordingly, the scheduled payment amounts are $1,264 for the first two years, $1,328 for the next three years, and $1,388 thereafter for the remainder of the term. For purposes of §1026.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a payment of $1,398, which is the substantially equal, monthly, fully amortizing payment that would repay $200,000 over 30 years using the fully indexed rate of 7.5 percent.

43(c)(5)(ii) Special rules for loans with a balloon payment, interest-only loans, and negative amortization loans.

Paragraph 43(c)(5)(ii)(A).

1. *General.* For loans with a balloon payment, the rules differ depending on whether the loan is a higher-priced covered transaction, as defined under §1026.43(b)(4), or is not a higher-priced covered transaction because the annual percentage rate does not exceed the applicable threshold calculated using the applicable average prime offer rate (APOR) for a comparable transaction. ''Average prime offer rate'' is defined in §1026.35(a)(2); ''higher-priced covered transaction'' is defined in §1026.43(b)(4). For higher-priced covered transactions with a balloon payment, the creditor must consider the consumer's ability to repay the loan based on the payment schedule under the terms of the legal obligation, including any required balloon payment. For loans with a balloon payment that are not higher-priced covered transactions, the creditor should use the maximum payment scheduled during the first five years of the loan following the date on which the first regular periodic payment will be due. ''Balloon payment'' is defined in §1026.18(s)(5)(i).

2. *First five years after the date on which the first regular periodic payment will be due.* Under §1026.43(c)(5)(ii)(A)(*1*), the creditor must determine a consumer's ability to repay a loan with a balloon payment that is not a higher-priced covered transaction using the maximum payment scheduled during the first five years (60 months) after the date on which the first regular periodic payment will be due. To illustrate:

i. Assume a loan that provides for regular monthly payments and a balloon payment due at the end of a six-year loan term. The loan is consummated on August 15, 2014, and the first monthly payment is due on October 1, 2014. The first five years after the first monthly payment end on October 1, 2019. The balloon payment must be made on the due date of the 72nd monthly payment, which is September 1, 2020. For purposes of determining the consumer's ability to repay the loan under §1026.43(c)(2)(iii), the creditor need not consider the balloon payment that is due on September 1, 2020.

ii. Assume a loan that provides for regular monthly payments and a balloon payment due at the end of a five-year loan term. The loan is consummated on August 15, 2014, and the first monthly payment is due on October 1, 2014. The first five years after the first monthly payment end on October 1, 2019. The balloon payment must be made on the due date of the 60th monthly payment, which is September 1, 2019. For purposes of determining the consumer's ability to repay the loan under §1026.43(c)(2)(iii), the creditor must consider the balloon payment that is due on September 1, 2019.

3. *Renewable balloon-payment mortgage; loan term.* A balloon-payment mortgage that is not a higher-priced covered transaction could provide that a creditor is unconditionally obligated to renew a balloon-payment mortgage at the consumer's option (or is obligated to renew subject to conditions within the consumer's control). See comment 17(c)(1)–11 discussing renewable balloon-payment mortgages. For purposes of this section, the loan term does not include any period of time that could result from a renewal provision. To illustrate, assume a three-year balloon-payment mortgage that is not a higher-priced covered transaction contains an unconditional obligation to renew for another three years at the consumer's option. In this example, the loan term for the balloon-payment mortgage is three years, and not the potential six years that could result if the consumer chooses to renew the loan. Accordingly, the creditor must underwrite the loan using the maximum payment scheduled in the first five years after consummation, which includes the balloon payment due at the end of the three-year loan term. See comment 43(c)(5)(ii)(A)–4.ii, which provides an example of how to determine the consumer's repayment ability for a three-year renewable balloon-payment mortgage that is not a higher-priced covered transaction.

4. *Examples of loans with a balloon payment that are not higher-priced covered transactions.* The following are examples of how to determine the maximum payment scheduled during the first five years after the date on which the first regular periodic payment will be due (all amounts shown are rounded, and all amounts are calculated using non-rounded values):

i. *Balloon-payment mortgage with a three-year loan term; fixed interest rate.* A loan agreement provides for a fixed interest rate of 6 percent, which is below the APOR-calculated threshold for a comparable transaction; thus the loan is not a higher-priced covered transaction. The loan amount is

$200,000, and the loan has a three-year loan term but is amortized over 30 years. The monthly payment scheduled for the first three years following consummation is $1,199, with a balloon payment of $193,367 due at the end of the third year. For purposes of §1026.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on the balloon payment of $193,367.

ii. *Renewable balloon-payment mortgage with a three-year loan term.* Assume the same facts above in comment 43(c)(5)(ii)(A)–4.i, except that the loan agreement also provides that the creditor is unconditionally obligated to renew the balloon-payment mortgage at the consumer's option at the end of the three-year term for another three years. In determining the maximum payment scheduled during the first five years after the date on which the first regular periodic payment will be due, the creditor must use a loan term of three years. Accordingly, for purposes of §1026.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on the balloon payment of $193,367.

iii. *Balloon-payment mortgage with a six-year loan term; fixed interest rate.* A loan provides for a fixed interest rate of 6 percent, which is below the APOR threshold for a comparable transaction, and thus, the loan is not a higher-priced covered transaction. The loan amount is $200,000, and the loan has a six-year loan term but is amortized over 30 years. The loan is consummated on March 15, 2014, and the monthly payment scheduled for the first six years following consummation is $1,199, with the first monthly payment due on May 1, 2014. The first five years after the date on which the first regular periodic payment will be due end on May 1, 2019. The balloon payment of $183,995 is required on the due date of the 72nd monthly payment, which is April 1, 2020 (more than five years after the date on which the first regular periodic payment will be due). For purposes of §1026.43(c)(2)(iii), the creditor may determine the consumer's ability to repay the loan based on the monthly payment of $1,199, and need not consider the balloon payment of $183,995 due on April 1, 2020.

5. *Higher-priced covered transaction with a balloon payment.* Where a loan with a balloon payment is a higher-priced covered transaction, the creditor must determine the consumer's repayment ability based on the loan's payment schedule, including any balloon payment. For example (all amounts are rounded): Assume a higher-priced covered transaction with a fixed interest rate of 7 percent. The loan amount is $200,000 and the loan has a ten year loan term, but is amortized over 30 years. The monthly payment scheduled for the first ten years is $1,331, with a balloon payment of $172,955. For purposes of §1026.43(c)(2)(iii), the creditor must consider the consumer's ability to repay the loan based on the payment schedule that fully repays the loan amount, including the balloon payment of $172,955.

Paragraph 43(c)(5)(ii)(B).

1. *General.* For loans that permit interest-only payments, the creditor must use the fully indexed rate or introductory rate, whichever is greater, to calculate the substantially equal, monthly payment 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. For discussion regarding the fully indexed rate, and the meaning of ''substantially equal,'' see comments 43(b)(3)–1 through –5 and 43(c)(5)(i)–4, respectively. Under §1026.43(c)(5)(ii)(B), the relevant term of the loan is the period of time that remains as of the date the loan is recast to require fully amortizing payments. For a loan on which only interest and no principal has been paid, the loan amount will be the outstanding principal balance at the time of the recast. ''Loan amount'' and ''recast'' are defined in §1026.43(b)(5) and (b)(11), respectively. ''Interest-only'' and ''Interest-only loan'' are defined in §1026.18(s)(7)(iv).

2. *Examples.* The following are examples of how to determine the consumer's repayment ability based on substantially equal, monthly payments of principal and interest under §1026.43(c)(5)(ii)(B) (all amounts shown are rounded, and all amounts are calculated using non-rounded values):

i. *Fixed-rate mortgage with interest-only payments for five years.* A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate of 7 percent, and permits interest-only payments for the first five years. The monthly payment of $1,167 scheduled for the first five years would cover only the interest due. The loan is recast on the due date of the 60th monthly payment, after which the scheduled monthly payments increase to $1,414, a monthly payment that repays the loan amount of $200,000 over the 25 years remaining as of the date the loan is recast (300 months). For purposes of §1026.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a payment of $1,414, which is the substantially equal, monthly, fully amortizing payment that would repay $200,000 over the 25 years remaining as of the date the loan is recast using the fixed interest rate of 7 percent.

ii. *Adjustable-rate mortgage with discount for three years and interest-only payments for five years.* A loan in an amount of $200,000 has a 30-year loan term, but provides for interest-only payments for the first five years. The loan agreement provides for a discounted interest rate of 5 percent that is fixed for an initial period of three years, after which the interest rate will adjust each year based on a specified index plus a margin of 3 percent, subject to an annual interest rate adjustment cap of 2 percent. The index value in effect at consummation is 4.5 percent; the fully indexed rate is 7.5 percent (4.5 percent plus 3 percent). The monthly payments for the first three years are $833. For the fourth year, the payments are $1,167, based on an interest rate of 7 percent, calculated by adding the 2 percent annual adjustment cap to the initial rate of 5 percent. For the fifth year, the payments are $1,250, applying the fully indexed rate of 7.5 percent. These first five years of payments will cover only the interest due. The loan is recast on the due date of the 60th monthly payment, after which the scheduled monthly payments increase to $1,478, a monthly payment that will repay the loan amount of $200,000 over the remaining 25 years of the loan (300 months). For purposes of §1026.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a monthly payment of $1,478, which is the substantially equal, monthly payment of principal and interest that would repay $200,000 over the 25 years remaining as of the date the loan is recast using the fully indexed rate of 7.5 percent.

Paragraph 43(c)(5)(ii)(C).

1. *General.* For purposes of determining the consumer's ability to repay a negative amortization loan, the creditor must use substantially equal, monthly payments of principal and interest based on the fully indexed rate or the introductory rate, whichever is greater, that will repay the maximum loan amount over the term of the loan that remains as of the date the loan is recast. Accordingly, before determining the substantially equal, monthly payments the creditor must first determine the maximum loan amount and the period of time that remains in the loan term after the loan is recast. ''Recast'' is defined in §1026.43(b)(11). Second, the creditor must use the fully indexed rate or introductory rate, whichever is greater, to calculate the substantially equal, monthly payment amount that will repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast. For discussion regarding the fully indexed rate and the meaning of ''substantially equal,'' see comments 43(b)(3)–1 through –5 and 43(c)(5)(i)–4, respectively. For the meaning of the term ''maximum loan amount'' and a discussion of how to determine the maximum loan amount for purposes of §1026.43(c)(5)(ii)(C), see §1026.43(b)(7) and associated commentary. ''Negative amortization loan'' is defined in §1026.18(s)(7)(v).

2. *Term of loan.* Under §1026.43(c)(5)(ii)(C), the relevant term of the loan is the period of time that remains as of the date the terms of the legal obligation recast. That is, the creditor must determine substantially equal, monthly payments of principal and interest that will repay the maximum loan amount based on the period of time that remains after any negative amortization cap is triggered or any period permitting minimum periodic payments expires, whichever occurs first.

3. *Examples.* The following are examples of how to determine the consumer's repayment ability based on substantially equal, monthly payments of principal and interest as required under §1026.43(c)(5)(ii)(C) (all amounts shown are rounded, and all amounts are calculated using non-rounded values):

i. *Adjustable-rate mortgage with negative amortization.* A. Assume an adjustable-rate mortgage in the amount of $200,000 with a 30-year loan term. The loan agreement provides that the consumer can make minimum monthly payments that cover only part of the interest accrued each month until the date on which the principal balance reaches 115 percent of its original balance (*i.e.*, a negative amortization cap of 115 percent) or for the first five years of the loan (60 monthly payments), whichever occurs first. The introductory interest rate at consummation is 1.5 percent. One month after consummation, the interest rate adjusts and will adjust monthly thereafter based on the specified index plus a margin of 3.5 percent. The index value in effect at consummation is 4.5 percent; the fully indexed rate is 8 percent (4.5 percent plus 3.5 percent). The maximum lifetime interest rate is 10.5 percent; there are no other periodic interest rate adjustment caps that limit how quickly the maximum lifetime rate may be reached. The minimum monthly payment for the first year is based on the initial interest rate of 1.5 percent. After that, the minimum monthly payment adjusts annually, but may increase by no more than 7.5 percent over the previous year's payment. The minimum monthly payment is $690 in the first year, $742 in the second year, and $797 in the first part of the third year.

B. To determine the maximum loan amount, assume that the interest rate increases to the maximum lifetime interest rate of 10.5 percent at the first adjustment (*i.e.*, the due date of the first periodic monthly payment), and interest accrues at that rate until the loan is recast. Assume that the consumer makes the minimum monthly payments scheduled, which are capped at 7.5 percent from year-to-year, for the maximum possible time. Because the consumer's minimum monthly payments are less than the interest accrued each month, negative amortization occurs (*i.e.*, the accrued but unpaid interest is added to the principal balance). Thus, assuming that the consumer makes the minimum monthly payments for as long as possible and that the maximum interest rate of 10.5 percent is reached at the first rate adjustment (*i.e.*, the due date of the first periodic monthly payment), the negative amortization cap of 115 percent is reached on the due date of the 27th monthly payment and the loan is recast as of that date. The maximum loan amount as of the due date of the 27th monthly payment is $229,251, and the remaining term of the loan is 27 years and nine months (333 months).

C. For purposes of §1026.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a monthly payment of $1,716, which is the substantially equal, monthly payment of principal and interest that will repay the maximum loan amount of $229,251 over the remaining loan term of 333 months using the fully indexed rate of 8 percent. See comments 43(b)(7)–1 and –2 discussing the calculation of the maximum loan amount, and §1026.43(b)(11) for the meaning of the term ''recast.''

ii. *Fixed-rate, graduated payment mortgage.* A loan in the amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate of 7.5 percent, and requires the consumer to make minimum monthly payments during the first year, with payments increasing 12.5 percent over the previous year every year for four years (the annual payment cap). The payment schedule provides for payments of $943 in the first year, $1,061 in the second year, $1,193 in the third year, $1,343 in the fourth year, and then requires $1,511 for the remaining term of the loan. During the first three years of the loan, the payments are less than the interest accrued each month, resulting in negative amortization. Assuming the minimum payments increase year-to-year up to the 12.5 percent payment cap, the consumer will begin making payments that cover at least all of the interest accrued at the end of the third year. Thus, the loan is recast on the due date of the 36th monthly payment. The maximum loan amount on that date is $207,662, and the remaining loan term is 27 years (324 months). For purposes of §1026.43(c)(2)(iii), the creditor must determine the consumer's ability to repay the loan based on a monthly payment of $1,497, which is the substantially equal, monthly payment of principal and interest that will repay the maximum loan amount of $207,662 over the remaining loan term of 27 years using the fixed interest rate of 7.5 percent.

43(c)(6) Payment calculation for simultaneous loans.

1. *Scope.* In determining the consumer's repayment ability for a covered transaction under §1026.43(c)(2)(iii), a creditor must include consideration of any simultaneous loan which it knows, or has reason to know, will be made at or before consummation of the covered transaction. For a discussion of the standard ''knows or has reason to know,'' see comment 43(c)(2)(iv)–2. For the meaning of the term ''simultaneous loan,'' see §1026.43(b)(12).

2. *Payment calculation—covered transaction.* For a simultaneous loan that is a covered transaction, as that term is defined under §1026.43(b)(1), a creditor must determine a consumer's ability to repay the monthly payment obligation for a simultaneous loan as set forth in §1026.43(c)(5), taking into account any mortgage-related obligations required to be considered under §1026.43(c)(2)(v). For the meaning of the term ''mortgage-related obligations,'' see §1026.43(b)(8).

3. *Payment calculation—home equity line of credit.* For a simultaneous loan that is a home equity line of credit subject to §1026.40, the creditor must consider the periodic payment required under the terms of the plan when assessing the consumer's ability to repay the covered transaction secured by the same dwelling as the simultaneous loan. Under §1026.43(c)(6)(ii), a creditor must determine the periodic payment required under the terms of the plan by considering the actual amount of credit to be drawn by the consumer at consummation of the covered transaction. The amount to be drawn is the amount requested by the consumer; when the amount requested will be disbursed, or actual receipt of funds, is not determinative. Any additional draw against the line of credit that the creditor of the covered transaction does not know or have reason to know about before or during underwriting need not be considered in relation to ability to repay. For example, where the creditor's policies and procedures require the source of down payment to be verified, and the creditor verifies that a simultaneous loan that is a HELOC will provide the source of down payment for the first-lien covered transaction, the creditor must consider the periodic payment on the HELOC by assuming the amount drawn is at least the down payment amount. In general, a creditor should determine the periodic payment based on guidance in the commentary to §1026.40(d)(5) (discussing payment terms).

43(c)(7) Monthly Debt-to-Income Ratio or Residual Income

1. *Monthly debt-to-income ratio or monthly residual income.* Under §1026.43(c)(2)(vii), the creditor must consider the consumer's monthly debt-to-income ratio, or the consumer's monthly residual income, in accordance with the requirements in §1026.43(c)(7). Section 1026.43(c) does not prescribe a specific monthly debt-to-income ratio with which creditors must comply. Instead, an appropriate threshold for a consumer's monthly debt-to-income ratio or monthly residual income is for the creditor to determine in making a reasonable and good faith determination of a consumer's ability to repay.

2. *Use of both monthly debt-to-income ratio and monthly residual income.* If a creditor considers the consumer's monthly debt-to-income ratio, the creditor may also consider the consumer's residual income as further

validation of the assessment made using the consumer's monthly debt-to-income ratio.

3. *Compensating factors.* The creditor may consider factors in addition to the monthly debt-to-income ratio or residual income in assessing a consumer's repayment ability. For example, the creditor may reasonably and in good faith determine that a consumer has the ability to repay despite a higher debt-to-income ratio or lower residual income in light of the consumer's assets other than the dwelling, including any real property attached to the dwelling, securing the covered transaction, such as a savings account. The creditor may also reasonably and in good faith determine that a consumer has the ability to repay despite a higher debt-to-income ratio in light of the consumer's residual income.

43(d) Refinancing of non-standard mortgages.

43(d)(1) Definitions.

43(d)(1)(i) Non-standard mortgage.

Paragraph 43(d)(1)(i)(A).

1. *Adjustable-rate mortgage with an introductory fixed rate.* Under §1026.43(d)(1)(i)(A), an adjustable-rate mortgage with an introductory fixed interest rate for one year or longer is considered a ''non-standard mortgage.'' For example, a covered transaction that has a fixed introductory rate for the first two, three, or five years and then converts to a variable rate for the remaining 28, 27, or 25 years, respectively, is a ''non-standard mortgage.'' A covered transaction with an introductory rate for six months that then converts to a variable rate for the remaining 29 and one-half years is not a ''non-standard mortgage.''

43(d)(1)(ii) Standard mortgage.

Paragraph 43(d)(1)(ii)(A).

1. *Regular periodic payments.* Under §1026.43(d)(1)(ii)(A), a ''standard mortgage'' must provide for regular periodic payments that do not result in an increase of the principal balance (negative amortization), allow the consumer to defer repayment of principal (*see* comment 43(e)(2)(i)–2), or result in a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest on a monthly or other periodic basis that will repay the loan amount over the loan term. Except for payments resulting from any interest rate changes after consummation in an adjustable-rate or step-rate mortgage, the periodic payments must be substantially equal. For an explanation of the term ''substantially equal,'' see comment 43(c)(5)(i)–4. In addition, a single-payment transaction is not a ''standard mortgage'' because it does not require ''regular periodic payments.'' *See also* comment 43(e)(2)(i)–1.

Paragraph 43(d)(1)(ii)(D).

1. *First five years after consummation.* A ''standard mortgage'' must have an interest rate that is fixed for at least the first five years (60 months) after consummation. For example, assume an adjustable-rate mortgage that applies the same fixed interest rate to determine the first 60 payments of principal and interest due. The loan is consummated on August 15, 2013, and the first monthly payment is due on October 1, 2013. The date that is five years after consummation is August 15, 2018. The first interest rate adjustment occurs on September 1, 2018. This loan meets the criterion for a ''standard mortgage'' under §1026.43(d)(1)(ii)(D) because the interest rate is fixed until September 1, 2018, which is more than five years after consummation. For guidance regarding step-rate mortgages, see comment 43(e)(2)(iv)–3.iii.

Paragraph 43(d)(1)(ii)(E).

1. *Permissible use of proceeds.* To qualify as a ''standard mortgage,'' the loan's proceeds may be used for only two purposes: paying off the non-standard mortgage and paying for closing costs, including paying escrow amounts required at or before closing. If the proceeds of a covered transaction are used for other purposes, such as to pay off other liens or to provide additional cash to the consumer for discretionary spending, the transaction does not meet the definition of a ''standard mortgage.''

43(d)(2) Scope.

1. *Written application.* For an explanation of the requirements for a ''written application'' in §1026.43(d)(2)(iii), (d)(2)(iv), and (d)(2)(v), see comment 19(a)(1)(i)–3.

Paragraph 43(d)(2)(ii).

1. *Materially lower.* The exemptions afforded under §1026.43(d)(3) apply to a refinancing only if the monthly payment for the new loan is ''materially lower'' than the monthly payment for an existing non-standard mortgage. The payments to be compared must be calculated based on the requirements under §1026.43(d)(5). Whether the new loan payment is ''materially lower'' than the non-standard mortgage payment depends on the facts and circumstances. In all cases, a payment reduction of 10 percent or more meets the ''materially lower'' standard.

Paragraph 43(d)(2)(iv).

1. *Late payment—12 months prior to application.* Under §1026.43(d)(2)(iv), the exemptions in §1026.43(d)(3) apply to a covered transaction only if, during the 12 months immediately preceding the creditor's receipt of the consumer's written application for a refinancing, the consumer has made no more than one payment on the non-standard mortgage more than 30 days late. (For an explanation of ''written application,'' see comment 43(d)(2)–1.) For example, assume a consumer applies for a refinancing on May 1, 2014. Assume also that the consumer made a non-standard mortgage payment on August 15, 2013, that was 45 days late. The consumer made no other late payments on the non-standard mortgage between May 1, 2013, and May 1, 2014. In this example, the requirement

under §1026.43(d)(2)(iv) is met because the consumer made only one payment that was over 30 days late within the 12 months prior to applying for the refinancing (*i.e.*, eight and one-half months prior to application).

2. *Payment due date*. Whether a payment is more than 30 days late is measured in relation to the contractual due date not accounting for any grace period. For example, if the contractual due date for a non-standard mortgage payment is the first day of every month, but no late fee will be charged as long as the payment is received by the 16th of the month, the payment due date for purposes of §1026.43(d)(2)(iv) and (v) is the first day of the month, not the 16th day of the month. Thus, a payment due under the contract on October 1st that is paid on November 1st is made more than 30 days after the payment due date.

Paragraph 43(d)(2)(v).

1. *Late payment—six months prior to application*. Under §1026.43(d)(2)(v), the exemptions in §1026.43(d)(3) apply to a covered transaction only if, during the six months immediately preceding the creditor's receipt of the consumer's written application for a refinancing, the consumer has made no payments on the non-standard mortgage more than 30 days late. (For an explanation of ''written application'' and how to determine the payment due date, see comments 43(d)(2)–1 and 43(d)(2)(iv)–2.) For example, assume a consumer with a non-standard mortgage applies for a refinancing on May 1, 2014. If the consumer made a payment on March 15, 2014, that was 45 days late, the requirement under §1026.43(d)(2)(v) is not met because the consumer made a payment more than 30 days late one and one-half months prior to application. If the number of months between consummation of the non-standard mortgage and the consumer's application for the standard mortgage is six or fewer, the consumer may not have made any payment more than 30 days late on the non-standard mortgage.

Paragraph 43(d)(2)(vi).

1. *Non-standard mortgage loan made in accordance with ability-to-repay or qualified mortgage requirements*. For non-standard mortgages that are consummated on or after January 10, 2014, §1026.43(d)(2)(vi) provides that the refinancing provisions set forth in §1026.43(d) apply only if the non-standard mortgage was made in accordance with the requirements of §1026.43(c) or (e), as applicable. For example, if a creditor originated a non-standard mortgage on or after January 10, 2014 that did not comply with the requirements of §1026.43(c) and was not a qualified mortgage pursuant to §1026.43(e), §1026.43(d) would not apply to the refinancing of the non-standard mortgage loan into a standard mortgage loan. However, §1026.43(d) applies to the refinancing of a non-standard mortgage loan into a standard mortgage loan, regardless of whether the non-standard mortgage loan was made in compliance with §1026.43(c) or (e), if the non-standard mortgage loan was consummated prior to January 10, 2014.

43(d)(3) Exemption from repayment ability requirements.

1. *Two-part determination*. To qualify for the exemptions in §1026.43(d)(3), a creditor must have considered, first, whether the consumer is likely to default on the existing mortgage once that loan is recast and, second, whether the new mortgage likely would prevent the consumer's default.

43(d)(4) Offer of rate discounts and other favorable terms.

1. *Documented underwriting practices*. In connection with a refinancing made pursuant to §1026.43(d), §1026.43(d)(4) requires a creditor offering a consumer rate discounts and terms that are the same as, or better than, the rate discounts and terms offered to new consumers to make such an offer consistent with the creditor's documented underwriting practices. Section 1026.43(d)(4) does not require a creditor making a refinancing pursuant to §1026.43(d) to comply with the underwriting requirements of §1026.43(c). Rather, §1026.43(d)(4) requires creditors providing such discounts to do so consistent with documented policies related to loan pricing, loan term qualifications, or other similar underwriting practices. For example, assume that a creditor is providing a consumer with a refinancing made pursuant to §1026.43(d) and that this creditor has a documented practice of offering rate discounts to consumers with credit scores above a certain threshold. Assume further that the consumer receiving the refinancing has a credit score below this threshold, and therefore would not normally qualify for the rate discount available to consumers with high credit scores. This creditor complies with §1026.43(d)(4) by offering the consumer the discounted rate in connection with the refinancing made pursuant to §1026.43(d), even if the consumer would not normally qualify for that discounted rate, provided that the offer of the discounted rate is not prohibited by applicable State or Federal law. However, §1026.43(d)(4) does not require a creditor to offer a consumer such a discounted rate.

43(d)(5) Payment calculations.

43(d)(5)(i) Non-Standard mortgage.

1. *Payment calculation for a non-standard mortgage*. In determining whether the monthly periodic payment for a standard mortgage is materially lower than the monthly periodic payment for the non-standard mortgage under §1026.43(d)(2)(ii), the creditor must consider the monthly payment for the non-standard mortgage that will result after the loan is ''recast,'' assuming substantially equal payments of principal and interest that amortize the remaining loan amount over the remaining term as of the date the

mortgage is recast. For guidance regarding the meaning of ''substantially equal,'' see comment 43(c)(5)(i)–4. For the meaning of ''recast,'' see §1026.43(b)(11) and associated commentary.

2. *Fully indexed rate.* The term ''fully indexed rate'' in §1026.43(d)(5)(i)(A) for calculating the payment for a non-standard mortgage is generally defined in §1026.43(b)(3) and associated commentary. Under §1026.43(b)(3) the fully indexed rate is calculated at the time of consummation. For purposes of §1026.43(d)(5)(i), however, the fully indexed rate is calculated within a reasonable period of time before or after the date the creditor receives the consumer's written application for the standard mortgage. Thirty days is generally considered ''a reasonable period of time.''

3. *Written application.* For an explanation of the requirements for a ''written application'' in §1026.43(d)(5)(i), see comment 19(a)(1)(i)–3.

4. *Payment calculation for an adjustable-rate mortgage with an introductory fixed rate.* Under §1026.43(d)(5)(i), the monthly periodic payment for an adjustable-rate mortgage with an introductory fixed interest rate for a period of one or more years must be calculated based on several assumptions.

i. First, the payment must be based on the outstanding principal balance as of the date on which the mortgage is recast, assuming all scheduled payments have been made up to that date and the last payment due under those terms is made and credited on that date. For example, assume an adjustable-rate mortgage with a 30-year loan term. The loan agreement provides that the payments for the first 24 months are based on a fixed rate, after which the interest rate will adjust annually based on a specified index and margin. The loan is recast on the due date of the 24th payment. If the 24th payment is due on September 1, 2014, the creditor must calculate the outstanding principal balance as of September 1, 2014, assuming that all 24 payments under the fixed rate terms have been made and credited timely.

ii. Second, the payment calculation must be based on substantially equal monthly payments of principal and interest that will fully repay the outstanding principal balance over the term of the loan remaining as of the date the loan is recast. Thus, in the example above, the creditor must assume a loan term of 28 years (336 monthly payments).

iii. Third, the payment must be based on the fully indexed rate, as described in §1026.43(d)(5)(i)(A).

5. *Example of payment calculation for an adjustable-rate mortgage with an introductory fixed rate.* The following example illustrates the rule described in comment 43(d)(5)(i)–4:

i. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted introductory interest rate of 5 percent that is fixed for an initial period of two years, after which the interest rate will adjust annually based on a specified index plus a margin of 3 percentage points.

ii. The non-standard mortgage is consummated on February 15, 2014, and the first monthly payment is due on April 1, 2014. The loan is recast on the due date of the 24th monthly payment, which is March 1, 2016.

iii. On March 15, 2015, the creditor receives the consumer's written application for a refinancing after the consumer has made 12 monthly on-time payments. On this date, the index value is 4.5 percent.

iv. To calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under §1026.43(d)(2)(ii), the creditor must use:

A. The outstanding principal balance as of March 1, 2016, assuming all scheduled payments have been made up to March 1, 2016, and the last payment due under the fixed rate terms is made and credited on March 1, 2016. In this example, the outstanding principal balance is $193,948.

B. The fully indexed rate of 7.5 percent, which is the index value of 4.5 percent as of March 15, 2015 (the date on which the application for a refinancing is received) plus the margin of 3 percent.

C. The remaining loan term as of March 1, 2016, the date of the recast, which is 28 years (336 monthly payments).

v. Based on these assumptions, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* §1026.43(d)(2)(ii)) is $1,383. This is the substantially equal, monthly payment of principal and interest required to repay the outstanding principal balance at the fully indexed rate over the remaining term.

6. *Payment calculation for an interest-only loan.* Under §1026.43(d)(5)(i), the monthly periodic payment for an interest-only loan must be calculated based on several assumptions:

i. First, the payment must be based on the outstanding principal balance as of the date of the recast, assuming all scheduled payments are made under the terms of the legal obligation in effect before the mortgage is recast. For a loan on which only interest and no principal has been paid, the outstanding principal balance at the time of recast will be the loan amount, as defined in §1026.43(b)(5), assuming all scheduled payments are made under the terms of the legal obligation in effect before the mortgage is recast. For example, assume that a mortgage has a 30-year loan term, and provides that the first 24 months of payments are interest-only. If the 24th payment is due on September 1, 2015, the creditor must calculate the outstanding principal balance as of September 1, 2015, assuming that all 24 payments under the interest-only payment terms have been made and credited timely and that no payments of principal have been made.

ii. Second, the payment calculation must be based on substantially equal monthly payments of principal and interest that will fully repay the loan amount over the term of the loan remaining as of the date the loan is recast. Thus, in the example above, the creditor must assume a loan term of 28 years (336 monthly payments).

iii. Third, the payment must be based on the fully indexed rate, as described in § 1026.43(d)(5)(i)(A).

7. *Example of payment calculation for an interest-only loan.* The following example illustrates the rule described in comment 43(d)(5)(i)–6:

i. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a fixed interest rate of 7 percent, and permits interest-only payments for the first two years (the first 24 payments), after which time amortizing payments of principal and interest are required.

ii. The non-standard mortgage is consummated on February 15, 2014, and the first monthly payment is due on April 1, 2014. The loan is recast on the due date of the 24th monthly payment, which is March 1, 2016.

iii. On March 15, 2015, the creditor receives the consumer's written application for a refinancing, after the consumer has made 12 monthly on-time payments. The consumer has made no additional payments of principal.

iv. To calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under § 1026.43(d)(2)(ii), the creditor must use:

A. The loan amount, which is the outstanding principal balance as of March 1, 2016, assuming all scheduled interest-only payments have been made and credited up to that date. In this example, the loan amount is $200,000.

B. An interest rate of 7 percent, which is the interest rate in effect at the time of consummation of this fixed-rate non-standard mortgage.

C. The remaining loan term as of March 1, 2016, the date of the recast, which is 28 years (336 monthly payments).

v. Based on these assumptions, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* § 1026.43(d)(2)(ii)) is $1,359. This is the substantially equal, monthly payment of principal and interest required to repay the loan amount at the fully indexed rate over the remaining term.

8. *Payment calculation for a negative amortization loan.* Under § 1026.43(d)(5)(i), the monthly periodic payment for a negative amortization loan must be calculated based on several assumptions:

i. First, the calculation must be based on the maximum loan amount, determined after adjusting for the outstanding principal balance. If the consumer makes only the minimum periodic payments for the maximum possible time, until the consumer must begin making fully amortizing payments, the outstanding principal balance will be the maximum loan amount, as defined in § 1026.43(b)(7). In this event, the creditor complies with § 1026.43(d)(5)(i)(C)(*3*) by relying on the examples of how to calculate the maximum loan amount, see comment 43(b)(7)–3. If the consumer makes payments above the minimum periodic payments for the maximum possible time, the creditor must calculate the maximum loan amount based on the outstanding principal balance. In this event, the creditor complies with § 1026.43(d)(5)(i)(C)(*3*) by relying on the examples of how to calculate the maximum loan amount in comment 43(d)(5)(i)–10.

ii. Second, the calculation must be based on substantially equal monthly payments of principal and interest that will fully repay the maximum loan amount over the term of the loan remaining as of the date the loan is recast. For example, if the loan term is 30 years and the loan is recast on the due date of the 60th monthly payment, the creditor must assume a remaining loan term of 25 years (300 monthly payments).

iii. Third, the payment must be based on the fully indexed rate as of the date of the written application for the standard mortgage.

9. *Example of payment calculation for a negative amortization loan if only minimum payments made.* The following example illustrates the rule described in comment 43(d)(5)(i)–8:

i. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides that the consumer can make minimum monthly payments that cover only part of the interest accrued each month until the date on which the principal balance increases to the negative amortization cap of 115 percent of the loan amount, or for the first five years of monthly payments (60 payments), whichever occurs first. The loan is an adjustable-rate mortgage that adjusts monthly according to a specified index plus a margin of 3.5 percent.

ii. The non-standard mortgage is consummated on February 15, 2014, and the first monthly payment is due on April 1, 2014. Assume that the consumer has made only the minimum periodic payments. Assume further that, based on the calculation of the maximum loan amount required under § 1026.43(b)(7) and associated commentary, the negative amortization cap of 115 percent would be reached on June 1, 2016, the due date of the 27th monthly payment.

iii. On March 15, 2015, the creditor receives the consumer's written application for a refinancing, after the consumer has made 12 monthly on-time payments. On this date, the index value is 4.5 percent.

iv. To calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under §1026.43(d)(2)(ii), the creditor must use:

A. The maximum loan amount of $229,251 as of June 1, 2016;

B. The fully indexed rate of 8 percent, which is the index value of 4.5 percent as of March 15, 2015 (the date on which the creditor receives the application for a refinancing) plus the margin of 3.5 percent; and

C. The remaining loan term as of June 1, 2016, the date of the recast, which is 27 years and nine months (333 monthly payments).

v. Based on these assumptions, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* §1026.43(d)(2)(ii)) is $1,716. This is the substantially equal, monthly payment of principal and interest required to repay the maximum loan amount at the fully indexed rate over the remaining term.

10. *Example of payment calculation for a negative amortization loan if payments above minimum amount made.* The following example illustrates the rule described in comment 43(d)(5)(i)–8:

i. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides that the consumer can make minimum monthly payments that cover only part of the interest accrued each month until the date on which the principal balance increases to the negative amortization cap of 115 percent of the loan amount, or for the first five years of monthly payments (60 payments), whichever occurs first. The loan is an adjustable-rate mortgage that adjusts monthly according to a specified index plus a margin of 3.5 percent. The introductory interest rate at consummation is 1.5 percent. One month after consummation, the interest rate adjusts and will adjust monthly thereafter based on the specified index plus a margin of 3.5 percent. The maximum lifetime interest rate is 10.5 percent; there are no other periodic interest rate adjustment caps that limit how quickly the maximum lifetime rate may be reached. The minimum monthly payment for the first year is based on the initial interest rate of 1.5 percent. After that, the minimum monthly payment adjusts annually, but may increase by no more than 7.5 percent over the previous year's payment. The minimum monthly payment is $690 in the first year, $742 in the second year, $798 in the third year, $857 in the fourth year, and $922 in the fifth year.

ii. The non-standard mortgage is consummated on February 15, 2014, and the first monthly payment is due on April 1, 2014. Assume that the consumer has made more than the minimum periodic payments, and that after the consumer's 12th monthly on-time payment the outstanding principal balance is $195,000. Based on the calculation of the maximum loan amount after adjusting for this outstanding principal balance, the negative amortization cap of 115 percent would be reached on March 1, 2019, the due date of the 60th monthly payment.

iii. On March 15, 2015, the creditor receives the consumer's written application for a refinancing, after the consumer has made 12 monthly on-time payments. On this date, the index value is 4.5 percent.

iv. To calculate the non-standard mortgage payment that must be compared to the standard mortgage payment under §1026.43(d)(2)(ii), the creditor must use:

A. The maximum loan amount of $229,219 as of March 1, 2019.

B. The fully indexed rate of 8 percent, which is the index value of 4.5 percent as of March 15, 2015 (the date on which the creditor receives the application for a refinancing) plus the margin of 3.5 percent.

C. The remaining loan term as of March 1, 2019, the date of the recast, which is exactly 25 years (300 monthly payments).

v. Based on these assumptions, the monthly payment for the non-standard mortgage for purposes of determining whether the standard mortgage monthly payment is lower than the non-standard mortgage monthly payment (*see* §1026.43(d)(2)(ii)) is $1,769. This is the substantially equal, monthly payment of principal and interest required to repay the maximum loan amount at the fully indexed rate over the remaining term.

43(d)(5)(ii) Standard mortgage.

1. *Payment calculation for a standard mortgage.* In determining whether the monthly periodic payment for a standard mortgage is materially lower than the monthly periodic payment for a non-standard mortgage, the creditor must consider the monthly payment for the standard mortgage that will result in substantially equal, monthly, fully amortizing payments (as defined in §1026.43(b)(2)) using the rate as of consummation. For guidance regarding the meaning of ''substantially equal'' see comment 43(c)(5)(i)–4. For a mortgage with a single, fixed rate for the first five years after consummation, the maximum rate that will apply during the first five years after consummation will be the rate at consummation. For a step-rate mortgage, however, the rate that must be used is the highest rate that will apply during the first five years after consummation. For example, if the rate for the first two

years after the date on which the first regular periodic payment will be due is 4 percent, the rate for the following two years is 5 percent, and the rate for the next two years is 6 percent, the rate that must be used is 6 percent.

2. *Example of payment calculation for a standard mortgage.* The following example illustrates the rule described in comment 43(d)(5)(ii)–1: A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for an interest rate of 6 percent that is fixed for an initial period of five years, after which time the interest rate will adjust annually based on a specified index plus a margin of 3 percent, subject to a 2 percent annual interest rate adjustment cap. The creditor must determine whether the standard mortgage monthly payment is materially lower than the non-standard mortgage monthly payment (*see* §1026.43(d)(2)(ii)) based on a standard mortgage payment of $1,199. This is the substantially equal, monthly payment of principal and interest required to repay $200,000 over 30 years at an interest rate of 6 percent.

43(e) Qualified mortgages.

43(e)(1) Safe harbor and presumption of compliance.

1. *General.* Section 1026.43(c) requires a creditor to make a reasonable and good faith determination at or before consummation that a consumer will be able to repay a covered transaction. Section 1026.43(e)(1)(i) and (ii) provide a safe harbor or presumption of compliance, respectively, with the repayment ability requirements of §1026.43(c) for creditors and assignees of covered transactions that satisfy the requirements of a qualified mortgage under §1026.43(e)(2), (4), (5), (6), (7), or (f). *See* §1026.43(e)(1)(i) and (ii) and associated commentary.

43(e)(1)(i)(A) Safe harbor for transactions that are not higher-priced covered transactions.

1. *Higher-priced covered transactions.* For guidance on determining whether a loan is a higher-priced covered transaction, see comments 43(b)(4)–1 through –3.

43(e)(1)(ii) Presumption of compliance for higher-priced covered transactions.

1. *General.* Under §1026.43(e)(1)(ii), a creditor or assignee of a qualified mortgage under §1026.43(e)(2), (e)(4), or (f) that is a higher-priced covered transaction is presumed to comply with the repayment ability requirements of §1026.43(c). To rebut the presumption, it must be proven that, despite meeting the standards for a qualified mortgage (including either the debt-to-income standard in §1026.43(e)(2)(vi) or the standards of one of the entities specified in §1026.43(e)(4)(ii)), the creditor did not have a reasonable and good faith belief in the consumer's repayment ability. Specifically, it must be proven that, at the time of consummation, based on the information available to the creditor, the consumer's income, debt obligations, alimony, child support, and the consumer's monthly payment (including mortgage-related obligations) on the covered transaction and on any simultaneous loans of which the creditor was aware at consummation would leave the consumer with insufficient residual income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan with which to meet living expenses, including any recurring and material non-debt obligations of which the creditor was aware at the time of consummation, and that the creditor thereby did not make a reasonable and good faith determination of the consumer's repayment ability. For example, a consumer may rebut the presumption with evidence demonstrating that the consumer's residual income was insufficient to meet living expenses, such as food, clothing, gasoline, and health care, including the payment of recurring medical expenses of which the creditor was aware at the time of consummation, and after taking into account the consumer's assets other than the value of the dwelling securing the loan, such as a savings account. In addition, the longer the period of time that the consumer has demonstrated actual ability to repay the loan by making timely payments, without modification or accommodation, after consummation or, for an adjustable-rate mortgage, after recast, the less likely the consumer will be able to rebut the presumption based on insufficient residual income and prove that, at the time the loan was made, the creditor failed to make a reasonable and good faith determination that the consumer had the reasonable ability to repay the loan.

43(e)(2) Qualified mortgage defined—general.

1. *General QM Amendments Effective on March 1, 2021.* Comment 43–2 provides that, for a transaction for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022, a person has the option of complying either: With 12 CFR part 1026 as it is in effect; or with 12 CFR part 1026 as it was in effect on February 26, 2021, together with any amendments to 12 CFR part 1026 that become effective after February 26, 2021, other than the revisions to Regulation Z contained in Qualified Mortgage Definition Under the Truth in Lending Act (Regulation Z): General QM Loan Definition published on December 29, 2020 (2021 General QM Amendments). Prior to the effective date of the 2021 General QM Amendments, §1026.43(e)(2) provided a qualified mortgage definition that, among other things, required that the ratio of the consumer's total monthly debt to total monthly income at the time of consummation not exceed 43 percent. The 2021 General QM Amendments removed that requirement and replaced it with the annual percentage rate thresholds in §1026.43(e)(2)(vi), among other

revisions. Both the qualified mortgage definition in §1026.43(e)(2) that was in effect prior to the 2021 General QM Amendments and the qualified mortgage definition in §1026.43(e)(2) as amended by the 2021 General QM Amendments are available to creditors for transactions for which a creditor received an application on or after March 1, 2021 but prior to October 1, 2022. *See* comment 43–2 for an explanation of how creditors determine the date the creditor received the consumer's application for purposes of that comment.

Paragraph 43(e)(2)(i).

1. *Regular periodic payments.* Under §1026.43(e)(2)(i), a qualified mortgage must provide for regular periodic payments that may not result in an increase of the principal balance (negative amortization), deferral of principal repayment, or a balloon payment. Thus, the terms of the legal obligation must require the consumer to make payments of principal and interest, on a monthly or other periodic basis, that will fully repay the loan amount over the loan term. The periodic payments must be substantially equal except for the effect that any interest rate change after consummation has on the payment in the case of an adjustable-rate or step-rate mortgage. In addition, because §1026.43(e)(2)(i) requires that a qualified mortgage provide for regular periodic payments, a single-payment transaction may not be a qualified mortgage.

2. *Deferral of principal repayment.* Under §1026.43(e)(2)(i)(B), a qualified mortgage's regular periodic payments may not allow the consumer to defer repayment of principal, except as provided in §1026.43(f). A loan allows the deferral of principal repayment if one or more of the periodic payments may be applied solely to accrued interest and not to loan principal. Deferred principal repayment also occurs if the payment is applied to both accrued interest and principal but the consumer is permitted to make periodic payments that are less than the amount that would be required under a payment schedule that has substantially equal payments that fully repay the loan amount over the loan term. Graduated payment mortgages, for example, allow deferral of principal repayment in this manner and therefore may not be qualified mortgages.

Paragraph 43(e)(2)(ii).

1. *General.* The 30-year term limitation in §1026.43(e)(2)(ii) is applied without regard to any interim period between consummation and the beginning of the first full unit period of the repayment schedule. For example, assume a covered transaction is consummated on March 20, 2014 and the due date of the first regular periodic payment is April 30, 2014. The beginning of the first full unit period of the repayment schedule is April 1, 2014 and the loan term therefore ends on April 1, 2044. The transaction would comply with the 30-year term limitation in §1026.43(e)(2)(ii).

Paragraph 43(e)(2)(iv).

1. *Maximum interest rate during the first five years.* For a qualified mortgage, the creditor must underwrite the loan using a periodic payment of principal and interest based on the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due. Creditors must use the maximum rate that could apply at any time during the first five years after the date on which the first regular periodic payment will be due, regardless of whether the maximum rate is reached at the first or subsequent adjustment during the five year period.

2. *Fixed-rate mortgage.* For a fixed-rate mortgage, creditors should use the interest rate in effect at consummation. ''Fixed-rate mortgage'' is defined in §1026.18(s)(7)(iii).

3. *Interest rate adjustment caps.* For an adjustable-rate mortgage, creditors should assume the interest rate increases after consummation as rapidly as possible, taking into account the terms of the legal obligation. That is, creditors should account for any periodic interest rate adjustment cap that may limit how quickly the interest rate can increase under the terms of the legal obligation. Where a range for the maximum interest rate during the first five years is provided, the highest rate in that range is the maximum interest rate for purposes of §1026.43(e)(2)(iv). Where the terms of the legal obligation are not based on an index plus margin or formula, the creditor must use the maximum interest rate that occurs during the first five years after the date on which the first regular periodic payment will be due. To illustrate:

i. *Adjustable-rate mortgage with discount for three years.* Assume an adjustable-rate mortgage has an initial discounted rate of 5 percent that is fixed for the first three years, measured from the first day of the first full calendar month following consummation, after which the rate will adjust annually based on a specified index plus a margin of 3 percent. The index value in effect at consummation is 4.5 percent. The loan agreement provides for an annual interest rate adjustment cap of 2 percent, and a lifetime maximum interest rate of 12 percent. The first rate adjustment occurs on the due date of the 36th monthly payment; the rate can adjust to no more than 7 percent (5 percent initial discounted rate plus 2 percent annual interest rate adjustment cap). The second rate adjustment occurs on the due date of the 48th monthly payment; the rate can adjust to no more than 9 percent (7 percent rate plus 2 percent annual interest rate adjustment cap). The third rate adjustment occurs on the due date of the 60th monthly payment; the rate can adjust to no more than 11 percent (9 percent rate plus 2 percent annual interest rate cap adjustment). The maximum interest rate during the first five years after the date on which the first regular periodic payment will be due is 11 percent (the rate on the due date of the 60th monthly payment). For further discussion of how to determine whether a rate adjustment occurs during the first five years after the date on which the first regular periodic payment will be due, see comment 43(e)(2)(iv)–7.

ii. *Adjustable-rate mortgage with discount for three years.* Assume the same facts as in paragraph 3.i except that the lifetime maximum interest rate is 10 percent, which is less than the maximum interest rate in the first five years after the date on which the first regular periodic payment will be due of 11 percent that would apply but for the lifetime maximum interest rate. The maximum interest rate during the first five years after the date on which the first regular periodic payment will be due is 10 percent.

iii. *Step-rate mortgage.* Assume a step-rate mortgage with an interest rate fixed at 6.5 percent for the first two years, measured from the first day of the first full calendar month following consummation, 7 percent for the next three years, and then 7.5 percent for the remainder of the loan term. The maximum interest rate during the first five years after the date on which the first regular periodic payment will be due is 7.5 percent.

4. *First five years after the date on which the first regular periodic payment will be due.* Under §1026.43(e)(2)(iv)(A), the creditor must underwrite the loan using the maximum interest rate that may apply during the first five years after the date on which the first regular periodic payment will be due. To illustrate, assume an adjustable-rate mortgage with an initial fixed interest rate of 5 percent for the first five years, measured from the first day of the first full calendar month following consummation, after which the interest rate will adjust annually to the specified index plus a margin of 6 percent, subject to a 2 percent annual interest rate adjustment cap. The index value in effect at consummation is 5.5 percent. The loan consummates on September 15, 2014, and the first monthly payment is due on November 1, 2014. The first rate adjustment to no more than 7 percent (5 percent plus 2 percent annual interest rate adjustment cap) occurs on the due date of the 60th monthly payment, which is October 1, 2019, and therefore, the rate adjustment occurs during the first five years after the date on which the first regular periodic payment will be due. To meet the definition of qualified mortgage under §1026.43(e)(2), the creditor must underwrite the loan using a monthly payment of principal and interest based on an interest rate of 7 percent.

5. *Loan amount.* To meet the definition of qualified mortgage under §1026.43(e)(2), a creditor must determine the periodic payment of principal and interest using the maximum interest rate permitted during the first five years after the date on which the first regular periodic payment will be due that repays either:

i. The outstanding principal balance as of the earliest date the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due can take effect under the terms of the legal obligation, over the remaining term of the loan. To illustrate, assume a loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 5 percent that is fixed for an initial period of three years, measured from the first day of the first full calendar month following consummation, after which the interest rate will adjust annually based on a specified index plus a margin of 3 percent, subject to a 2 percent annual interest rate adjustment cap and a lifetime maximum interest rate of 9 percent. The index value in effect at consummation equals 4.5 percent. Assuming the interest rate increases after consummation as quickly as possible, the rate adjustment to the lifetime maximum interest rate of 9 percent occurs on the due date of the 48th monthly payment. The outstanding principal balance on the loan at the end of the fourth year (after the 48th monthly payment is credited) is $188,218. The creditor will meet the definition of qualified mortgage if it underwrites the covered transaction using the monthly payment of principal and interest of $1,564 to repay the outstanding principal balance of $188,218 over the remaining 26 years of the loan term (312 months) using the maximum interest rate during the first five years of 9 percent; or

ii. The loan amount, as that term is defined in §1026.43(b)(5), over the entire loan term, as that term is defined in §1026.43(b)(6). Using the same example above, the creditor will meet the definition of qualified mortgage if it underwrites the covered transaction using the monthly payment of principal and interest of $1,609 to repay the loan amount of $200,000 over the 30-year loan term using the maximum interest rate during the first five years of 9 percent.

6. *Mortgage-related obligations.* Section 1026.43(e)(2)(iv) requires creditors to take the consumer's monthly payment for mortgage-related obligations into account when underwriting the loan. For the meaning of the term ''mortgage-related obligations,'' see §1026.43(b)(8) and associated commentary.

7. *Examples.* The following are examples of how to determine the periodic payment of principal and interest based on the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due for purposes of meeting the definition of qualified

mortgage under §1026.43(e) (all payment amounts shown are rounded, and all amounts are calculated using non-rounded values; all initial fixed interest rate periods are measured from the first day of the first full calendar month following consummation):

i. *Fixed-rate mortgage.* A loan in an amount of $200,000 has a 30-year loan term and a fixed interest rate of 7 percent. The maximum interest rate during the first five years after the date on which the first regular periodic payment will be due for a fixed-rate mortgage is the interest rate in effect at consummation, which is 7 percent under this example. The monthly fully amortizing payment scheduled over the 30 years is $1,331. The creditor will meet the definition of qualified mortgage if it underwrites the loan using the fully amortizing payment of $1,331.

ii. *Adjustable-rate mortgage with discount for three years.* A. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 5 percent that is fixed for an initial period of three years, after which the interest rate will adjust annually based on a specified index plus a margin of 3 percent, subject to a 2 percent annual interest rate adjustment cap and a lifetime maximum interest rate of 9 percent. The index value in effect at consummation is 4.5 percent. The loan is consummated on March 15, 2014, and the first regular periodic payment is due May 1, 2014. The loan agreement provides that the first rate adjustment occurs on April 1, 2017 (the due date of the 36th monthly payment); the second rate adjustment occurs on April 1, 2018 (the due date of the 48th monthly payment); and the third rate adjustment occurs on April 1, 2019 (the due date of the 60th monthly payment). Under this example, the maximum interest rate during the first five years after the date on which the first regular periodic payment due is 9 percent (the lifetime interest rate cap), which applies beginning on April 1, 2018 (the due date of the 48th monthly payment). The outstanding principal balance at the end of the fourth year (after the 48th payment is credited) is $188,218.

B. The transaction will meet the definition of a qualified mortgage if the creditor underwrites the loan using the monthly payment of principal and interest of $1,564 to repay the outstanding principal balance at the end of the fourth year of $188,218 over the remaining 26 years of the loan term (312 months), using the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due of 9 percent. Alternatively, the transaction will meet the definition of a qualified mortgage if the creditor underwrites the loan using the monthly payment of principal and interest of $1,609 to repay the loan amount of $200,000 over the 30-year loan term, using the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due of 9 percent.

iii. *Adjustable-rate mortgage with discount for five years.* A. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 6 percent that is fixed for an initial period of five years, after which the interest rate will adjust annually based on a specified index plus a margin of 3 percent, subject to a 2 percent annual interest rate adjustment cap. The index value in effect at consummation is 4.5 percent. The loan consummates on March 15, 2014 and the first regular periodic payment is due May 1, 2014. Under the terms of the loan agreement, the first rate adjustment to no more than 8 percent (6 percent plus 2 percent annual interest rate adjustment cap) is on April 1, 2019 (the due date of the 60th monthly payment), which occurs less than five years after the date on which the first regular periodic payment will be due. Thus, the maximum interest rate under the terms of the loan during the first five years after the date on which the first regular periodic payment will be due is 8 percent.

B. The transaction will meet the definition of a qualified mortgage if the creditor underwrites the loan using the monthly payment of principal and interest of $1,436 to repay the outstanding principal balance at the end of the fifth year of $186,109 over the remaining 25 years of the loan term (300 months), using the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due of 8 percent. Alternatively, the transaction will meet the definition of a qualified mortgage if the creditor underwrites the loan using the monthly payment of principal and interest of $1,468 to repay the loan amount of $200,000 over the 30-year loan term, using the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due of 8 percent.

iv. *Adjustable-rate mortgage with discount for seven years.* A. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides for a discounted interest rate of 6 percent that is fixed for an initial period of seven years, after which the interest rate will adjust annually based on a specified index plus a margin of 3 percent, subject to a 2 percent annual interest rate adjustment cap. The index value in effect at consummation is 4.5 percent. The loan is consummated on March 15, 2014, and the first regular periodic payment is due May 1, 2014. Under the terms of the loan agreement, the first rate adjustment is on April 1, 2021 (the due date of the 84th monthly payment), which occurs more than five years after the date on which the first regular periodic payment will be due. Thus, the maximum interest rate under the terms of the loan during the first five years after the date on which the first regular periodic payment will be due is 6 percent.

B. The transaction will meet the definition of a qualified mortgage if the creditor underwrites the loan using the monthly payment of principal and interest of $1,199 to repay the loan amount of $200,000 over the 30-year loan term using the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due of 6 percent.

iv. *Step-rate mortgage*. A. A loan in an amount of $200,000 has a 30-year loan term. The loan agreement provides that the interest rate is 6.5 percent for the first two years of the loan, 7 percent for the next three years, and then 7.5 percent for remainder of the loan term. The maximum interest rate during the first five years after the date on which the first regular periodic payment will be due is 7.5 percent, which occurs on the due date of the 60th monthly payment. The outstanding principal balance at the end of the fifth year (after the 60th payment is credited) is $187,868.

B. The transaction will meet the definition of a qualified mortgage if the creditor underwrites the loan using a monthly payment of principal and interest of $1,388 to repay the outstanding principal balance of $187,868 over the remaining 25 years of the loan term (300 months), using the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due of 7.5 percent. Alternatively, the transaction will meet the definition of a qualified mortgage if the creditor underwrites the loan using a monthly payment of principal and interest of $1,398 to repay $200,000 over the 30-year loan term using the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due of 7.5 percent.

Paragraph 43(e)(2)(v)

1. *General*. For guidance on satisfying §1026.43(e)(2)(v), a creditor may rely on commentary to §1026.43(c)(2)(i) and (vi), (c)(3), and (c)(4).

Paragraph 43(e)(2)(v)(A)

Consider. In order to comply with the requirement to consider under §1026.43(e)(2)(v)(A), a creditor must take into account current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination. A creditor must maintain written policies and procedures for how it takes into account, pursuant to its underwriting standards, income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination. A creditor must also retain documentation showing how it took into account income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income in its ability-to-repay determination, including how it applied its policies and procedures, in order to meet this requirement to consider and thereby meet the requirements for a qualified mortgage under §1026.43(e)(2). This documentation may include, for example, an underwriter worksheet or a final automated underwriting system certification, in combination with the creditor's applicable underwriting standards and any applicable exceptions described in its policies and procedures, that shows how these required factors were taken into account in the creditor's ability-to-repay determination.

2. *Requirement to consider monthly debt-to-income ratio or residual income*. Section 1026.43(e)(2)(v)(A) does not prescribe specifically how a creditor must consider monthly debt-to-income ratio or residual income. Section 1026.43(e)(2)(v)(A) also does not prescribe a particular monthly debt-to-income ratio or residual income threshold with which a creditor must comply. A creditor may, for example, consider monthly debt-to-income ratio or residual income by establishing monthly debt-to-income or residual income thresholds for its own underwriting standards and documenting how it applied those thresholds to determine the consumer's ability to repay. A creditor may also consider these factors by establishing monthly debt-to-income or residual income thresholds and exceptions to those thresholds based on other compensating factors, and documenting application of the thresholds along with any applicable exceptions.

3. *Flexibility to consider additional factors related to a consumer's ability to repay*. The requirement to consider income or assets, debt obligations, alimony, child support, and monthly debt-to-income ratio or residual income does not preclude the creditor from taking into account additional factors that are relevant in determining a consumer's ability to repay the loan. For guidance on considering additional factors in determining the consumer's ability to repay, see comment 43(c)(7)–3.

Paragraph 43(e)(2)(v)(B)

1. *Verification of income, assets, debt obligations, alimony, and child support*. Section 1026.43(e)(2)(v)(B) does not prescribe specific methods of underwriting that creditors must use. Section 1026.43(e)(2)(v)(B)(*1*) requires a

creditor to verify the consumer's current or reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan in accordance with §1026.43(c)(4), which states that a creditor must verify such amounts using third-party records that provide reasonably reliable evidence of the consumer's income or assets. Section 1026.43(e)(2)(v)(B)(*2*) requires a creditor to verify the consumer's current debt obligations, alimony, and child support in accordance with §1026.43(c)(3), which states that a creditor must verify such amounts using reasonably reliable third-party records. So long as a creditor complies with the provisions of §1026.43(c)(3) with respect to debt obligations, alimony, and child support and §1026.43(c)(4) with respect to income and assets, the creditor is permitted to use any reasonable verification methods and criteria.

2. *Classifying and counting income, assets, debt obligations, alimony, and child support.* ''Current and reasonably expected income or assets other than the value of the dwelling (including any real property attached to the dwelling) that secures the loan'' is determined in accordance with §1026.43(c)(2)(i) and its commentary. ''Current debt obligations, alimony, and child support'' has the same meaning as under §1026.43(c)(2)(vi) and its commentary. Section 1026.43(c)(2)(i) and (vi) and the associated commentary apply to a creditor's determination with respect to what inflows and property it may classify and count as income or assets and what obligations it must classify and count as debt obligations, alimony, and child support, pursuant to its compliance with §1026.43(e)(2)(v)(B).

3. *Safe harbor for compliance with specified external standards.*

i. Meeting the standards in the following manuals for verifying current or reasonably expected income or assets using third-party records provides a creditor with reasonably reliable evidence of the consumer's income or assets. Meeting the standards in the following manuals for verifying current debt obligations, alimony, and child support using third-party records provides a creditor with reasonably reliable evidence of the consumer's debt obligations, alimony, and child support obligations. Accordingly, a creditor complies with §1026.43(e)(2)(v)(B) if it complies with verification standards in one or more of the following manuals:

A. Chapters B3–3 through B3–6 of the Fannie Mae Single Family Selling Guide, published June 3, 2020;

B. Sections 5102 through 5500 of the Freddie Mac Single-Family Seller/Servicer Guide, published June 10, 2020;

C. Sections II.A.1 and II.A.4–5 of the Federal Housing Administration's Single Family Housing Policy Handbook, issued October 24, 2019;

D. Chapter 4 of the U.S. Department of Veterans Affairs' Lenders Handbook, revised February 22, 2019;

E. Chapter 4 of the U.S. Department of Agriculture's Field Office Handbook for the Direct Single Family Housing Program, revised March 15, 2019; and

F. Chapters 9 through 11 of the U.S. Department of Agriculture's Handbook for the Single Family Guaranteed Loan Program, revised March 19, 2020.

ii. *Applicable provisions in manuals.* A creditor complies with §1026.43(e)(2)(v)(B) if it complies with requirements in the manuals listed in comment 43(e)(2)(v)(B)–3 for creditors to verify income, assets, debt obligations, alimony and child support using specified reasonably reliable third-party documents or to include or exclude particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

iii. *Inapplicable provisions in manuals.* For purposes of compliance with §1026.43(e)(2)(v)(B), a creditor need not comply with requirements in the manuals listed in comment 43(e)(2)(v)(B)–3 other than those that require creditors to verify income, assets, debt obligations, alimony and child support using specified documents or to classify and count particular inflows, property, and obligations as income, assets, debt obligations, alimony, and child support.

iv. *Revised versions of manuals.* A creditor also complies with §1026.43(e)(2)(v)(B) where it complies with revised versions of the manuals listed in comment 43(e)(2)(v)(B)–3.i, provided that the two versions are substantially similar.

v. *Use of standards from more than one manual.* A creditor complies with §1026.43(e)(2)(v)(B) if it complies with the verification standards in one or more of the manuals specified in comment 43(e)(2)(v)(B)–3.i. Accordingly, a creditor may, but need not, comply with §1026.43(e)(2)(v)(B) by complying with the verification standards from more than one manual (in other words, by ''mixing and matching'' verification standards).

Paragraph 43(e)(2)(vi).

1. *Determining the average prime offer rate for a comparable transaction as of the date the interest rate is set.* For guidance on determining the average prime offer rate for a comparable transaction as of the date the interest rate is set, see comments 43(b)(4)–1 through –3.

2. *Determination of applicable threshold.* A creditor must determine the applicable threshold by determining which category the loan falls into based on the face amount of the note (the ''loan amount'' as defined in §1026.43(b)(5)). For example, for a first-lien covered transaction with a loan amount of

$75,000, the loan would fall into the tier for loans greater than or equal to $66,156 (indexed for inflation) but less than $110,260 (indexed for inflation), for which the applicable threshold is 3.5 or more percentage points.

3. *Annual adjustment for inflation.* The dollar amounts in §1026.43(e)(2)(vi) will be adjusted annually on January 1 by the annual percentage change in the CPI–U that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2022, reflecting a 4.2 percent increase in the CPI–U that was reported on the preceding June 1, to satisfy §1026.43(e)(2)(vi), the annual percentage rate may not exceed the average prime offer rate for a comparable transaction as of the date the interest rate is set by the following amounts:

A. For a first-lien covered transaction with a loan amount greater than or equal to $114,847, 2.25 or more percentage points;

B. For a first-lien covered transaction with a loan amount greater than or equal to $68,908 but less than $114,847, 3.5 or more percentage points;

C. For a first-lien covered transaction with a loan amount less than $68,908, 6.5 or more percentage points;

D. For a first-lien covered transaction secured by a manufactured home with a loan amount less than $114,847, 6.5 or more percentage points;

E. For a subordinate-lien covered transaction with a loan amount greater than or equal to $68,908, 3.5 or more percentage points;

F. For a subordinate-lien covered transaction with a loan amount less than $68,908, 6.5 or more percentage points.

4. *Determining the annual percentage rate for certain loans for which the interest rate may or will change.*

i. *In general.* The commentary to §1026.17(c)(1) and other provisions in subpart C of this part address how to determine the annual percentage rate disclosures for closed-end credit transactions. Provisions in §1026.32(a)(3) address how to determine the annual percentage rate to determine coverage under §1026.32(a)(1)(i). Section 1026.43(e)(2)(vi) requires, for the purposes of §1026.43(e)(2)(vi), a different determination of the annual percentage rate for a qualified mortgage under §1026.43(e)(2) for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. An identical special rule for determining the annual percentage rate for such a loan also applies for purposes of §1026.43(b)(4).

ii. *Loans for which the interest rate may or will change.* Section 1026.43(e)(2)(vi) includes a special rule for determining the annual percentage rate for a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due. This rule applies to adjustable-rate mortgages that have a fixed-rate period of five years or less and to step-rate mortgages for which the interest rate changes within that five-year period.

iii. *Maximum interest rate during the first five years.* For a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, a creditor must treat the maximum interest rate that could apply at any time during that five-year period as the interest rate for the full term of the loan to determine the annual percentage rate for purposes of §1026.43(e)(2)(vi), regardless of whether the maximum interest rate is reached at the first or subsequent adjustment during the five-year period. For additional instruction on how to determine the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due, see comments 43(e)(2)(iv)–3 and –4.

iv. *Treatment of the maximum interest rate in determining the annual percentage rate.* For a loan for which the interest rate may or will change within the first five years after the date on which the first regular periodic payment will be due, the creditor must determine the annual percentage rate for purposes of §1026.43(e)(2)(vi) by treating the maximum interest rate that may apply within the first five years as the interest rate for the full term of the loan. For example, assume an adjustable-rate mortgage with a loan term of 30 years and an initial discounted rate of 5.0 percent that is fixed for the first three years. Assume that the maximum interest rate during the first five years after the date on which the first regular periodic payment will be due is 7.0 percent. Pursuant to §1026.43(e)(2)(vi), the creditor must determine the annual percentage rate based on an interest rate of 7.0 percent applied for the full 30-year loan term.

5. *Meaning of a manufactured home.* For purposes of §1026.43(e)(2)(vi)(D), manufactured home means any residential structure as defined under regulations of the U.S. Department of Housing and Urban Development (HUD) establishing manufactured home construction and safety standards (24 CFR 3280.2). Modular or other factory-built homes that do not meet the HUD code standards are not manufactured homes for purposes of §1026.43(e)(2)(vi)(D).

6. *Scope of threshold for transactions secured by a manufactured home.* The threshold in §1026.43(e)(2)(vi)(D) applies to first-lien covered transactions less than $110,260 (indexed for inflation) that are secured by a manufactured home and land, or by a manufactured home only.

43(e)(3) Limits on points and fees for qualified mortgages.

Paragraph 43(e)(3)(i).

1. *Total loan amount.* The term ''total loan amount'' is defined in §1026.32(b)(4)(i). For an explanation of how to calculate the ''total loan amount'' under §1026.43(e)(3)(i), see comment 32(b)(4)(i)–1.

2. *Calculation of allowable points and fees.* A creditor must determine which category the loan falls into based on the face amount of the note (the ''loan amount'' as defined in §1026.43(b)(5)). For categories with a percentage limit, the creditor must apply the allowable points and fees percentage to the ''total loan amount,'' which may be different than the loan amount. A creditor must calculate the allowable amount of points and fees for a qualified mortgage as follows:

i. First, the creditor must determine the ''tier'' into which the loan falls based on the loan amount. The loan amount is the principal amount the consumer will borrow, as reflected in the promissory note or loan contract. *See* §1026.43(b)(5). For example, if the loan amount is $55,000, the loan falls into the tier for loans greater than or equal to $20,000 but less than $60,000, to which a 5 percent cap on points and fees applies. For tiers with a prescribed dollar limit on points and fees (*e.g.*, for loans from $60,000 up to $100,000, the limit is $3,000), the creditor does not need to do any further calculations.

ii. Second, for tiers with a percentage limit, the creditor must determine the total loan amount based on the calculation for the total loan amount under comment 32(b)(4)(i)–1. If the loan amount is $55,000, for example, the total loan amount may be a different amount, such as $52,000.

iii. Third, the creditor must apply the percentage cap on points and fees to the total loan amount. For example, for a loan of $55,000 where the total loan amount is $52,000, the allowable points and fees are 5 percent of $52,000, or $2,600.

3. *Sample determination of allowable points and fees.*

i. A covered transaction with a loan amount of $105,000 falls into the first points and fees tier, to which a points and fees cap of 3 percent of the total loan amount applies. *See* §1026.43(e)(3)(i)(A). Therefore, if the calculation under comment 32(b)(4)(i)–1 results in a total loan amount of $102,000, then the allowable total points and fees for this loan are 3 percent of $102,000, or $3,060.

ii. A covered transaction with a loan amount of $75,000 falls into the second points and fees tier, to which a points and fees cap of $3,000 applies. *See* §1026.43(e)(3)(i)(B). The allowable total points and fees for this loan are $3,000, regardless of the total loan amount.

iii. A covered transaction with a loan amount of $50,000 falls into the third points and fees tier, to which a points and fees cap of 5 percent of the total loan amount applies. *See* §1026.43(e)(3)(i)(C). Therefore, if the calculation under comment 32(b)(4)(i)–1 results in a total loan amount of $48,000, then the allowable total points and fees for this loan are 5 percent of $48,000, or $2,400.

iv. A covered transaction with a loan amount of $15,000 falls into the fourth points and fees tier, to which a points and fees cap of $1,000 applies. *See* §1026.43(e)(3)(i)(D). The allowable total points and fees for this loan are $1,000, regardless of the total loan amount.

v. A covered transaction with a loan amount of $10,000 falls into the fifth points and fees tier, to which a points and fees cap of 8 percent of the total loan amount applies. *See* §1026.43(e)(3)(i)(E). Therefore, if the calculation under comment 32(b)(4)(i)–1 results in a total loan amount of $7,000, then the allowable total points and fees for this loan are 8 percent of $7,000, or $560.

Paragraph 43(e)(3)(ii).

1. *Annual adjustment for inflation.* The dollar amounts, including the loan amounts, in §1026.43(e)(3)(i) will be adjusted annually on January 1 by the annual percentage change in the CPI–U that was in effect on the preceding June 1. The Bureau will publish adjustments after the June figures become available each year.

i. For 2015, reflecting a 2 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to $101,953: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $61,172 but less than $101,953: $3,059;

C. For a loan amount greater than or equal to $20,391 but less than $61,172: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $12,744 but less than $20,391; $1,020;

E. For a loan amount less than $12,744: 8 percent of the total loan amount.

ii. For 2016, reflecting a 0.2 percent decrease in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed;

A. For a loan amount greater than or equal to $101,749: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $61,050 but less than $101,749: $3,052;

C. For a loan amount greater than or equal to $20,350 but less than $61,050: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $12,719 but less than $20,350; $1,017;

E. For a loan amount less than $12,719: 8 percent of the total loan amount.

iii. For 2017, reflecting a 1.1 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transactions total points and fees do not exceed:

A. For a loan amount greater than or equal to $102,894: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $61,737 but less than $102,894: $3,087;

C. For a loan amount greater than or equal to $20,579 but less than $61,737: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $12,862 but less than $20,579: $1,029;

E. For a loan amount less than $12,862: 8 percent of the total loan amount.

iv. For 2018, reflecting a 2.2 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $105,158: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $63,095 but less than $105,158: $3,155;

C. For a loan amount greater than or equal to $21,032 but less than $63,095: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $13,145 but less than $21,032: $1,052;

E. For a loan amount less than $13,145: 8 percent of the total loan amount.

v. For 2019, reflecting a 2.5 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $107,747: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $64,648 but less than $107,747: $3,232;

C. For a loan amount greater than or equal to $21,549 but less than $64,648: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $13,468 but less than $21,549: $1,077;

E. For a loan amount less than $13,468: 8 percent of the total loan amount.

vi. For 2020, reflecting a 2 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $109,898: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $65,939 but less than $109,898: $3,297;

C. For a loan amount greater than or equal to $21,980 but less than $65,939: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $13,737 but less than $21,980: $1,099;

E. For a loan amount less than $13,737: 8 percent of the total loan amount.

vii. For 2021, reflecting a 0.3 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $110,260: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $66,156 but less than $110,260: $3,308;

C. For a loan amount greater than or equal to $22,052 but less than $66,156: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $13,783 but less than $22,052: $1,103;

E. For a loan amount less than $13,783: 8 percent of the total loan amount.

viii. For 2022, reflecting a 4.2 percent increase in the CPI–U that was reported on the preceding June 1, a covered transaction is not a qualified mortgage unless the transaction's total points and fees do not exceed:

A. For a loan amount greater than or equal to $114,847: 3 percent of the total loan amount;

B. For a loan amount greater than or equal to $68,908 but less than $114,847: $3,445;

C. For a loan amount greater than or equal to $22,969 but less than $68,908: 5 percent of the total loan amount;

D. For a loan amount greater than or equal to $14,356 but less than $22,969: $1,148;

E. For a loan amount less than $14,356: 8 percent of the total loan amount.

Paragraph 43(e)(3)(iv).

1. *Interest rate.* For purposes of §1026.43(e)(3)(iv)(B), interest is calculated using the contract interest rate applicable during the period from consummation until the payment described in §1026.43(e)(3)(iv) is made to the consumer. In an adjustable-rate or step-rate transaction in which more than one interest rate applies during the period from consummation until payment is made to the consumer, the minimum payment amount is determined by calculating interest on the dollar amount described in §1026.43(e)(3)(iv)(A) at each such interest rate for the part of the overall period during which that rate applies. However, §1026.43(e)(3)(iv) provides that, for purposes of §1026.43(e)(3)(iii), the creditor or assignee can pay to the consumer an amount that exceeds the sum of the amounts described in §1026.43(e)(3)(iv)(A) and (B). Therefore, a creditor or assignee may, for example, elect to calculate interest using the maximum interest rate that may apply during the period from consummation until payment is made to the consumer. See comment 43(e)(3)(iii)–1 for guidance on making payments to the consumer.

2. *Relationship to RESPA tolerance cure.* Under Regulation X (12 CFR 1024.7(i)), if any charges at settlement exceed the charges listed on the good faith estimate of settlement costs by more than the amounts permitted under 12 CFR 1024.7(e), the loan originator may cure the tolerance violation by

reimbursing the amount by which the tolerance was exceeded at settlement or within 30 calendar days after settlement. Similarly, under § 1026.19(f)(2)(v), if amounts paid by the consumer exceed the amounts specified under § 1026.19(e)(3)(i) or (ii), the creditor complies with § 1026.19(e)(1)(i) if the creditor refunds the excess to the consumer no later than 60 days after consummation. The amount paid to the consumer pursuant to § 1026.43(e)(3)(iv) may be offset by the amount paid to the consumer pursuant to 12 CFR 1024.7(i) or § 1026.19(f)(2)(v), to the extent that the amount paid to the consumer pursuant to 12 CFR 1024.7(i) or § 1026.19(f)(2)(v) is being applied to fees or charges included in points and fees pursuant to § 1026.32(b)(1). However, a creditor or assignee has not satisfied § 1026.43(e)(3)(iii) unless the total amount described in § 1026.43(e)(3)(iv), including any offset due to a payment made pursuant to 12 CFR 1024.7(i) or § 1026.19(f)(2)(v), is paid to the consumer within 210 days after consummation and prior to the occurrence of any of the events in § 1026.43(e)(3)(iii)(B)(*1*) through (*3*).

43(e)(4) Qualified mortgage defined—other agencies.

1. *General.* The Department of Housing and Urban Development, Department of Veterans Affairs, and the Department of Agriculture have promulgated definitions for qualified mortgages under mortgage programs they insure, guarantee, or provide under applicable law. Cross-references to those definitions are listed in § 1026.43(e)(4) to acknowledge the covered transactions covered by those definitions are qualified mortgages for purposes of this section.

2. *Mortgages for which the creditor received the consumer's application prior to October 1, 2022.* Covered transactions that met the requirements of § 1026.43(e)(2)(i) through (iii), were eligible for purchase or guarantee by the Federal National Mortgage Association (Fannie Mae) or the Federal Home Loan Mortgage Corporation (Freddie Mac) (or any limited-life regulatory entity succeeding the charter of either) operating under the conservatorship or receivership of the Federal Housing Finance Agency pursuant to section 1367 of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (12 U.S.C. 4617), and for which the creditor received the consumer's application prior to the mandatory compliance date of October 1, 2022, continue to be qualified mortgages for the purposes of this section, including those covered transactions that were consummated on or after October 1, 2022.

3. *Mortgages for which the creditor received the consumer's application on or after March 1, 2021 but prior to October 1, 2022.* For a discussion of the optional early compliance period for the 2021 General QM Amendments, please see comment 43–2.

4. [Reserved].

5. [Reserved].

Paragraph 43(e)(5)

1. *Satisfaction of qualified mortgage requirements.* For a covered transaction to be a qualified mortgage under § 1026.43(e)(5), the mortgage must satisfy the requirements for a qualified mortgage under § 1026.43(e)(2), other than the requirements in § 1026.43(e)(2)(v) and (vi). For example, a qualified mortgage under § 1026.43(e)(5) may not have a loan term in excess of 30 years because longer terms are prohibited for qualified mortgages under § 1026.43(e)(2)(ii). Similarly, a qualified mortgage under § 1026.43(e)(5) may not result in a balloon payment because § 1026.43(e)(2)(i)(C) provides that qualified mortgages may not have balloon payments except as provided under § 1026.43(f). However, a covered transaction need not comply with § 1026.43(e)(2)(v) and (vi).

2. *Debt-to-income ratio or residual income.* Section 1026.43(e)(5) does not prescribe a specific monthly debt-to-income ratio with which creditors must comply. Instead, creditors must consider a consumer's debt-to-income ratio or residual income calculated generally in accordance with § 1026.43(c)(7) and verify the information used to calculate the debt-to-income ratio or residual income in accordance with § 1026.43(c)(3) and (4). However, § 1026.43(c)(7) refers creditors to § 1026.43(c)(5) for instructions on calculating the payment on the covered transaction. Section 1026.43(c)(5) requires creditors to calculate the payment differently than § 1026.43(e)(2)(iv). For purposes of the qualified mortgage definition in § 1026.43(e)(5), creditors must base their calculation of the consumer's debt-to-income ratio or residual income on the payment on the covered transaction calculated according to § 1026.43(e)(2)(iv) instead of according to § 1026.43(c)(5).

3. *Forward commitments.* A creditor may make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a "forward commitment." A mortgage that will be acquired by a purchaser pursuant to a forward commitment does not satisfy the requirements of § 1026.43(e)(5), whether the forward commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of transactions with certain prescribed criteria that the transaction meets. However, a forward commitment to another person that also meets the requirements of § 1026.43(e)(5)(i)(D) is permitted. For example, assume a creditor that is eligible to make qualified mortgages under § 1026.43(e)(5) makes a mortgage. If that mortgage meets the purchase criteria of an investor with which the creditor has an agreement to sell

loans after consummation, then the loan does not meet the definition of a qualified mortgage under §1026.43(e)(5). However, if the investor meets the requirements of §1026.43(e)(5)(i)(D), the mortgage will be a qualified mortgage if all other applicable criteria also are satisfied.

4. *Creditor qualifications.* To be eligible to make qualified mortgages under §1026.43(e)(5), a creditor must satisfy the requirements stated in §1026.35(b)(2)(iii)(B) and (C). Section 1026.35(b)(2)(iii)(B) requires that, during the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor and its affiliates together extended no more than 2,000 covered transactions, as defined by §1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person. Section 1026.35(b)(2)(iii)(C) requires that, as of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended, during the applicable period, covered transactions, as defined by §1026.43(b)(1), secured by first liens, together, had total assets of less than $2 billion, adjusted annually by the Bureau for inflation.

5. *Requirement to hold in portfolio.* Creditors generally must hold a loan in portfolio to maintain the transaction's status as a qualified mortgage under §1026.43(e)(5), subject to four exceptions. Unless one of these exceptions applies, a loan is no longer a qualified mortgage under §1026.43(e)(5) once legal title to the debt obligation is sold, assigned, or otherwise transferred to another person. Accordingly, unless one of the exceptions applies, the transferee could not benefit from the presumption of compliance for qualified mortgages under §1026.43(e)(1) unless the loan also met the requirements of another qualified mortgage definition.

6. *Application to subsequent transferees.* The exceptions contained in §1026.43(e)(5)(ii) apply not only to an initial sale, assignment, or other transfer by the originating creditor but to subsequent sales, assignments, and other transfers as well. For example, assume Creditor A originates a qualified mortgage under §1026.43(e)(5). Six months after consummation, Creditor A sells the qualified mortgage to Creditor B pursuant to §1026.43(e)(5)(ii)(B) and the loan retains its qualified mortgage status because Creditor B complies with the limits on asset size and number of transactions. If Creditor B sells the qualified mortgage, it will lose its qualified mortgage status under §1026.43(e)(5) unless the sale qualifies for one of the §1026.43(e)(5)(ii) exceptions for sales three or more years after consummation, to another qualifying institution, as required by supervisory action, or pursuant to a merger or acquisition.

7. *Transfer three years after consummation.* Under §1026.43(e)(5)(ii)(A), if a qualified mortgage under §1026.43(e)(5) is sold, assigned, or otherwise transferred three years or more after consummation, the loan retains its status as a qualified mortgage under §1026.43(e)(5) following the transfer. The transferee need not be eligible to originate qualified mortgages under §1026.43(e)(5). The loan will continue to be a qualified mortgage throughout its life, and the transferee, and any subsequent transferees, may invoke the presumption of compliance for qualified mortgages under §1026.43(e)(1).

8. *Transfer to another qualifying creditor.* Under §1026.43(e)(5)(ii)(B), a qualified mortgage under §1026.43(e)(5) may be sold, assigned, or otherwise transferred at any time to another creditor that meets the requirements of §1026.43(e)(5)(i)(D). That section requires that a creditor together with all its affiliates, extended no more than 2,000 first-lien covered transactions that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person; and have, together with its affiliates that regularly extended covered transactions secured by first liens, total assets less than $2 billion (as adjusted for inflation). These tests are assessed based on transactions and assets from the calendar year preceding the current calendar year or from either of the two calendar years preceding the current calendar year if the application for the transaction was received before April 1 of the current calendar year. A qualified mortgage under §1026.43(e)(5) transferred to a creditor that meets these criteria would retain its qualified mortgage status even if it is transferred less than three years after consummation.

9. *Supervisory sales.* Section 1026.43(e)(5)(ii)(C) facilitates sales that are deemed necessary by supervisory agencies to revive troubled creditors and resolve failed creditors. A qualified mortgage under §1026.43(e)(5) retains its qualified mortgage status if it is sold, assigned, or otherwise transferred to another person pursuant to: A capital restoration plan or other action under 12 U.S.C. 1831o; the actions or instructions of any person acting as conservator, receiver or bankruptcy trustee; an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law; or an agreement between the creditor and such an agency. A qualified mortgage under §1026.43(e)(5) that is sold, assigned, or otherwise transferred

under these circumstances retains its qualified mortgage status regardless of how long after consummation it is sold and regardless of the size or other characteristics of the transferee. Section 1026.43(e)(5)(ii)(C) does not apply to transfers done to comply with a generally applicable regulation with future effect designed to implement, interpret, or prescribe law or policy in the absence of a specific order by or a specific agreement with a governmental agency described in §1026.43(e)(5)(ii)(C) directing the sale of one or more qualified mortgages under §1026.43(e)(5) held by the creditor or one of the other circumstances listed in §1026.43(e)(5)(ii)(C). For example, a qualified mortgage under §1026.43(e)(5) that is sold pursuant to a capital restoration plan under 12 U.S.C. 1831o would retain its status as a qualified mortgage following the sale. However, if the creditor simply chose to sell the same qualified mortgage as one way to comply with general regulatory capital requirements in the absence of supervisory action or agreement it would lose its status as a qualified mortgage following the sale unless it qualifies under another definition of qualified mortgage.

10. *Mergers and acquisitions.* A qualified mortgage under §1026.43(e)(5) retains its qualified mortgage status if a creditor merges with, is acquired by, or acquires another person regardless of whether the creditor or its successor is eligible to originate new qualified mortgages under §1026.43(e)(5) after the merger or acquisition. However, the creditor or its successor can originate new qualified mortgages under §1026.43(e)(5) only if it complies with all of the requirements of §1026.43(e)(5) after the merger or acquisition. For example, assume a creditor that originates 250 covered transactions each year and originates qualified mortgages under §1026.43(e)(5) is acquired by a larger creditor that originates 10,000 covered transactions each year. Following the acquisition, the small creditor would no longer be able to originate §1026.43(e)(5) qualified mortgages because, together with its affiliates, it would originate more than 500 covered transactions each year. However, the §1026.43(e)(5) qualified mortgages originated by the small creditor before the acquisition would retain their qualified mortgage status.

43(e)(7) Seasoned loans.

Paragraph 43(e)(7)(i)(A)

1. *Fixed-rate mortgage.* Section 1026.43(e)(7)(i)(A) provides that, for a covered transaction to become a qualified mortgage under §1026.43(e)(7), the covered transaction must be a fixed-rate mortgage, as defined in §1026.18(s)(7)(iii). Under §1026.18(s)(7)(iii), the term "fixed-rate mortgage" means a transaction secured by real property or a dwelling that is not an adjustable-rate mortgage or a step-rate mortgage. Thus, a covered transaction that is an adjustable-rate mortgage or step-rate mortgage is not eligible to become a qualified mortgage under §1026.43(e)(7).

2. *Fully amortizing payments.* Section 1026.43(e)(7)(i)(A) provides that for a covered transaction to become a qualified mortgage as a seasoned loan under §1026.43(e)(7), a mortgage must meet certain product requirements and be a fixed-rate mortgage with fully amortizing payments. Only loans for which the scheduled periodic payments do not require a balloon payment, as defined in §1026.18(s), to fully amortize the loan within the loan term can become seasoned loans for the purposes of §1026.43(e)(7). However, §1026.43(e)(7)(i)(A) does not prohibit a qualifying change as defined in §1026.43(e)(7)(iv)(B) that is entered into during or after a temporary payment accommodation in connection with a disaster or pandemic-related national emergency, even if such a qualifying change involves a balloon payment or lengthened loan term.

Paragraph 43(e)(7)(iii)

1. *Requirement to hold in portfolio.* For a covered transaction to become a qualified mortgage under §1026.43(e)(7), a creditor generally must hold the transaction in portfolio until the end of the seasoning period, subject to the exceptions set forth in §1026.43(e)(7)(iii)(B)(*1*) through (*3*). Unless one of these exceptions applies, a covered transaction cannot become a qualified mortgage as a seasoned loan under §1026.43(e)(7) if legal title to the debt obligation is sold, assigned, or otherwise transferred to another person before the end of the seasoning period.

2. *Application to subsequent transferees.* The exception contained in §1026.43(e)(7)(iii)(B)*(3)* may be used only one time for a covered transaction. The exceptions contained in §1026.43(e)(7)(iii)(B)(*1*) and (*2*) apply not only to an initial sale, assignment, or other transfer by the originating creditor but to subsequent sales, assignments, and other transfers as well. For example, assume Creditor A originates a covered transaction that is not a qualified mortgage at origination. Six months after consummation, the covered transaction is transferred to Creditor B pursuant to §1026.43(e)(7)(iii)(B)(*3*). The transfer does not fail to comply with the requirements in §1026.43(e)(7)(iii) because the loan is not securitized as part of the transfer or at any other time before the end of the seasoning period. If Creditor B sells the covered transaction before the end of the seasoning period, the covered transaction is not eligible to season into a qualified mortgage under §1026.43(e)(7) unless the sale falls within an exception set forth in §1026.43(e)(7)(iii)(B)(*1*) or (*2*) (*i.e.,* the transfer is required by supervisory action or pursuant to a merger or acquisition).

3. *Supervisory sales.* Section 1026.43(e)(7)(iii)(B)(*1*) facilitates sales that are deemed necessary by supervisory agencies to revive troubled creditors and resolve failed creditors. A covered transaction does not violate the requirements in §1026.43(e)(7)(iii) if it is sold, assigned, or otherwise transferred to another person before the end of the seasoning period pursuant to: A capital restoration plan or other action under 12 U.S.C. 1831o; the actions or instructions of any person acting as conservator, receiver or bankruptcy trustee; an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law; or an agreement between the creditor and such an agency. Section 1026.43(e)(7)(iii)(B)(*1*) does not apply to transfers done to comply with a generally applicable regulation with future effect designed to implement, interpret, or prescribe law or policy in the absence of a specific order by or a specific agreement with a governmental agency described in §1026.43(e)(7)(iii)(B)(*1*) directing the sale of one or more covered transactions held by the creditor or one of the other circumstances listed in §1026.43(e)(7)(iii)(B)(*1*). For example, a covered transaction does not violate the requirements in §1026.43(e)(7)(iii) if the covered transaction is sold pursuant to a capital restoration plan under 12 U.S.C. 1831o before the end of seasoning period. However, if the creditor simply chose to sell the same covered transaction as one way to comply with general regulatory capital requirements in the absence of supervisory action or agreement, then the covered transaction cannot become a qualified mortgage as a seasoned loan under §1026.43(e)(7), unless the sale met the requirements of §1026.43(e)(7)(iii)(B)(*3*) or the covered transaction qualifies under another definition of qualified mortgage.

Paragraph 43(e)(7)(iv)(A)

1. *Due date.* In determining whether a scheduled periodic payment is delinquent for purposes of §1026.43(e)(7), the due date is the date the payment is due under the terms of the legal obligation, without regard to whether the consumer is afforded a period after the due date to pay before the servicer assesses a late fee.

Paragraph 43(e)(7)(iv)(A)(2)

1. *60 days delinquent.* The following example illustrates the meaning of 60 days delinquent for purposes of §1026.43(e)(7). Assume a loan is consummated on October 15, 2022, that the consumer's periodic payment is due on the 1st of each month, and that the consumer timely made the first periodic payment due on December 1, 2022. For purposes of §1026.43(e)(7), the consumer is 30 days delinquent if the consumer fails to make a payment (sufficient to cover the scheduled January 1, 2023 periodic payment of principal, interest, and escrow (if applicable)) before February 1, 2023. For purposes of §1026.43(e)(7), the consumer is 60 days delinquent if the consumer then fails to make two payments (sufficient to cover the scheduled January 1, 2023 and February 1, 2023 periodic payments of principal, interest, and escrow (if applicable)) before March 1, 2023.

Paragraph 43(e)(7)(iv)(B)

1. *Qualifying change.* An agreement that meets the conditions specified in §1026.43(e)(7)(iv)(B) is a qualifying change even if it is not in writing.

Paragraph 43(e)(7)(iv)(C)(2)

1. *Suspension of seasoning period during certain temporary payment accommodations.* Section 1026.43(e)(7)(iv)(C)(*2*) provides that the seasoning period does not include any period during which the consumer is in a temporary payment accommodation extended in connection with a disaster or pandemic-related national emergency, provided that during or at the end of the temporary payment accommodation there is a qualifying change as defined in §1026.43(e)(7)(iv)(B) or the consumer cures the loan's delinquency under its original terms. Section 1026.43(e)(7)(iv)(C)(*2*) further explains that, under these circumstances, the seasoning period consists of the period from the date on which the first periodic payment was due after origination of the covered transaction to the beginning of the temporary payment accommodation and an additional period immediately after the temporary payment accommodation ends, which together must equal at least 36 months. For example, assume the consumer enters into a covered transaction for which the first periodic payment is due on March 1, 2022, and the consumer enters a three-month temporary payment accommodation in connection with a disaster or pandemic-related national emergency, effective March 1, 2023. Assume further that the consumer misses the March 1, April 1, and May 1, 2023 periodic payments during the temporary payment accommodation period, but enters into a qualifying change as defined in §1026.43(e)(7)(iv)(B) on June 1, 2023, and is not delinquent on June 1, 2023. Under these circumstances, the seasoning period consists of the period from March 1, 2022 to February 28, 2023 and the period from June 1, 2023 to May 31, 2025, assuming the consumer is not 30 days or more delinquent on May 31, 2025.

Paragraph 43(e)(7)(iv)(D)

1. *Temporary payment accommodation in connection with a disaster or pandemic-related national emergency.* For purposes of §1026.43(e)(7), examples of temporary payment accommodations in connection with a

disaster or pandemic-related national emergency include, but are not limited to a trial loan modification plan, a temporary payment forbearance program, or a temporary repayment plan.

43(f) Balloon-Payment qualified mortgages made by certain creditors.

43(f)(1) Exemption.

Paragraph 43(f)(1)(i)

1. *Satisfaction of qualified mortgage requirements.* Under §1026.43(f)(1)(i), for a mortgage that provides for a balloon payment to be a qualified mortgage, the mortgage must satisfy the requirements for a qualified mortgage in paragraphs (e)(2)(i)(A), (e)(2)(ii), and (e)(2)(iii). Therefore, a covered transaction with balloon payment terms must provide for regular periodic payments that do not result in an increase of the principal balance, pursuant to §1026.43(e)(2)(i)(A); must have a loan term that does not exceed 30 years, pursuant to §1026.43(e)(2)(ii); and must have total points and fees that do not exceed specified thresholds pursuant to §1026.43(e)(2)(iii).

Paragraph 43(f)(1)(ii)

1. *Example.* Under §1026.43(f)(1)(ii), if a qualified mortgage provides for a balloon payment, the creditor must determine that the consumer is able to make all scheduled payments under the legal obligation other than the balloon payment. For example, assume a loan in an amount of $200,000 that has a five-year loan term, but is amortized over 30 years. The loan agreement provides for a fixed interest rate of 6 percent. The loan consummates on March 3, 2014, and the monthly payment of principal and interest scheduled for the first five years is $1,199, with the first monthly payment due on April 1, 2014. The balloon payment of $187,308 is required on the due date of the 60th monthly payment, which is April 1, 2019. The loan can be a qualified mortgage if the creditor underwrites the loan using the scheduled principal and interest payment of $1,199, plus the consumer's monthly payment for all mortgage-related obligations, and satisfies the other criteria set forth in §1026.43(f).

2. *Creditor's determination.* A creditor must determine that the consumer is able to make all scheduled payments other than the balloon payment to satisfy §1026.43(f)(1)(ii), in accordance with the legal obligation, together with the consumer's monthly payments for all mortgage-related obligations and excluding the balloon payment, to meet the repayment ability requirements of §1026.43(f)(1)(ii). A creditor satisfies §1026.43(f)(1)(ii) if it uses the maximum payment in the payment schedule, excluding any balloon payment, to determine if the consumer has the ability to make the scheduled payments.

Paragraph 43(f)(1)(iii)

1. *Debt-to-income or residual income.* A creditor must consider and verify the consumer's monthly debt-to-income ratio or residual income to meet the requirements of §1026.43(f)(1)(iii)(C). To calculate the consumer's monthly debt-to-income or residual income for purposes of §1026.43(f)(1)(iii)(C), the creditor may rely on the definitions and calculation rules in §1026.43(c)(7) and its accompanying commentary, except for the calculation rules for a consumer's total monthly debt obligations (which is a component of debt-to-income and residual income under §1026.43(c)(7)). For purposes of calculating the consumer's total monthly debt obligations under §1026.43(f)(1)(iii), the creditor must calculate the monthly payment on the covered transaction using the payment calculation rules in §1026.43(f)(1)(iv)(A), together with all mortgage-related obligations and excluding the balloon payment.

Paragraph 43(f)(1)(iv)

1. *Scheduled payments.* Under §1026.43(f)(1)(iv)(A), the legal obligation must provide that scheduled payments must be substantially equal and determined using an amortization period that does not exceed 30 years. Balloon payments often result when the periodic payment would fully repay the loan amount only if made over some period that is longer than the loan term. For example, a loan term of 10 years with periodic payments based on an amortization period of 20 years would result in a balloon payment being due at the end of the loan term. Whatever the loan term, the amortization period used to determine the scheduled periodic payments that the consumer must pay under the terms of the legal obligation may not exceed 30 years.

2. *Substantially equal.* The calculation of payments scheduled by the legal obligation under §1026.43(f)(1)(iv)(A) are required to result in substantially equal amounts. This means that the scheduled payments need to be similar, but need not be equal. For further guidance on substantially equal payments, see comment 43(c)(5)(i)–4.

3. *Interest-only payments.* A mortgage that only requires the payment of accrued interest each month does not meet the requirements of §1026.43(f)(1)(iv)(A).

Paragraph 43(f)(1)(v)

1. *Forward commitments.* A creditor may make a mortgage loan that will be transferred or sold to a purchaser pursuant to an agreement that has been entered into at or before the time the transaction is consummated. Such an agreement is sometimes known as a "forward commitment." A balloon-payment mortgage that will be acquired by a purchaser pursuant to a forward

commitment does not satisfy the requirements of §1026.43(f)(1)(v), whether the forward commitment provides for the purchase and sale of the specific transaction or for the purchase and sale of transactions with certain prescribed criteria that the transaction meets. However, a purchase and sale of a balloon-payment qualified mortgage to another person that separately meets the requirements of §1026.43(f)(1)(vi) is permitted. For example: Assume a creditor that meets the requirements of §1026.43(f)(1)(vi) makes a balloon-payment mortgage that meets the requirements of §1026.43(f)(1)(i) through (iv); if the balloon-payment mortgage meets the purchase criteria of an investor with which the creditor has an agreement to sell such loans after consummation, then the balloon-payment mortgage does not meet the definition of a qualified mortgage in accordance with §1026.43(f)(1)(v). However, if the investor meets the requirement of §1026.43(f)(1)(vi), the balloon-payment qualified mortgage retains its qualified mortgage status.

Paragraph 43(f)(1)(vi).

1. *Creditor qualifications.* Under §1026.43(f)(1)(vi), to make a qualified mortgage that provides for a balloon payment, the creditor must satisfy three criteria that are also required under §1026.35(b)(2)(iii)(A), (B) and (C), which require:

i. During the preceding calendar year or during either of the two preceding calendar years if the application for the transaction was received before April 1 of the current calendar year, the creditor extended a first-lien covered transaction, as defined in §1026.43(b)(1), on a property that is located in an area that is designated either ''rural'' or ''underserved,'' as defined in §1026.35(b)(2)(iv), to satisfy the requirement of §1026.35(b)(2)(iii)(A) (the rural-or-underserved test). Pursuant to §1026.35(b)(2)(iv), an area is considered to be rural if it is: A county that is neither in a metropolitan statistical area, nor a micropolitan statistical area adjacent to a metropolitan statistical area, as those terms are defined by the U.S. Office of Management and Budget; or a census block that is not in an urban area, as defined by the U.S. Census Bureau using the latest decennial census of the United States. An area is considered to be underserved during a calendar year if, according to HMDA data for the preceding calendar year, it is a county in which no more than two creditors extended covered transactions secured by first liens on properties in the county five or more times.

A. The Bureau determines annually which counties in the United States are rural or underserved as defined by §1026.35(b)(2)(iv)(A)(*1*) or §1026.35(b)(2)(iv)(B) and publishes on its public website lists of those counties to assist creditors in determining whether they meet the criterion at §1026.35(b)(2)(iii)(A). Creditors may also use an automated tool provided on the Bureau's public website to determine whether specific properties are located in areas that qualify as ''rural'' or ''underserved'' according to the definitions in §1026.35(b)(2)(iv) for a particular calendar year. In addition, the U.S. Census Bureau may also provide on its public website an automated address search tool that specifically indicates if a property address is located in an urban area for purposes of the Census Bureau's most recent delineation of urban areas. For any calendar year that begins after the date on which the Census Bureau announced its most recent delineation of urban areas, a property is located in an area that qualifies as ''rural'' according to the definitions in §1026.35(b)(2)(iv) if the search results provided for the property by any such automated address search tool available on the Census Bureau's public website do not identify the property as being in an urban area.

B. For example, if a creditor extended during 2017 a first-lien covered transaction that is secured by a property that is located in an area that meets the definition of rural or underserved under §1026.35(b)(2)(iv), the creditor meets this element of the exception for any transaction consummated during 2018.

C. Alternatively, if the creditor did not extend in 2017 a transaction that meets the definition of rural or underserved test under §1026.35(b)(2)(iv), the creditor satisfies this criterion for any transaction consummated during 2018 for which it received the application before April 1, 2018, if it extended during 2016 a first-lien covered transaction that is secured by a property that is located in an area that meets the definition of rural or underserved under §1026.35(b)(2)(iv).

ii. During the preceding calendar year, or, if the application for the transaction was received before April 1 of the current calendar year, during either of the two preceding calendar years, the creditor together with its affiliates extended no more than 2,000 covered transactions, as defined by §1026.43(b)(1), secured by first liens, that were sold, assigned, or otherwise transferred to another person, or that were subject at the time of consummation to a commitment to be acquired by another person, to satisfy the requirement of §1026.35(b)(2)(iii)(B).

iii. As of the preceding December 31st, or, if the application for the transaction was received before April 1 of the current calendar year, as of either of the two preceding December 31sts, the creditor and its affiliates that regularly extended covered transactions secured by first liens, together, had total assets that do not exceed the applicable asset threshold established by the Bureau, to satisfy the requirement of §1026.35(b)(2)(iii)(C). The Bureau publishes notice of the asset threshold each year by amending comment 35(b)(2)(iii)–1.iii.

43(f)(2) Post-consummation transfer of balloon-payment qualified mortgage.

1. *Requirement to hold in portfolio.* Creditors generally must hold a balloon-payment qualified mortgage in portfolio to maintain the transaction's status as a qualified mortgage under §1026.43(f)(1), subject to four exceptions. Unless one of these exceptions applies, a balloon-payment qualified mortgage is no longer a qualified mortgage under §1026.43(f)(1) once legal title to the debt obligation is sold, assigned, or otherwise transferred to another person. Accordingly, unless one of the exceptions applies, the transferee could not benefit from the presumption of compliance for qualified mortgages under §1026.43(f)(1) unless the loan also met the requirements of another qualified mortgage definition.

2. *Application to subsequent transferees.* The exceptions contained in §1026.43(f)(2) apply not only to an initial sale, assignment, or other transfer by the originating creditor but to subsequent sales, assignments, and other transfers as well. For example, assume Creditor A originates a qualified mortgage under §1026.43(f)(1). Six months after consummation, Creditor A sells the qualified mortgage to Creditor B pursuant to §1026.43(f)(2)(ii) and the loan retains its qualified mortgage status because Creditor B complies with the conditions relating to operating in rural or underserved areas, asset size, and number of transactions. If Creditor B sells the qualified mortgage, it will lose its qualified mortgage status under §1026.43(f)(1) unless the sale qualifies for one of the §1026.43(f)(2) exceptions for sales three or more years after consummation, to another qualifying institution, as required by supervisory action, or pursuant to a merger or acquisition.

Paragraph 43(f)(2)(i).

1. *Transfer three years after consummation.* Under §1026.43(f)(2)(i), if a balloon-payment qualified mortgage under §1026.43(f)(1) is sold, assigned, or otherwise transferred three years or more after consummation, the balloon-payment qualified mortgage retains its status as a qualified mortgage under §1026.43(f)(1) following the sale. The transferee need not be eligible to originate qualified mortgages under §1026.43(f)(1)(vi). The balloon-payment qualified mortgage will continue to be a qualified mortgage throughout its life, and the transferee, and any subsequent transferees, may invoke the presumption of compliance for qualified mortgages under §1026.43(f)(1).

Paragraph 43(f)(2)(ii).

1. *Transfer to another qualifying creditor.* Under §1026.43(f)(2)(ii), a balloon-payment qualified mortgage under §1026.43(f)(1) may be sold, assigned, or otherwise transferred at any time to another creditor that meets the requirements of §1026.43(f)(1)(vi). That section requires that a creditor: (1) Extended a first-lien covered transaction, as defined in §1026.43(b)(1), on a property located in a rural or underserved area; (2) together with all affiliates, extended no more than 2,000 first-lien covered transactions that were sold, assigned, or otherwise transferred by the creditor or its affiliates to another person, or that were subject at the time of consummation to a commitment to be acquired by another person; and (3) have, together with its affiliates that regularly extended covered transactions secured by first liens, total assets less than $2 billion (as adjusted for inflation). These tests are assessed based on transactions and assets from the calendar year preceding the current calendar year or from either of the two calendar years preceding the current calendar year if the application for the transaction was received before April 1 of the current calendar year. A balloon-payment qualified mortgage under §1026.43(f)(1) transferred to a creditor that meets these criteria would retain its qualified mortgage status even if it is transferred less than three years after consummation.

Paragraph 43(f)(2)(iii).

1. *Supervisory sales.* Section 1026.43(f)(2)(iii) facilitates sales that are deemed necessary by supervisory agencies to revive troubled creditors and resolve failed creditors. A balloon-payment qualified mortgage under §1026.43(f)(1) retains its qualified mortgage status if it is sold, assigned, or otherwise transferred to another person pursuant to: (1) A capital restoration plan or other action under 12 U.S.C. 1831o; (2) the actions or instructions of any person acting as conservator, receiver, or bankruptcy trustee; (3) an order of a State or Federal government agency with jurisdiction to examine the creditor pursuant to State or Federal law; or (4) an agreement between the creditor and such an agency. A balloon-payment qualified mortgage under §1026.43(f)(1) that is sold, assigned, or otherwise transferred under these circumstances retains its qualified mortgage status regardless of how long after consummation it is sold and regardless of the size or other characteristics of the transferee. Section 1026.43(f)(2)(iii) does not apply to transfers done to comply with a generally applicable regulation with future effect designed to implement, interpret, or prescribe law or policy in the absence of a specific order by or a specific agreement with a governmental agency described in §1026.43(f)(2)(iii) directing the sale of one or more qualified mortgages under §1026.43(f)(1) held by the creditor or one of the other circumstances listed in §1026.43(f)(2)(iii). For example, a balloon-payment qualified mortgage under §1026.43(f)(1) that is sold pursuant to a capital restoration plan under 12 U.S.C. 1831o would retain its status as a qualified mortgage following the sale. However, if the creditor simply chose to sell the same qualified mortgage as one way to comply with

general regulatory capital requirements in the absence of supervisory action or agreement the transaction would lose its status as a qualified mortgage following the sale unless it qualifies under another definition of qualified mortgage.

Paragraph 43(f)(2)(iv).

1. *Mergers and acquisitions.* A qualified mortgage under §1026.43(f)(1) retains its qualified mortgage status if a creditor merges with, is acquired by another person, or acquires another person regardless of whether the creditor or its successor is eligible to originate new balloon-payment qualified mortgages under §1026.43(f)(1) after the merger or acquisition. However, the creditor or its successor can originate new balloon-payment qualified mortgages under §1026.43(f)(1) only if it complies with all of the requirements of §1026.43(f)(1) after the merger or acquisition. For example, assume a small creditor that originates 250 first-lien covered transactions each year and originates balloon-payment qualified mortgages under §1026.43(f)(1) is acquired by a larger creditor that originates 10,000 first-lien covered transactions each year. Following the acquisition, the small creditor would no longer be able to originate balloon-payment qualified mortgages because, together with its affiliates, it would originate more than 500 first-lien covered transactions each year. However, the balloon-payment qualified mortgages originated by the small creditor before the acquisition would retain their qualified mortgage status.

43(g) Prepayment penalties.

43(g)(2) Limits on prepayment penalties.

1. *Maximum period and amount.* Section 1026.43(g)(2) establishes the maximum period during which a prepayment penalty may be imposed and the maximum amount of the prepayment penalty. A covered transaction may include a prepayment penalty that may be imposed during a shorter period or in a lower amount than provided under §1026.43(g)(2). For example, a covered transaction may include a prepayment penalty that may be imposed for two years after consummation and that equals 1 percent of the amount prepaid in each of those two years.

43(g)(3) Alternative offer required.

Paragraph 43(g)(3)(i).

1. *Same type of interest rate.* Under §1026.43(g)(3)(i), if a creditor offers a consumer a covered transaction with a prepayment penalty, the creditor must offer the consumer an alternative covered transaction without a prepayment penalty and with an annual percentage rate that cannot increase after consummation. Under §1026.43(g)(3)(i), if the covered transaction with a prepayment penalty is a fixed-rate mortgage, as defined in §1026.18(s)(7)(iii), then the alternative covered transaction without a prepayment penalty must also be a fixed-rate mortgage. Likewise, if the covered transaction with a prepayment penalty is a step-rate mortgage, as defined in §1026.18(s)(7)(ii), then the alternative covered transaction without a prepayment penalty must also be a step-rate mortgage.

Paragraph 43(g)(3)(iv).

1. *Points and fees.* Whether or not an alternative covered transaction without a prepayment penalty satisfies the points and fees conditions for a qualified mortgage is determined based on the information known to the creditor at the time the creditor offers the consumer the transaction. At the time a creditor offers a consumer an alternative covered transaction without a prepayment penalty under §1026.43(g)(3), the creditor may know the amount of some, but not all, of the points and fees that will be charged for the transaction. For example, a creditor may not know that a consumer intends to buy single-premium credit unemployment insurance, which would be included in the points and fees for the covered transaction. The points and fees condition under §1026.43(g)(3)(iv) is satisfied if a creditor reasonably believes, based on information known to the creditor at the time the offer is made, that the amount of points and fees to be charged for an alternative covered transaction without a prepayment penalty will be less than or equal to the amount of points and fees allowed for a qualified mortgage under §1026.43(e)(2)(iii).

Paragraph 43(g)(3)(v).

1. *Transactions for which the consumer likely qualifies.* Under §1026.43(g)(3)(v), the alternative covered transaction without a prepayment penalty the creditor must offer under §1026.43(g)(3) must be a transaction for which the creditor has a good faith belief the consumer likely qualifies. For example, assume the creditor has a good faith belief the consumer can afford monthly payments of up to $800. If the creditor offers the consumer a fixed-rate mortgage with a prepayment penalty for which monthly payments are $700 and an alternative covered transaction without a prepayment penalty for which monthly payments are $900, the requirements of §1026.43(g)(3)(v) are not met. The creditor's belief that the consumer likely qualifies for the covered transaction without a prepayment penalty should be based on the information known to the creditor at the time the creditor offers the transaction. In making this determination, the creditor may rely on information provided by the consumer, even if the information subsequently is determined to be inaccurate.

43(g)(4) Offer through a mortgage broker.

1. *Rate sheet.* Under §1026.43(g)(4), where the creditor offers covered transactions with a prepayment penalty to consumers through a mortgage broker, as defined in §1026.36(a)(2), the creditor must present the mortgage broker an alternative covered transaction that satisfies the requirements of

§1026.43(g)(3). Creditors may comply with this requirement by providing a rate sheet to the mortgage broker that states the terms of such an alternative covered transaction without a prepayment penalty.

2. *Alternative to creditor's offer*. Section 1026.43(g)(4)(ii) requires that the creditor provide, by agreement, for the mortgage broker to present the consumer an alternative covered transaction that satisfies the requirements of §1026.43(g)(3) offered by either the creditor or by another creditor, if the other creditor offers a covered transaction with a lower interest rate or a lower total dollar amount of discount points and origination points or fees. The agreement may provide for the mortgage broker to present both the creditor's covered transaction and an alternative covered transaction offered by another creditor with a lower interest rate or a lower total dollar amount of origination discount points and points or fees. See comment 36(e)(3)–3 for guidance in determining which step-rate mortgage has a lower interest rate.

3. *Agreement*. The creditor's agreement with a mortgage broker for purposes of §1026.43(g)(4) may be part of another agreement with the mortgage broker, for example, a compensation agreement. Thus, the creditor need not enter into a separate agreement with the mortgage broker with respect to each covered transaction with a prepayment penalty.

43(g)(5) Creditor that is a loan originator.

1. *Loan originator*. The definition of ''loan originator'' in §1026.36(a)(1) applies for purposes of §1026.43(g)(5). Thus, a 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.i and ii.

2. *Lower interest rate*. Under §1026.43(g)(5), a creditor that is a loan originator must present an alternative covered transaction without a prepayment penalty that satisfies the requirements of §1026.43(g)(3) offered by either the assignee for the covered transaction or another person, if that other person offers a transaction with a lower interest rate or a lower total dollar amount of origination points or fees or discount points. See comment 36(e)(3)–3 for guidance in determining which step-rate mortgage has a lower interest rate.

43(h) Evasion; open-end credit.

1. *Subject to closed-end credit rules*. Where a creditor documents a loan as open-end credit but the features and terms, or other circumstances, demonstrate that the loan does not meet the definition of open-end credit in §1026.2(a)(20), the loan is subject to the rules for closed-end credit, including §1026.43.

SUBPART F—SPECIAL RULES FOR PRIVATE EDUCATION LOANS

Section 1026.46—Special Disclosure Requirements for Private Education Loans

46(a) Coverage

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

46(b) Definitions

46(b)(1) Covered Educational Institution

1. *General*. A covered educational institution includes any educational institution that meets the definition of an institution of higher education in §1026.46(b)(2). An institution is also a covered educational institution if it otherwise meets the definition of an institution of higher education, except for its lack of accreditation. Such an institution may include, for example, a university or community college. It may also include an institution, whether accredited or unaccredited, offering instruction to prepare students for gainful employment in a recognized profession, such as flying, culinary arts, or dental assistance. A covered educational institution does not include elementary or secondary schools.

2. *Agent*. For purposes of §1026.46(b)(1), the term agent means an institution-affiliated organization as defined by Section 151 of the Higher Education Act of 1965 (20 U.S.C 1019) or an officer or employee of an institution-affiliated organization. Under Section 151 of the Higher Education Act, an institution-affiliated organization means any organization that is directly or indirectly related to a covered institution and is engaged in the

practice of recommending, promoting, or endorsing education loans for students attending the covered institution or the families of such students. An institution-affiliated organization may include an alumni organization, athletic organization, foundation, or social, academic, or professional organization, of a covered institution, but does not include any creditor with respect to any private education loan made by that creditor.

46(b)(2) Institution of Higher Education

1. *General.* An institution of higher education includes any institution that meets the definitions contained in sections 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001–1002) and implementing Department of Education regulations (34 CFR 600). Such an institution may include, for example, a university or community college. It may also include an institution offering instruction to prepare students for gainful employment in a recognized profession, such as flying, culinary arts, or dental assistance. An institution of higher education does not include elementary or secondary schools.

46(b)(3) Postsecondary Educational Expenses

1. *General.* The examples listed in §1026.46(b)(3) are illustrative only. The full list of postsecondary educational expenses is contained in section 472 of the Higher Education Act of 1965 (20 U.S.C. 1087ll).

46(b)(4) Preferred Lender Arrangement

1. *General.* The term ''preferred lender arrangement'' is defined in section 151 of the Higher Education Act of 1965 (20 U.S.C. 1019). The term refers to an arrangement or agreement between a creditor and a covered educational institution (or an institution-affiliated organization as defined by section 151 of the Higher Education Act of 1965 (20 U.S.C 1019)) under which a creditor provides private education loans to consumers for students attending the covered educational institution and the covered educational institution recommends, promotes, or endorses the private education loan products of the creditor. It does not include arrangements or agreements with respect to Federal Direct Stafford/Ford loans, or Federal PLUS loans made under the Federal PLUS auction pilot program.

46(b)(5) Private Education Loan

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

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

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

iii. *Examples.* The creditor must comply only if the extension of credit also meets the other parts of the definition of private education loan. For example, if the creditor uses a single application form for both open-end and closed-end credit, and the consumer applies for open-end credit to be used for postsecondary educational expenses, the extension of credit is not covered. Similarly, if the consumer indicates the extension of credit will be used for educational expenses that are not postsecondary educational expenses, such as elementary or secondary educational expenses, the extension of credit is not covered. These examples are only illustrative, not exhaustive.

3. *Short-term loans.* Some covered educational institutions offer loans to students with terms of 90 days or less to assist the student in paying for educational expenses, usually while the student waits for other funds to be disbursed. Under §1026.46(b)(5)(iv)(A) such loans are not considered private education loans, even if interest is charged on the credit balance. (Because these loans charge interest, they are not covered by the exception under §1026.46(b)(5)(iv)(B).) However, these loans are extensions of credit subject to the requirements of §§1026.17 and 18. The legal agreement may provide that repayment is required when the consumer or the educational institution receives certain funds.

If, under the terms of the legal obligation, repayment of the loan is required when the certain funds are received by the consumer or the educational institution (such as by deposit into the consumer's or educational institution's account), the disclosures should be based on the creditor's estimate of the time the funds will be delivered.

4. *Billing plans.* Some covered educational institutions offer billing plans that permit a consumer to make payments in installments. Such plans are not considered private education loans, if an interest rate will not be applied to the credit balance and the term of the extension of credit is one year or less, even if the plan is payable in more than four installments. However, such plans may be extensions of credit subject to the requirements of §§1026.17 and 1026.18.

46(c) Form of Disclosures

1. *Form of disclosures—relation to other sections.* Creditors must make the disclosures required under this subpart in accordance with §1026.46(c). Section 1026.46(c)(2) requires that the disclosures be grouped together and segregated from everything else. In complying with this requirement, creditors may follow the rules in §1026.17, except where specifically provided otherwise. For example, although §1026.17(b) requires creditors to provide only one set of disclosures before consummation of the transaction, §§1026.47(b) and (c) require that the creditor provide the disclosures under §1026.18 both upon approval and after the consumer accepts the loan.

46(c)(3) Electronic Disclosures

1. *Application and solicitation disclosures—electronic disclosures.* If the disclosures required under §1026.47(a) are provided electronically, they must be provided on or with the application or solicitation reply form. Electronic disclosures are deemed to be on or with an application or solicitation if they meet one of the following conditions:

i. They automatically appear on the screen when the application or solicitation reply form appears;

ii. They are located on the same Web "page" as the application or solicitation reply form without necessarily appearing on the initial screen, if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable; or

iii. They are posted on a Web site and the application or solicitation reply form is linked to the disclosures in a manner that prevents the consumer from by passing the disclosures before submitting the application or reply form.

46(d) Timing of Disclosures

1. *Receipt of disclosures.* Under §1026.46(d)(4), if the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed. For purposes of §1026.46(d)(4), "business day" means all calendar days except Sundays and the legal public holidays referred to in §1026.2(a)(6). *See* comment 2(a)(6)–2. For example, if the creditor places the disclosures in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8.

46(d)(1) Application or Solicitation Disclosures

1. *Invitations to apply.* A creditor may contact a consumer who has not been pre-selected for a private education loan about taking out a loan (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a contact does not meet the definition of solicitation, nor is it covered by this subpart, unless the contact itself includes the following:

i. An application form in a direct mailing, electronic communication or a single application form as a "take-one" (in racks in public locations, for example);

ii. An oral application in a telephone contact; or

iii. An application in an in-person contact.

46(d)(2) Approval Disclosures

1. *Timing.* The creditor must provide the disclosures required by §1026.47(b) at the time the creditor provides to the consumer any notice that the loan has been approved. However, nothing in this section prevents the creditor from communicating to the consumer that additional information is required from the consumer before approval may be granted. In such a case, a creditor is not required to provide the disclosures at that time. If the creditor communicates notice of approval to the consumer by mail, the disclosures must be mailed at the same time as the notice of approval. If the creditor communicates notice of approval by telephone, the creditor must place the disclosures in the mail within three business days of the telephone call. If the creditor communicates notice of approval in electronic form, the creditor may provide the disclosures in electronic form. If the creditor has complied 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 creditor may provide the disclosures solely in electronic form; otherwise, the creditor must place the disclosures in the mail within three business days of the communication.

46(g) Effect of Subsequent Events

1. *Approval disclosures.* Inaccuracies in the disclosures required under §1026.47(b) are not violations if attributable to events occurring after disclosures are made, although creditors are restricted under §1026.48(c)(2) from making certain changes to the loan's rate or terms after the creditor provides an approval disclosure to a consumer. Since creditors are required provide the final disclosures under §1026.47(c), they need not make new approval disclosures in response to an event that occurs after the creditor delivers the required approval disclosures, except as specified under §1026.48(c)(4). For example, at the time the approval disclosures are provided, the creditor may not know the precise disbursement date of the loan funds and must provide estimated disclosures based on the best information reasonably available and labeled as an estimate. If, after the approval disclosures are provided, the creditor learns from the educational institution the precise disbursement date, new approval disclosures would not be required, unless specifically required under §1026.48(c)(4) if other changes are made. Similarly, the creditor may not know the precise amounts of each loan to be consolidated in a consolidation loan transaction and information about the precise amounts would not require new approval disclosures, unless specifically required under §1026.48(c)(4) if other changes are made.

2. *Final disclosures.* Inaccuracies in the disclosures required under §1026.47(c) are not violations if attributable to events occurring after disclosures are made. For example, if the consumer initially chooses to defer payment of principal and interest while enrolled in a covered educational institution, but later chooses to make payments while enrolled, such a change does not make the original disclosures inaccurate.

Section 1026.47—Content of Disclosures

1. *As applicable.* The disclosures required by this subpart need be made only as applicable, unless specifically required otherwise. The creditor need not provide any disclosure that is not applicable to a particular transaction. For example, in a transaction consolidating private education loans, or in transactions under §1026.46(a) for which compliance with this subpart is optional, the creditor need not disclose the information under §§1026.47(a)(6), and (b)(4), and any other information otherwise required to be disclosed under this subpart that is not applicable to the transaction. Similarly, creditors making loans to consumers where the student is not attending an institution of higher education, as defined in §1026.46(b)(2), need not provide the disclosures regarding the self-certification form in §1026.47(a)(8).

47(a) Application or Solicitation Disclosures

Paragraph 47(a)(1)(i)

1. *Rates actually offered.* The disclosure may state only those rates that the creditor is actually prepared to offer. For example, a creditor may not disclose a very low interest rate that will not in fact be offered at any time. For a loan with variable interest rates, the ranges of rates will be considered actually offered if:

i. For disclosures in applications or solicitations sent by direct mail, the rates were in effect within 60 days before mailing;

ii. For disclosures in applications or solicitations in electronic form, the rates were in effect within 30 days before the disclosures are sent to a consumer, or for disclosures made on an Internet Web site, within 30 days before being viewed by the public;

iii. For disclosures in printed applications or solicitations made available to the general public, the rates were in effect within 30 days before printing; or

iv. For disclosures provided orally in telephone applications or solicitations, the rates are currently available at the time the disclosures are provided.

2. *Creditworthiness and other factors.* If the rate will depend, at least in part, on a later determination of the consumer's creditworthiness or other factors, the disclosure must include a statement that the rate for which the consumer may qualify at approval will depend on the consumer's creditworthiness and other factors. The creditor may, but is not required to, specify any additional factors that it will use to determine the interest rate. For example, if the creditor will determine the interest rate based on information in the consumer's or cosigner's credit report and the type of school the consumer attends, the creditor may state, "Your interest rate will be based on your credit history and other factors (cosigner credit and school type)."

3. *Rates applicable to the loan.* For a variable-rate private education loan, the disclosure of the interest rate or range of rates must reflect the rate or rates calculated based on the index and margin that will be used to make interest rate adjustments for the loan. The creditor may provide a description of the index and margin or range of margins used to make interest rate adjustments, including a reference to a source, such as a newspaper, where the consumer may look up the index.

Paragraph 47(a)(1)(iii)

1. *Coverage.* The interest rate is considered variable if the terms of the legal obligation allow the creditor to increase the interest rate originally disclosed to the consumer and the requirements of §1026.47(a)(1)(iii) apply to all such transactions. The provisions do

not apply to increases resulting from delinquency (including late payment), default, assumption, or acceleration.

2. *Limitations.* The creditor must disclose how often the rate may change and any limit on the amount that the rate may increase at any one time. The creditor must also disclose any maximum rate over the life of the transaction. If the legal obligation between the parties does specify a maximum rate, the creditor must disclose any legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable maximum rate is in the form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. The creditor must also disclose that the consumer's actual rate may be higher or lower than the initial rates disclosed under §1026.47(a)(1)(i), if applicable.

Paragraph 47(a)(1)(iv)

1. *Cosigner or guarantor—changes in applicable interest rate.* The creditor must state whether the interest rate typically will be higher if the loan is not co-signed or guaranteed by a third party. The creditor is required to provide a statement of the effect on the interest rate and is not required to provide a numerical estimate of the effect on the interest rate. For example, a creditor may state: ''Rates are typically higher without a cosigner.''

47(a)(2) Fees and Default or Late Payment Costs

1. *Fees or range of fees.* The creditor must itemize fees required to obtain the private education loan. The creditor must give a single dollar amount for each fee, unless the fee is based on a percentage, in which case a percentage must be stated. If the exact amount of the fee is not known at the time of disclosure, the creditor may disclose the dollar amount or percentage for each fee as an estimated range.

2. *Fees required to obtain the private education loan.* The creditor must itemize the fees that the consumer must pay to obtain the private education loan. Fees disclosed include all finance charges under §1026.4, such as loan origination fees, credit report fees, and fees charged upon entering repayment, as well as fees not considered finance charges but required to obtain credit, such as application fees that are charged whether or not credit is extended. Fees disclosed include those paid by the consumer directly to the creditor and fees paid to third parties by the creditor on the consumer's behalf. Creditors are not required to disclose fees that apply if the consumer exercises an option under the loan agreement after consummation, such as fees for deferment, forbearance, or loan modification.

47(a)(3) Repayment Terms

1. *Loan term.* The term of the loan is the maximum period of time during which regularly scheduled payments of principal and interest will be due on the loan.

2. *Payment deferral options—general.* The creditor must describe the options that the consumer has under the loan agreement to defer payment on the loan. When there is no deferment option provided for the loan, the creditor must disclose that fact. Payment deferral options required to be disclosed include options for immediate deferral of payments, such as when the student is currently enrolled at a covered educational institution. The description may include of the length of the maximum initial in-school deferment period, the types of payments that may be deferred, and a description of any payments that are required during the deferment period. The creditor may, but need not, disclose any conditions applicable to the deferment option, such as that deferment is permitted only while the student is continuously enrolled in school. If payment deferral is not an option while the student is enrolled in school, the creditor may disclose that the consumer must begin repayment upon disbursement of the loan and that the consumer may not defer repayment while enrolled in school. If the creditor offers payment deferral options that may apply during the repayment period, such as an option to defer payments if the student returns to school to pursue an additional degree, the creditor must include a statement referring the consumer to the contract document or promissory note for more information.

3. *Payment deferral options—in school deferment.* For each payment deferral option applicable while the student is enrolled at a covered educational institution the creditor must disclose whether interest will accrue while the student is enrolled at a covered educational institution and, if interest does accrue, whether payment of interest may be deferred and added to the principal balance.

4. *Combination with cost estimate disclosure.* The disclosures of the loan term under §1026.47(a)(3)(i) and of the payment deferral options applicable while the student is enrolled at a covered educational institution under §§1026.47(a)(3)(ii) and (iii) may be combined with the disclosure of cost estimates required in §1026.47(a)(4). For example, the creditor may describe each payment deferral option in the same chart or table that provides the cost estimates for each payment deferral option. *See* appendix H–21.

5. *Bankruptcy limitations.* The creditor may comply with §1026.47(a)(3)(iv) by disclosing the following statement: ''If you file for

bankruptcy you may still be required to pay back this loan.''

47(a)(4) Cost Estimates

1. *Total cost of the loan.* For purposes of § 1026.47(a)(4), the creditor must calculate the example of the total cost of the loan in accordance with the rules in § 1026.18(h) for calculating the loan's total of payments.

2. *Basis for estimates.* i. The creditor must calculate the total cost estimate by determining all finance charges that would be applicable to loans with the highest rate of interest required to be disclosed under § 1026.47(a)(1)(i). For example, if a creditor charges a range of origination fees from 0% to 3%, but the 3% origination fee would apply to loans with the highest initial rate, the lender must assume the 3% origination fee is charged. The creditor must base the total cost estimate on a total loan amount that includes all prepaid finance charges and results in a $10,000 amount financed. For example, if the prepaid finance charges are $600, the creditor must base the estimate on a $10,600 total loan amount and an amount financed of $10,000. The example must reflect an amount provided of $10,000. If the creditor only offers a particular private education loan for less than $10,000, the creditor may assume a loan amount that results in a $5,000 amount financed for that loan.

ii. If a prepaid finance charge is determined as a percentage of the amount financed, for purposes of the example, the creditor should assume that the fee is determined as a percentage of the total loan amount, even if this is not the creditor's usual practice. For example, suppose the consumer requires a disbursement of $10,000 and the creditor charges a 3% origination fee. In order to calculate the total cost example, the creditor must determine the loan amount that will result in a $10,000 amount financed after the 3% fee is assessed. In this example, the resulting loan amount would be $10,309.28. Assessing the 3% origination fee on the loan amount of $10,309.28 results in an origination fee of $309.28, which is withheld from the loan funds disbursed to the consumer. The principal loan amount of $10,309.28 minus the prepaid finance charge of $309.28 results in an amount financed of $10,000.

3. *Calculated for each option to defer interest payments.* The example must include an estimate of the total cost of the loan for each in-school deferral option disclosed in § 1026.47(a)(3)(iii). For example, if the creditor provides the consumer with the option to begin making principal and interest payments immediately, to defer principal payments but begin making interest-only payments immediately, or to defer all principal and interest payments while in school, the creditor is required to disclose three estimates of the total cost of the loan, one for each deferral option. If the creditor adds accrued interest to the loan balance (*i.e.*, interest is capitalized), the estimate of the total loan cost should be based on the capitalization method that the creditor actually uses for the loan. For instance, for each deferred payment option where the creditor would capitalize interest on a quarterly basis, the total loan cost must be calculated assuming interest capitalizes on a quarterly basis.

4. *Deferment period assumptions.* Creditors may use either of the following two methods for estimating the duration of in-school deferment periods:

i. For loan programs intended for educational expenses of undergraduate students, the creditor may assume that the consumer defers payments for a four-year matriculation period, plus the loan's maximum applicable grace period, if any. For all other loans, the creditor may assume that the consumer defers for a two-year matriculation period, plus the maximum applicable grace period, if any, or the maximum time the consumer may defer payments under the loan program, whichever is shorter.

ii. Alternatively, if the creditor knows that the student will be enrolled in a program with a standard duration, the creditor may assume that the consumer defers payments for the full duration of the program (plus any grace period). For example, if a creditor makes loans intended for students enrolled in a four-year medical school degree program, the creditor may assume that the consumer defers payments for four years plus the loan's maximum applicable grace period, if any. However, the creditor may not modify the disclosure to correspond to a particular student's situation. For example, even if the creditor knows that a student will be a second-year medical school student, the creditor must assume a four-year deferral period.

Paragraph 47(a)(6)(ii)

1. *Terms of Federal student loans.* The creditor must disclose the interest rates available under each program under title IV of the Higher Education Act of 1965 and whether the rates are fixed or variable, as prescribed in the Higher Education Act of 1965 (20 U.S.C. 1077a). Where the fixed interest rate for a loan varies by statute depending on the date of disbursement or receipt of application, the creditor must disclose only the interest rate as of the time the disclosure is provided.

Paragraph 47(a)(6)(iii)

1. *Web site address.* The creditor must include with this disclosure an appropriate U.S. Department of Education Web site address such as ''federalstudentaid.ed.gov.''

47(b) Approval Disclosures

47(b)(1) Interest Rate

1. *Variable rate disclosures.* The interest rate is considered variable if the terms of the legal obligation allow the creditor to increase the interest rate originally disclosed to the consumer. The provisions do not apply to increases resulting from delinquency (including late payment), default, assumption, or acceleration. In addition to disclosing the information required under §§1026.47(b)(ii) and (iii), the creditor must disclose the information required under §§1026.18(f)(1)(i) and (iii)—the circumstances under which the rate may increase and the effect of an increase, respectively. The creditor is required to disclose the maximum monthly payment based on the maximum possible rate in §1026.47(b)(3)(viii), and the creditor need not disclose a separate example of the payment terms that would result from an increase under §1026.18(f)(1)(iv).

2. *Limitations on rate adjustments.* The creditor must disclose how often the rate may change and any limit on the amount that the rate may increase at any one time. The creditor must also disclose any maximum rate over the life of the transaction. If the legal obligation between the parties does provide a maximum rate, the creditor must disclose any legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations. However, if the applicable maximum rate is in the form of a legal limit, such as a state's usury cap (rather than a maximum rate specified in the legal obligation between the parties), the creditor must disclose that the maximum rate is determined by applicable law. Compliance with §1026.18(f)(1)(ii) (requiring disclosure of any limitations on the increase of the interest rate) does not necessarily constitute compliance with this section. Specifically, this section requires that if there are no limitations on interest rate increases, the creditor must disclose that fact. By contrast, comment 18(f)(1)(ii)–1 states that if there are no limitations the creditor need not disclose that fact. In addition, under this section, limitations on rate increases include, rather than exclude, legal limits in the nature of usury or rate ceilings under state or Federal statutes or regulations.

3. *Rates applicable to the loan.* For a variable-rate loan, the disclosure of the interest rate must reflect the index and margin that will be used to make interest rate adjustments for the loan. The creditor may provide a description of the index and margin or range of margins used to make interest rate adjustments, including a reference to a source, such as a newspaper, where the consumer may look up the index.

47(b)(2) Fees and Default or Late Payment Costs

1. *Fees and default or late payment costs.* Creditors may follow the commentary for §1026.47(a)(2) in complying with §1026.47(b)(2). Creditors must disclose the late payment fees required to be disclosed under §1026.18(l) as part of the disclosure required under §1026.47(b)(2)(ii). If the creditor includes the itemization of the amount financed under §1026.18(c)(1), any fees disclosed as part of the itemization need not be separately disclosed elsewhere.

47(b)(3) Repayment Terms

1. *Principal amount.* The principal amount must equal what the face amount of the note would be as of the time of approval, and it must be labeled ''Total Loan Amount.'' *See* appendix H–18. This amount may be different from the ''principal loan amount'' used to calculate the amount financed under comment 18(b)(3)–1, because the creditor has the option under that comment of using a ''principal loan amount'' that is different from the face amount of the note. If the creditor elects to provide an itemization of the amount financed under §1026.18(c)(1) the creditor need not disclose the amount financed elsewhere.

2. *Loan term.* The term of the loan is the maximum period of time during which regularly scheduled payments of principal and interest are due on the loan.

3. *Payment deferral options applicable to the consumer.* Creditors may follow the commentary for §1026.47(a)(3)(ii) in complying with §1026.47(b)(3)(iii).

4. *Payments required during enrollment.* Required payments that must be disclosed include payments of interest and principal, interest only, or other payments that the consumer must make during the time that the student is enrolled. Compliance with §1026.18(g) constitutes compliance with §1026.47(b)(3)(iv).

5. *Bankruptcy limitations.* The creditor may comply with §1026.47(b)(3)(vi) by disclosing the following statement: ''If you file for bankruptcy you may still be required to pay back this loan.''

6. *An estimate of the total amount for repayment.* The creditor must disclose an estimate of the total amount for repayment at two interest rates:

i. The interest rate in effect on the date of approval. Compliance with the total of payments disclosure requirement of §1026.18(h) constitutes compliance with this requirement.

ii. The maximum possible rate of interest applicable to the loan or, if the maximum rate cannot be determined, a rate of 25%. If the legal obligation between the parties specifies a maximum rate of interest, the creditor must calculate the total amount for repayment based on that rate. If the legal obligation does not specify a maximum rate but a usury or rate ceiling under state or Federal statutes or regulations applies, the creditor must use that rate. If a there is no maximum rate in the legal obligation or under a usury or rate ceiling, the creditor must base the disclosure on a rate of 25% and must disclose that there is no maximum rate and that the total amount for repayment disclosed under §1026.47(b)(3)(vii)(B) is an estimate and will be higher if the applicable interest rate increases.

iii. If terms of the legal obligation provide a limitation on the amount that the interest rate may increase at any one time, the creditor may reflect the effect of the interest rate limitation in calculating the total cost example. For example, if the legal obligation provides that the interest rate may not increase by more than three percentage points each year, the creditor may assume that the rate increases by three percentage points each year until it reaches that maximum possible rate, or if a maximum rate cannot be determined, an interest rate of 25%.

7. *The maximum monthly payment.* The creditor must disclose the maximum payment that the consumer could be required to make under the loan agreement, calculated using the maximum rate of interest applicable to the loan, or if the maximum rate cannot be determined, a rate of 25%. The creditor must determine and disclose the maximum rate of interest in accordance with comments 47(b)(3)–6.ii and 47(b)(3)–6.iii. In addition, if a maximum rate cannot be determined, the creditor must state that there is no maximum rate and that the monthly payment amounts disclosed under §1026.47(b)(3)(viii) are estimates and will be higher if the applicable interest rate increases.

47(b)(4) Alternatives to Private Education Loans

1. *General.* Creditors may use the guidance provided in the commentary for §1026.47(a)(6) in complying with §1026.47(b)(4).

47(b)(5) Rights of the Consumer

1. *Notice of acceptance period.* The disclosure that the consumer may accept the terms of the loan until the acceptance period under §1026.48(c)(1) has expired must include the specific date on which the acceptance period expires and state that the consumer may accept the terms of the loan until that date. Under §1026.48(c)(1), the date on which the acceptance period expires is based on when the consumer receives the disclosures. If the creditor mails the disclosures, the consumer is considered to have received them three business days after the creditor places the disclosures in the mail *See* §1026.46(d)(4). If the creditor provides an acceptance period longer than the minimum 30 calendar days, the disclosure must reflect the later date. The disclosure must also specify the method or methods by which the consumer may communicate acceptance.

47(c) Final Disclosures

1. *Notice of right to cancel.* The disclosure of the right to cancel must include the specific date on which the three-day cancellation period expires and state that the consumer has a right to cancel by that date. *See* comments 48(d)–1 and –2. For example, if the disclosures were mailed to the consumer on Friday, June 1, and the consumer is deemed to receive them on Tuesday, June 5, the creditor could state: ''You have a right to cancel this transaction, without penalty, by midnight on June 8, 2009. No funds will be disbursed to you or to your school until after this time. You may cancel by calling us at 800–XXX–XXXX.'' If the creditor permits cancellation by mail, the statement must specify that the consumer's mailed request will be deemed timely if placed in the mail not later than the cancellation date specified on the disclosure. The disclosure must also specify the method or methods by which the consumer may cancel.

2. *More conspicuous.* The statement of the right to cancel must be more conspicuous than any other disclosure required under this section except for the finance charge, the interest rate, and the creditor's identity. *See* §1026.46(c)(2)(iii). The statement will be deemed to be made more conspicuous if it is segregated from other disclosures, placed near or at the top of the disclosure document, and highlighted in relation to other required disclosures. For example, the statement may be outlined with a prominent, noticeable box; printed in contrasting color; printed in larger type, bold print, or different type face; underlined; or set off with asterisks.

Section 1026.48—Limitations on Private Education Loans

1. *Co-branding—definition of marketing.* The prohibition on co-branding in §§1026.48(a) and (b) applies to the marketing of private education loans. The term marketing includes any advertisement under §1026.2(a)(2). In addition, the term marketing includes any document provided by the creditor to the consumer related to a specific transaction, such as an application or solicitation, a promissory note or a contract provided to the consumer. For example, prominently displaying the name of the educational institution at the top of the application form or promissory note without mentioning the name of the creditor, such as by naming the loan product the ''University of ABC Loan,'' would be prohibited.2. *Implied endorsement.* A suggestion that a private education loan is offered or made by the covered educational

institution instead of by the creditor is included in the prohibition on implying that the covered educational institution endorses the private education loan under §1026.48(a)(1). For example, naming the loan the ''University of ABC Loan,'' suggests that the loan is offered by the educational institution. However, the use of a creditor's full name, even if that name includes the name of a covered educational institution, does not imply endorsement. For example, a credit union whose name includes the name of a covered educational institution is not prohibited from using its own name. In addition, the authorized use of a state seal by a state or an institution of higher education in the marketing of state education loan products does not imply endorsement.

3. *Disclosure.* i. A creditor is considered to have complied with §1026.48(a)(2) if the creditor's marketing contains a clear and conspicuous statement, equally prominent and closely proximate to the reference to the covered educational institution, using the name of the creditor and the name of the covered educational institution that the covered educational institution does not endorse the creditor's loans and that the creditor is not affiliated with the covered educational institution. For example, ''[Name of creditor]'s loans are not endorsed by [name of school] and [name of creditor] is not affiliated with [name of school].'' The statement is considered to be equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the educational institution, without any intervening text or graphical displays.

ii. A creditor is considered to have complied with §1026.48(b) if the creditor's marketing contains a clear and conspicuous statement, equally prominent and closely proximate to the reference to the covered educational institution, using the name of the creditor's loan or loan program, the name of the covered educational institution, and the name of the creditor, that the creditor's loans are not offered or made by the covered educational institution, but are made by the creditor. For example, ''[Name of loan or loan program] is not being offered or made by [name of school], but by [name of creditor].'' The statement is considered to be equally prominent and closely proximate if it is the same type size and is located immediately next to or directly above or below the reference to the educational institution, without any intervening text or graphical displays.

48(c) Consumer's Right to Accept

1. *30 day acceptance period.* The creditor must provide the consumer with at least 30 calendar days from the date the consumer receives the disclosures required under §1026.47(b) to accept the terms of the loan. The creditor may provide the consumer with a longer period of time. If the creditor places the disclosures in the mail, the consumer is considered to have received them three business days after they are mailed under §1026.46(d)(4). For purposes of determining when a consumer receives mailed disclosures, ''business day'' means all calendar days except Sundays and the legal public holidays referred to in §1026.2(a)(6). *See* comment 46(d)–1. The consumer may accept the loan at any time before the end of the 30-day period.

2. *Method of acceptance.* The creditor must specify a method or methods by which the consumer can accept the loan at any time within the 30-day acceptance period. The creditor may require the consumer to communicate acceptance orally or in writing. Acceptance may also be communicated electronically, but electronic communication must not be the only means provided for the consumer to communicate acceptance unless the creditor has provided the approval disclosure electronically in 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.*). If acceptance by mail is allowed, the consumer's communication of acceptance is considered timely if placed in the mail within the 30-day period.

3. *Prohibition on changes to rates and terms.* The prohibition on changes to the rates and terms of the loan applies to changes that affect those terms that are required to be disclosed under §§1026.47(b) and (c). The creditor is permitted to make changes that do not affect any of the terms disclosed to the consumer under those sections.

4. *Permissible changes to rates and terms—redisclosure not required.* Creditors are not required to consummate a loan where the extension of credit would be prohibited by law or where the creditor has reason to believe that the consumer has committed fraud. A creditor may make changes to the rate based on adjustments to the index used for the loan and changes that will unequivocally benefit the consumer. For example, a creditor is permitted to reduce the interest rate or lower the amount of a fee. A creditor may also reduce the loan amount based on a certification or other information received from a covered educational institution or from the consumer indicating that the student's cost of attendance has decreased or the amount of other financial aid has increased. A creditor may also withdraw the loan approval based on a certification or other information received from a covered educational institution or from the consumer indicating that the student is not enrolled in the institution. For these changes permitted by §1026.48(c)(3), the creditor is not required to provide a new set of approval disclosures required under

§1026.47(b) or provide the consumer with a new 30-day acceptance period under §1026.48(c)(1). The creditor must provide the final disclosures under §1026.47(c).

5. *Permissible changes to rates and terms—school certification.* If the creditor reduces the loan amount based on information that the student's cost of attendance has decreased or the amount of other financial aid has increased, the creditor may make certain corresponding changes to the rate and terms. The creditor may change the rate or terms to those that the consumer would have received if the consumer had applied for the reduced loan amount. For example, assume a consumer applies for, and is approved for, a $10,000 loan at a 7% interest rate. However, after the consumer receives the approval disclosures, the consumer's school certifies that the consumer's financial need is only $8,000. The creditor may reduce the loan amount for which the consumer is approved to $8,000. The creditor may also, for example, increase the interest rate on the loan to 7.125%, but only if the consumer would have received a rate of 7.125% if the consumer had originally applied for an $8,000 loan.

6. *Permissible changes to rates and terms—redisclosure required.* A creditor may make changes to the interest rate or terms to accommodate a request from a consumer. For example, assume a consumer applies for a $10,000 loan and is approved for the $10,000 amount at an interest rate of 6%. After the creditor has provided the approval disclosures, the consumer's financial need increases, and the consumer requests to a loan amount of $15,000. In this situation, the creditor is permitted to offer a $15,000 loan, and to make any other changes such as raising the interest rate to 7%, in response to the consumer's request. The creditor must provide a new set of disclosures under §1026.47(b) and provide the consumer with 30 days to accept the offer under §1026.48(c) for the $15,000 loan offered in response to the consumer's request. However, because the consumer may choose not to accept the offer for the $15,000 loan at the higher interest rate, the creditor may not withdraw or change the rate or terms of the offer for the $10,000 loan, except as permitted under §1026.48(c)(3), unless the consumer accepts the $15,000 loan.

48(d) Consumer's Right to Cancel

1. *Right to cancel.* If the creditor mails the disclosures, the disclosures are considered received by the consumer three business days after the disclosures were mailed. For purposes of determining when the consumer receives the disclosures, the term ''business day'' is defined as all calendar days except Sunday and the legal public holidays referred to in §1026.2(a)(6). *See* §1026.46(d)(4). The consumer has three business days from the date on which the disclosures are deemed received to cancel the loan. For example, if the creditor places the disclosures in the mail on Thursday, June 4, the disclosures are considered received on Monday, June 8. The consumer may cancel any time before midnight Thursday, June 11. The creditor may provide the consumer with more time to cancel the loan than the minimum three business days required under this section. If the creditor provides the consumer with a longer period of time in which to cancel the loan, the creditor may disburse the funds three business days after the consumer has received the disclosures required under this section, but the creditor must honor the consumer's later timely cancellation request.

2. *Method of cancellation.* The creditor must specify a method or methods by which the consumer may cancel. For example, the creditor may require the consumer to communicate cancellation orally or in writing. Cancellation may also be communicated electronically, but electronic communication must not be the only means by which the consumer may cancel unless the creditor provided the final disclosure electronically in 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.*). If the creditor allows cancellation by mail, the creditor must specify an address or the name and address of an agent of the creditor to receive notice of cancellation. The creditor must wait to disburse funds until it is reasonably satisfied that the consumer has not canceled. For example, the creditor may satisfy itself by waiting a reasonable time after expiration of the cancellation period to allow for delivery of a mailed notice. The creditor may also satisfy itself by obtaining a written statement from the consumer, which must be provided to and signed by the consumer only at the end of the three-day period, that the right has not been exercised.

3. *Cancellation without penalty.* The creditor may not charge the consumer a fee for exercising the right to cancel under §1026.48(d). The prohibition extends only to fees charged specifically for canceling the loan. The creditor is not required to refund fees, such as an application fee, that are charged to all consumers whether or not the consumer cancels the loan.

48(e) Self-Certification Form

1. *General.* Section 1026.48(e) requires that the creditor obtain the self-certification form, signed by the consumer, before consummating the private education loan. The rule applies only to private education loans that will be used for the postsecondary educational expenses of a student while that student is attending an institution of higher education as defined in §1026.46(b)(2). It does

not apply to all covered educational institutions. The requirement applies even if the student is not currently attending an institution of higher education, but will use the loan proceeds for postsecondary educational expenses while attending such institution. For example, a creditor is required to obtain the form before consummating a private education loan provided to a high school senior for expenses to be incurred during the consumer's first year of college. This provision does not require that the creditor obtain the self-certification form in instances where the loan is not intended for a student attending an institution of higher education, such as when the consumer is consolidating loans after graduation. Section 155(a)(2) of the Higher Education Act of 1965 provides that the form shall be made available to the consumer by the relevant institution of higher education. However, §1026.48(e) provides flexibility to institutions of higher education and creditors as to how the completed self-certification form is provided to the lender. The creditor may receive the form directly from the consumer, or the creditor may receive the form from the consumer through the institution of higher education. In addition, the creditor may provide the form, and the information the consumer will require to complete the form, directly to the consumer.

2. *Electronic signature.* Under section 155(a)(2) of the Higher Education Act of 1965, the institution of higher education may provide the self-certification form to the consumer in written or electronic form. Under section 155(a)(5) of the Higher Education Act of 1965, the form may be signed electronically by the consumer. A creditor may accept the self-certification form from the consumer in electronic form. A consumer's electronic signature is considered valid if it meets the requirements issued by the Department of Education under section 155(a)(5) of the Higher Education Act of 1965.

48(f) Provision of Information by Preferred Lenders

1. *General.* Section 1026.48(f) does not specify the format in which creditors must provide the required information to the covered educational institution. Creditors may choose to provide only the required information or may provide copies of the form or forms the lender uses to comply with §1026.47(a). A creditor is only required to provide the required information if the creditor is aware that it is a party to a preferred lender arrangement. For example, if a creditor is placed on a covered educational institution's preferred lender list without the creditor's knowledge, the creditor is not required to comply with §1026.48(f).

SUBPART G—SPECIAL RULES APPLICABLE TO CREDIT CARD ACCOUNTS AND OPEN-END CREDIT OFFERED TO COLLEGE STUDENTS

Section 1026.51 Ability To Pay

51(a) General Rule

51(a)(1)(i) Consideration of Ability to Pay

1. *Consideration of additional factors.* Section 1026.51(a) requires a card issuer to consider a consumer's ability to make the required minimum periodic payments under the terms of an account based on the consumer's income or assets and current obligations. The card issuer may also consider consumer reports, credit scores, and other factors, consistent with Regulation B (12 CFR part 1002).

2. *Ability to pay as of application or consideration of increase.* A card issuer complies with §1026.51(a) if it bases its consideration of a consumer's ability to make the required minimum periodic payments on the facts and circumstances known to the card issuer at the time the consumer applies to open the credit card account or when the card issuer considers increasing the credit line on an existing account.

3. *Credit line increase.* When a card issuer considers increasing the credit line on an existing account, §1026.51(a) applies whether the consideration is based upon a request of the consumer or is initiated by the card issuer.

4. *Consideration of income and assets.* For purposes of §1026.51(a):

i. A card issuer may consider any current or reasonably expected income or assets of the consumer or consumers who are applying for a new account or will be liable for debts incurred on that account, including a cosigner or guarantor. Similarly, when a card issuer is considering whether to increase the credit limit on an existing account, the card issuer may consider any current or reasonably expected income or assets of the consumer or consumers who are accountholders, cosigners, or guarantors, and are liable for debts incurred on that account. In both of these circumstances, a card issuer may treat any income and assets to which an applicant, accountholder, joint applicant, cosigner, or guarantor who is or will be liable for debts incurred on the account has a reasonable expectation of access as the applicant's current or reasonably expected income—but is not required to do so. A card issuer may instead limit its consideration of a consumer's current or reasonably expected income or assets to the consumer's independent income or assets as discussed in comments 51(b)(1)(i)–1 and 51(b)(2)–2. Although these comments clarify the independent ability-to-pay requirement that governs applications from consumers under 21, they provide guidance regarding the use of "independent income and assets'' as an underwriting criterion under §1026.51(a). For example, comment 51(b)(1)(i)–1 explains that card issuers may not consider income or assets to which applicants under 21 have only a reasonable expectation of access. An issuer who chooses to comply with §1026.51(a) by limiting its consideration to applicants' independent income and assets likewise would not consider income or assets to which applicants 21 or older have only a reasonable expectation of access.

ii. Current or reasonably expected income includes, for example, current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income include interest or dividends, retirement benefits, public assistance, alimony, child support, and separate maintenance payments. Proceeds from student loans may be considered as current or reasonably expected income only to the extent that those proceeds exceed the amount disbursed or owed to an educational institution for tuition and other expenses. Current or reasonably expected income also includes income that is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or joint account). Assets include, for example, savings accounts and investments.

iii. Consideration of the income or assets of authorized users, household members, or other persons who are not liable for debts incurred on the account does not satisfy the requirement to consider the consumer's current or reasonably expected income or assets, unless a Federal or State statute or regulation grants a consumer who is liable for debts incurred on the account an ownership interest in such income and assets (*e.g.*, joint ownership granted under State community property laws), such income is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or a joint account), or the consumer has a reasonable expectation of access to such income or assets even though the consumer does not have a current or expected ownership interest in the income or assets. See comment 51(a)(1)-6 for examples of non-applicant income to which a consumer has a reasonable expectation of access.

5. *Information regarding income and assets*. For purposes of §1026.51(a), a card issuer may consider the consumer's current or reasonably expected income and assets based on the following information:

i. Information provided by the consumer in connection with the account, including information provided by the consumer through the application process. For example, card issuers may rely without further inquiry on information provided by applicants in response to a request for ''salary,'' ''income,'' ''assets,'' ''available income,'' ''accessible income,'' or other language requesting that the applicant provide information regarding current or reasonably expected income or assets or any income or assets to which the applicant has a reasonable expectation of access. However, card issuers may not rely solely on information provided in response to a request for ''household income.'' In that case, the card issuer would need to obtain additional information about an applicant's current or reasonably expected income, including income and assets to which the applicant has a reasonable expectation of access (such as by contacting the applicant). See comments 51(a)(1)–4, –5, and –6 for additional guidance on determining the consumer's current or reasonably expected income under §1026.51(a)(1). See comment 51(a)(1)–9 for guidance regarding the use of a single, common application form or process for all credit card applicants, regardless of age.

ii. Information provided by the consumer in connection with any other financial relationship the card issuer or its affiliates have with the consumer (subject to any applicable information-sharing rules).

iii. Information obtained through third parties (subject to any applicable information-sharing rules).

iv. Information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets, including any income or assets to which the consumer has a reasonable expectation of access.

6. *Examples of considering income*. Assume that an applicant is not employed and that the applicant is age 21 or older so §1026.51(b) does not apply.

i. If a non-applicant's salary or other income is deposited regularly into a joint account shared with the applicant, a card issuer is permitted to consider the amount of the non-applicant's income that is being deposited regularly into the account to be the applicant's current or reasonably expected income for purposes of §1026.51(a).

ii. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly transfers a portion of that income into the applicant's individual deposit account. A card issuer is permitted to consider the amount of the non-applicant's income that is being transferred regularly into the applicant's account to be the applicant's current or reasonably expected income for purposes of §1026.51(a).

iii. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly uses a portion of that income to pay for the applicant's expenses. A card issuer is permitted to consider the amount of the non-applicant's income that is used regularly to pay for the applicant's expenses to be the applicant's current or reasonably expected income for purposes of § 1026.51(a) because the applicant has a reasonable expectation of access to that income.

iv. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access, the non-applicant does not regularly use that income to pay for the applicant's expenses, and no Federal or State statute or regulation grants the applicant an ownership interest in that income. A card issuer is not permitted to consider the non-applicant's income as the applicant's current or reasonably expected income for purposes of § 1026.51(a) because the applicant does not have a reasonable expectation of access to the non-applicant's income.

7. *Current obligations.* A card issuer may consider the consumer's current obligations based on information provided by the consumer or in a consumer report. In evaluating a consumer's current obligations, a card issuer need not assume that credit lines for other obligations are fully utilized.

8. *Joint applicants and joint accountholders.* With respect to the opening of a joint account for two or more consumers or a credit line increase on such an account, the card issuer may consider the collective ability of all persons who are or will be liable for debts incurred on the account to make the required payments.

9. *Single application.* A card issuer may use a single, common application form or process for all credit card applicants, regardless of age. A card issuer may rely without further verification on income and asset information provided by applicants through such an application, so long as the application questions gather sufficient information to allow the card issuer to satisfy the requirements of both § 1026.51(a) and (b), depending on whether a particular applicant has reached the age of 21. For example, a card issuer might provide two separate line items on its application form, one prompting applicants to provide their "personal income," and the other prompting applicants for "available income." A card issuer might also prompt applicants, regardless of age, using only the term "income" and satisfy the requirements of both § 1026.51(a) and (b).

51(a)(2) Minimum Periodic Payments

1. *Applicable minimum payment formula.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 1026.51(a)(2)(ii), if the account has or may have a promotional program, such as a deferred payment or similar program, where there is no applicable minimum payment formula during the promotional period, the issuer must estimate the required minimum periodic payment based on the minimum payment formula that will apply when the promotion ends.

2. *Interest rate for purchases.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 1026.51(a)(2)(ii), if the interest rate for purchases is or may be a promotional rate, the issuer must use the post-promotional rate to estimate interest charges.

3. *Mandatory fees.* For purposes of estimating required minimum periodic payments under the safe harbor set forth in § 1026.51(a)(2)(ii), mandatory fees that must be assumed to be charged include those fees the card issuer knows the consumer will be required to pay under the terms of the account if the account is opened, such as an annual fee. If a mandatory fee is a promotional fee (as defined in § 1026.16(g)), the issuer must use the post-promotional fee amount for purposes of § 1026.51(a)(2)(ii).

51(b) Rules Affecting Young Consumers

1. *Age as of date of application or consideration of credit line increase.* Sections 1026.51(b)(1) and (b)(2) apply only to a consumer who has not attained the age of 21 as of the date of submission of the application under § 1026.51(b)(1) or the date the credit line increase is requested by the consumer (or if no request has been made, the date the credit line increase is considered by the card issuer) under § 1026.51(b)(2).

2. *Liability of cosigner, guarantor, or joint accountholder.* Sections 1026.51(b)(1)(ii) and (b)(2) require the signature or written consent of a cosigner, guarantor, or joint accountholder agreeing either to be secondarily liable for any debt on the account incurred by the consumer before the consumer has attained the age of 21 or to be jointly liable with the consumer for any debt on the account. Sections 1026.51(b)(1)(ii) and (b)(2) do not prohibit a card issuer from also requiring the cosigner, guarantor, or joint accountholder to assume liability for debts incurred after the consumer has attained the age of 21, consistent with any agreement made between the parties.

3. *Authorized users exempt.* If a consumer who has not attained the age of 21 is being added to another person's account as an authorized user and has no liability for debts incurred on the account, § 1026.51(b)(1) and (b)(2) do not apply.

4. *Electronic application.* Consistent with § 1026.5(a)(1)(iii), an application may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. 7001 *et seq.*) in the circumstances set forth in § 1026.60. The electronic submission of an application from a

consumer or a consent to a credit line increase from a cosigner, guarantor, or joint accountholder to a card issuer would constitute a written application or consent for purposes of §1026.51(b) and would not be considered a consumer disclosure for purposes of the E-Sign Act.

5. *Current obligations.* A card issuer may consider the consumer's current obligations under §1026.51(b)(1) and (b)(2)(i) based on information provided by the consumer or in a consumer report. In evaluating a consumer's current obligations, a card issuer need not assume that credit lines for other obligations are fully utilized.

6. *Joint applicants or joint accountholders.* With respect to the opening of a joint account for two or more consumers under §1026.51(b)(1) or a credit line increase on such an account under §1026.51(b)(2)(i), the card issuer may consider the collective ability of all persons who are or will be liable for debts incurred on the account to make the required payments. See commentary to §1026.51(b)(1)(i) and (b)(2) for information on income and assets that may be considered for joint applicants, joint accountholders, cosigners, or guarantors who are under the age of 21, and commentary to §1026.51(b)(1)(ii) for information on income and assets that may be considered for joint applicants, joint accountholders, cosigners, or guarantors who are at least 21 years old.

7. *Relation to Regulation B.* In considering an application or credit line increase on the credit card account of a consumer who is less than 21 years old, card issuers must comply with the applicable rules in Regulation B (12 CFR part 1026). A card issuer does not violate Regulation B by complying with the requirements in §1026.51(b).

51(b)(1) Applications from young consumers

Paragraph 51(b)(1)(i).

1. *Consideration of income and assets for young consumers.* For purposes of §1026.51(b)(1)(i):

i. A card issuer may consider any current or reasonably expected income or assets of the consumer or consumers who are applying for a new account or will be liable for debts incurred on that account, including a cosigner or guarantor. However, because §1026.51(b)(1)(i) requires that the consumer who has not attained the age of 21 have an independent ability to make the required minimum periodic payments, the card issuer may only consider the applicant's current or reasonably expected income or assets under §1026.51(b)(1)(i). The card issuer may not consider income or assets to which an applicant, joint applicant, cosigner, or guarantor, in each case who is under the age of 21 and is or will be liable for debts incurred on the account, has only a reasonable expectation of access.

ii. Current or reasonably expected income includes, for example, current or expected salary, wages, bonus pay, tips, and commissions. Employment may be full-time, part-time, seasonal, irregular, military, or self-employment. Other sources of income include interest or dividends, retirement benefits, public assistance, alimony, child support, and separate maintenance payments. Proceeds from student loans may be considered as current or reasonably expected income only to the extent that those proceeds exceed the amount disbursed or owed to an educational institution for tuition and other expenses. Current or reasonably expected income includes income that is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or a joint account). Assets include, for example, savings accounts and investments. Current or reasonably expected income and assets does not include income and assets to which the consumer only has a reasonable expectation of access.

iii. Consideration of the income and assets of authorized users, household members, or other persons who are not liable for debts incurred on the account does not satisfy the requirement to consider the consumer's current or reasonably expected income or assets, unless a Federal or State statute or regulation grants a consumer who is liable for debts incurred on the account an ownership interest in such income or assets (*e.g.*, joint ownership granted under State community property laws), or the income is being deposited regularly into an account on which the consumer is an accountholder (*e.g.*, an individual deposit account or a joint account). See comment 51(b)(1)(i)–3 for examples of income that may be relied upon as a consumer's current or reasonably expected income.

2. *Information regarding income and assets for young consumers.* For purposes of §1026.51(b)(1)(i), a card issuer may consider the consumer's current or reasonably expected income and assets based on the following information:

i. Information provided by the consumer in connection with the account, including information provided by the consumer through the application process. For example, card issuers may rely without further inquiry on information provided by applicants in response to a request for ''salary,'' ''income,'' ''personal income,'' ''individual income,'' ''assets,'' or other language requesting that the applicant provide information regarding his or her current or reasonably expected income or assets. However, card issuers may not rely solely on information provided in response to a request for ''household income.'' Nor may they rely solely on information provided in response to a request for ''available income,'' ''accessible income,'' or other language requesting that the applicant provide any income or assets to which the applicant has a reasonable expectation of access. In such cases, the card issuer would need to obtain additional information about an applicant's current or reasonably expected income (such as by contacting the applicant). See comments 51(b)(1)(i)–1, –2, and –3 for additional guidance on determining the consumer's current or reasonably expected income under §1026.51(b)(1)(i). See comment 51(a)(1)–9 for guidance regarding the use of a single, common application for all credit card applicants, regardless of age.

ii. Information provided by the consumer in connection with any other financial relationship the card issuer or its affiliates have with the consumer (subject to any applicable information-sharing rules).

iii. Information obtained through third parties (subject to any applicable information-sharing rules).

iv. Information obtained through any empirically derived, demonstrably and statistically sound model that reasonably estimates a consumer's income or assets.

3. *Examples of considering income for young consumers.* Assume that an applicant is not employed and the applicant is under the age of 21 so §1026.51(b) applies.

i. If a non-applicant's salary or other income is deposited regularly into a joint account shared with the applicant, a card issuer is permitted to consider the amount of the non-applicant's income that is being deposited regularly into the account to be the applicant's current or reasonably expected income for purposes of §1026.51(b)(1)(i).

ii. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly transfers a portion of that income into the applicant's individual deposit account. A card issuer is permitted to consider the amount of the non-applicant's income that is being transferred regularly into the applicant's account to be the applicant's current or reasonably expected income for purposes of §1026.51(b)(1)(i).

iii. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access. However, the non-applicant regularly uses that income to pay for the applicant's expenses. A card issuer is not permitted to consider the non-applicant's income that is used regularly to pay for the applicant's expenses as the applicant's current or reasonably expected income for purposes of §1026.51(b)(1)(i), unless a Federal or State statute or regulation grants the applicant an ownership interest in such income.

iv. The non-applicant's salary or other income is deposited into an account to which the applicant does not have access, the non-applicant does not regularly use that income to pay for the applicant's expenses, and no Federal or State statute or regulation grants the applicant an ownership interest in that income. The card issuer is not permitted to consider the non-applicant's income to be the applicant's current or reasonably expected income for purposes of §1026.51(b)(1)(i).

Paragraph 51(b)(1)(ii).

1. *Financial information.* Information regarding income and assets that satisfies the requirements of §1026.51(a) also satisfies the requirements of §1026.51(b)(1)(ii)(B) and card issuers may rely on the guidance in comments 51(a)(1)–4, –5, and –6 for purposes of determining whether a cosigner, guarantor, or joint applicant who is at least 21 years old has the ability to make the required minimum periodic payments in accordance with §1026.51(b)(1)(ii)(B).

51(b)(2) Credit line increases for young consumers

1. *Credit line request by joint accountholder aged 21 or older.* The requirement under §1026.51(b)(2) that a cosigner, guarantor, or joint accountholder for a credit card account opened pursuant to §1026.51(b)(1)(ii) must agree in writing to assume liability for the increase before a credit line is increased, does not apply if the cosigner, guarantor or joint accountholder who is at least 21 years old initiates the request for the increase.

2. *Independent ability-to-pay standard.* Under §1026.51(b)(2), if a credit card account has been opened pursuant to §1026.51(b)(1)(i), no increase in the credit limit may be made on such account before the consumer attains the age of 21 unless, at the time of the contemplated increase, the consumer has an independent ability to make the required minimum periodic payments on the increased limit, consistent with §1026.51(b)(1)(i), or a cosigner, guarantor, or joint applicant who is at least 21 years old assumes liability for any debt incurred on the account, consistent with §1026.51(b)(1)(ii). Thus, when a card issuer is considering whether to increase the credit limit on an existing account, §1026.51(b)(2)(i)(A) requires that consumers who have not attained the age of 21 and do not have a cosigner, guarantor, or joint applicant who is 21 years or older must have an independent ability to make the required minimum periodic payments as of the time of the contemplated increase. Thus, the card issuer may not consider income or assets to which an accountholder, cosigner, or guarantor, in each case who is under the age of 21 and is or will be liable for debts incurred on the account, has only a reasonable expectation of access under §1026.51(b)(2)(i)(A). The card issuer, however, may consider income or assets to which an accountholder, cosigner, or guarantor, in each case who is age 21 or older and is or will be liable for debts incurred on

the account, has a reasonable expectation of access under §1026.51(b)(2)(i)(B). Information regarding income and assets that satisfies the requirements of §1026.51(b)(1)(i) also satisfies the requirements of §1026.51(b)(2)(i)(A) and card issuers may rely on the guidance in the commentary to §1026.51(b)(1)(i) for purposes of determining whether an accountholder who is less than 21 years old has the independent ability to make the required minimum periodic payments in accordance with §1026.51(b)(2)(i)(A). Information regarding income and assets that satisfies the requirements of §1026.51(a) also satisfies the requirements of §1026.51(b)(2)(i)(B) and card issuers may rely on the guidance in comments 51(a)(1)–4, –5, and –6 for purposes of determining whether a cosigner, guarantor, or joint applicant who is at least 21 years old has the ability to make the required minimum periodic payments in accordance with §1026.51(b)(2)(i)(B).

Section 1026.52—Limitations on Fees

52(a) Limitations during first year after account opening.

52(a)(1) General rule

1. *Application.* The 25 percent limit in §1026.52(a)(1) applies to fees that the card issuer charges to the account as well as to fees that the card issuer requires the consumer to pay with respect to the account through other means (such as through a payment from the consumer's asset account, including a prepaid account as defined in §1026.61, to the card issuer or from another credit account provided by the card issuer). For example:

i. Assume that, under the terms of a credit card account, a consumer is required to pay $120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to five percent of the cash advance and a late payment fee of $15 if the required minimum periodic payment is not received by the payment due date (which is the twenty-fifth of the month). At account opening on January 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge to the account the $120 in fees for the issuance or availability of credit at account opening. On February 1 of year one, the consumer uses the account for a $100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a $5 cash-advance fee to the account. On March 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a $15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a $2.50 cash advance fee to the account. Furthermore, §1026.52(a)(1) prohibits the card issuer from collecting the $2.50 cash advance fee from the consumer by other means.

ii. Assume that, under the terms of a credit card account, a consumer is required to pay $125 in fees for the issuance or availability of credit during the first year after account opening. At account opening on January 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge the $125 in fees to the account. However, §1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open a separate credit account with the card issuer to fund the payment of additional non-exempt fees during the first year after the credit card account is opened.

iii. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by §1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay $50 in fees for the issuance or availability of credit at account opening. At credit account opening on March 1 of year one, the credit limit for the account is $200. Section 1026.52(a)(1) permits the card issuer to charge the $50 in fees to the credit account. However, §1026.52(a)(1) prohibits the card issuer from requiring the consumer to make payments to the card issuer for additional non-exempt fees with respect to the credit account during the first year after account opening. Section 1026.52(a)(1) also prohibits the card issuer from requiring the consumer to open an additional credit feature with the card issuer to fund the payment of additional non-exempt fees during the first year after the covered separate credit feature is opened.

iv. Assume that a consumer opens a prepaid account accessed by a prepaid card on January 1 of year one and opens a covered separate credit feature accessible by a hybrid prepaid-credit card as defined in §1026.61 that is a credit card account under an open-end (not home-secured) consumer credit plan on March 1 of year one. Assume that, under the terms of the covered separate credit feature accessible by the hybrid prepaid-credit card, a consumer is required to pay $120 in fees for the issuance or availability of credit at account opening. The consumer is also required to pay a cash advance fee that is equal to 5 percent of any cash advance and a late payment fee of $15 if the required minimum periodic payment is not received by the payment due date (which is the 25th of the month). At credit account opening on March 1 of year one, the credit limit for the account is $500. Section 1026.52(a)(1) permits the card issuer to charge to the account the $120 in fees for the issuance or availability of credit at account opening. On April 1 of year one, the consumer uses the account for a $100 cash advance. Section 1026.52(a)(1) permits the card issuer to charge a $5 cash advance fee to the account. On April 26 of year one, the card issuer has not received the consumer's required minimum periodic payment. Section 1026.52(a)(2) permits the card issuer to charge a $15 late payment fee to the account. On July 15 of year one, the consumer uses the account for a $50 cash advance. Section 1026.52(a)(1) does not permit the card issuer to charge a $2.50 cash advance fee to the account, because the total amount of non-exempt fees reached the 25 percent limit with the $5 cash advance fee on April 1 (the $15 late fee on April 26 is exempt pursuant to §1026.52(a)(2)(i)). Furthermore, §1026.52(a)(1) prohibits the card issuer from collecting the $2.50 cash advance fee from the consumer by other means.

2. *Fees that exceed 25 percent limit.* A card issuer that charges a fee to a credit card account that exceeds the 25 percent limit complies with §1026.52(a)(1) if the card issuer waives or removes the fee and any associated interest charges or credits the account for an amount equal to the fee and any associated interest charges within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the fee was charged. For example, assuming the facts in the example in comment 52(a)(1)–1.i above, the card issuer complies with §1026.52(a)(1) if the card issuer charged the $2.50 cash advance fee to the account on July 15 of year one but waived or removed the fee or credited the account for $2.50 (plus any interest charges on that $2.50) at the end of the billing cycle.

3. *Changes in credit limit during first year.*

i. *Increases in credit limit.* If a card issuer increases the credit limit during the first year after the account is opened, §1026.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees that would otherwise be prohibited (such as a fee for increasing the credit limit). For example, assume that, at account opening on January 1, the credit limit for a credit card account is $400 and the consumer is required to pay $100 in fees for the issuance or availability of credit. On July 1, the card issuer increases the credit limit for the account to $600. Section 1026.52(a)(1) does not permit the card issuer to require the consumer to pay additional fees based on the increased credit limit.

ii. *Decreases in credit limit.* If a card issuer decreases the credit limit during the first year after the account is opened, §1026.52(a)(1) requires the card issuer to waive or remove any fees charged to the account that exceed 25 percent of the reduced credit limit or to credit the account for an amount equal to any fees the consumer was required to pay with respect to the account that exceed 25 percent of the reduced credit limit within a reasonable amount of time but no later than the end of the billing cycle following the billing cycle during which the credit limit was reduced. For example, assume that, at account opening on January 1, the credit limit for a credit card account is $1,000 and the consumer is required to pay $250 in fees for the issuance or availability of credit. The billing cycles for the account begin on the first day of the month and end on the last day of the month. On July 30, the card issuer decreases the credit limit for the account to $600. Section 1026.52(a)(1) requires the card issuer to waive or remove $100 in fees from the account or to credit the account for an amount equal to $100 within a reasonable amount of time but no later than August 31.

4. *Date on which account may first be used by consumer to engage in transactions.* i. *Methods of compliance.* For purposes of §1026.52(a)(1), an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. A card issuer may consider an account open for purposes of §1026.52(a)(1) on any of the following dates:

A. The date the account is first used by the consumer for a transaction (such as when an account is established in connection with financing the purchase of goods or services).

B. The date the consumer complies with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of a new account (such as requiring the consumer to provide information that verifies his or her identity), provided that the account may be used for transactions on that date.

C. The date that is seven days after the card issuer mails or delivers to the consumer account-opening disclosures that comply with §1026.6, provided that the consumer may use the account for transactions after complying with any reasonable activation procedures imposed by the card issuer for preventing fraud or unauthorized use of the new account (such as requiring the consumer to provide information that verifies his or her identity). If a card issuer has reasonable procedures designed to ensure that account-opening disclosures that comply with §1026.6 are mailed or delivered to consumers no later than a certain number of days after the card issuer establishes the account, the card issuer may add that number of days to the seven-day period for purposes of determining the date on which the account was opened.

ii. *Examples.* A. Assume that, on July 1 of year one, a credit card account under an open-end (not home-secured) consumer credit plan is established in connection with financing the purchase of goods or services and a $500 transaction is charged to the account by the consumer. The card issuer may consider the account open on July 1 of year one for purposes of §1026.52(a)(1). Accordingly, §1026.52(a)(1) ceases to apply to the account on July 1 of year two.

B. Assume that, on July 1 of year one, a card issuer approves a consumer's application for a credit card account under an open-end (not home-secured) consumer credit plan and establishes the account on its internal systems. On July 5, the card issuer mails or delivers to the consumer account-opening disclosures that comply with §1026.6. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may consider the account open on July 12 of year one for purposes of §1026.52(a)(1). Accordingly, §1026.52(a)(1) ceases to apply to the account on July 12 of year two.

C. Same facts as in paragraph B above except that the card issuer has adopted reasonable procedures designed to ensure that account-opening disclosures that comply with §1026.6 are mailed or delivered to consumers no later than three days after an account is established on its systems. If the consumer may use the account for transactions on the date the consumer complies with any reasonable procedures imposed by the card issuer for preventing fraud or unauthorized use, the card issuer may consider the account open on July 11 of year one for purposes of §1026.52(a)(1). Accordingly, §1026.52(a)(1) ceases to apply to the account on July 11 of year two. However, if the consumer uses the account for a transaction or complies with the card issuer's reasonable procedures for preventing fraud or unauthorized use on July 8 of year one, the card issuer may, at its option, consider the account open on that date for purposes of §1026.52(a)(1) and §1026.52(a)(1) therefore ceases to apply to the account on July 8 of year two.

52(a)(2) Fees Not Subject to Limitations

1. *Covered fees.* Except as provided in §1026.52(a)(2) and except as provided in comments 52(a)(2)–2 and–3, §1026.52(a) applies to any fees or other charges that a card issuer will or may require the consumer to pay with respect to a credit card account during the first year after account opening, other than charges attributable to periodic interest rates. For example, §1026.52(a) applies to:

i. Fees that the consumer is required to pay for the issuance or availability of credit described in §1026.60(b)(2), including any fee based on account activity or inactivity and any fee that a consumer is required to pay in order to receive a particular credit limit;

ii. Fees for insurance described in §1026.4(b)(7) or debt cancellation or debt suspension coverage described in §1026.4(b)(10) written in connection with a credit transaction, if the insurance or debt cancellation or debt suspension coverage is required by the terms of the account;

iii. Fees that the consumer is required to pay in order to engage in transactions using the account (such as cash advance fees, balance transfer fees, foreign transaction fees, and fees for using the account for purchases);

iv. Fees that the consumer is required to pay for violating the terms of the account (except to the extent specifically excluded by §1026.52(a)(2)(i));

v. Fixed finance charges; and

vi. Minimum charges imposed if a charge would otherwise have been determined by applying a periodic interest rate to a balance except for the fact that such charge is smaller than the minimum.

2. *Fees in connection with a covered separate credit feature and an asset feature of the prepaid account that are both accessible by a hybrid prepaid-credit card.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, §1026.52(a) applies to the following fees:

i. Except as provided in §1026.52(a)(2), any fee or charge imposed on the covered separate credit feature, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay in connection with the credit feature, and

ii. Except as provided in §1026.52(a)(2), any fee or charge imposed on the asset feature of the prepaid account, other than a charge attributable to a periodic interest rate, during the first year after account opening that the card issuer will or may require the consumer to pay where that fee or charge is a charge imposed as part of the plan under §1026.6(b)(3).

3. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under §1026.6(b)(3). See §1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under §1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and

non-covered separate credit features as those terms are defined in § 1026.61.

4. *Fees the consumer is not required to pay*. Section 1026.52(a)(2)(ii) provides that § 1026.52(a) does not apply to fees that the consumer is not required to pay with respect to the account. For example, § 1026.52(a) generally does not apply to fees for making an expedited payment (to the extent permitted by § 1026.10(e)), fees for optional services (such as travel insurance), fees for reissuing a lost or stolen card, or statement reproduction fees.

5. *Security deposits*. A security deposit that is charged to a credit card account is a fee for purposes of § 1026.52(a). In contrast, however, a security deposit is not subject to the 25 percent limit in § 1026.52(a)(1) if it is not charged to the account. For example, § 1026.52(a)(1) does not prohibit a card issuer from requiring a consumer to provide funds at account opening pledged as security for the account that exceed 25 percent of the credit limit at account opening so long as those funds are not obtained from the account.

52(a)(3) Rule of Construction

1. *Fees or charges otherwise prohibited by law*. Section 1026.52(a) does not authorize the imposition or payment of fees or charges otherwise prohibited by law. For example, see 16 CFR 310.4(a)(4).

52(b) Limitations on Penalty Fees

1. *Fees for violating the account terms or other requirements*. For purposes of § 1026.52(b), a fee includes any charge imposed by a card issuer based on an act or omission that violates the terms of the account or any other requirements imposed by the card issuer with respect to the account, other than charges attributable to periodic interest rates. Accordingly, for purposes of § 1026.52(b), a fee does not include charges attributable to an increase in an annual percentage rate based on an act or omission that violates the terms or other requirements of an account.

i. The following are examples of fees that are subject to the limitations in § 1026.52(b) or are prohibited by § 1026.52(b):

A. Late payment fees and any other fees imposed by a card issuer if an account becomes delinquent or if a payment is not received by a particular date.

B. Returned payment fees and any other fees imposed by a card issuer if a payment received via check, automated clearing house, or other payment method is returned.

C. Any fee or charge for an over-the-limit transaction as defined in § 1026.56(a), to the extent the imposition of such a fee or charge is permitted by § 1026.56.

D. Any fee imposed by a card issuer if payment on a check that accesses a credit card account is declined.

E. Any fee or charge for a transaction that the card issuer declines to authorize. *See* § 1026.52(b)(2)(i)(B).

F. Any fee imposed by a card issuer based on account inactivity (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). *See* § 1026.52(b)(2)(i)(B).

G. Any fee imposed by a card issuer based on the closure or termination of an account. *See* § 1026.52(b)(2)(i)(B).

ii. The following are examples of fees to which § 1026.52(b) does not apply:

A. Balance transfer fees.

B. Cash advance fees.

C. Foreign transaction fees.

D. Annual fees and other fees for the issuance or availability of credit described in § 1026.60(b)(2), except to the extent that such fees are based on account inactivity. *See* § 1026.52(b)(2)(i)(B).

E. Fees for insurance described in § 1026.4(b)(7) or debt cancellation or debt suspension coverage described in § 1026.4(b)(10) written in connection with a credit transaction, provided that such fees are not imposed as a result of a violation of the account terms or other requirements of an account.

F. Fees for making an expedited payment (to the extent permitted by § 1026.10(e)).

G. Fees for optional services (such as travel insurance).

H. Fees for reissuing a lost or stolen card.

2. *Rounding to nearest whole dollar*. A card issuer may round any fee that complies with § 1026.52(b) to the nearest whole dollar. For example, if § 1026.52(b) permits a card issuer to impose a late payment fee of $21.50, the card issuer may round that amount up to the nearest whole dollar and impose a late payment fee of $22. However, if the late payment fee permitted by § 1026.52(b) were $21.49, the card issuer would not be permitted to round that amount up to $22, although the card issuer could round that amount down and impose a late payment fee of $21.

3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards*. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in § 1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, § 1026.52(b) applies to any fee for violating the terms or other requirements of the credit feature, regardless of whether those fees are imposed on the credit feature or on the asset feature of the prepaid account. For example, assume that a late fee will be imposed by the card issuer if the covered separate credit feature

becomes delinquent or if a payment is not received by a particular date. This fee is subject to §1026.52(b) regardless of whether the fee is imposed on the asset feature of the prepaid account or on the separate credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.52(b) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under §1026.6(b)(3). See §1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature prepaid account that are not charges imposed as part of the plan under §1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in §1026.61.

52(b)(1) General Rule

1. *Relationship between §1026.52(b)(1)(i), (b)(1)(ii), and (b)(2).* i. *Relationship between §1026.52(b)(1)(i) and (b)(1)(ii).* A card issuer may impose a fee for violating the terms or other requirements of an account pursuant to either §1026.52(b)(1)(i) or (b)(1)(ii).

A. A card issuer that complies with the safe harbors in §1026.52(b)(1)(ii) is not required to determine that its fees represent a reasonable proportion of the total costs incurred by the card issuer as a result of a type of violation under §1026.52(b)(1)(i).

B. A card issuer may impose a fee for one type of violation pursuant to §1026.52(b)(1)(i) and may impose a fee for a different type of violation pursuant to §1026.52(b)(1)(ii). For example, a card issuer may impose a late payment fee of $30 based on a cost determination pursuant to §1026.52(b)(1)(i) but impose returned payment and over-the-limit fees of $25 or $35 pursuant to the safe harbors in §1026.52(b)(1)(ii).

C. A card issuer that previously based the amount of a penalty fee for a particular type of violation on a cost determination pursuant to §1026.52(b)(1)(i) may begin to impose a penalty fee for that type of violation that is consistent with §1026.52(b)(1)(ii) at any time (subject to the notice requirements in §1026.9), provided that the first fee imposed pursuant to §1026.52(b)(1)(ii) is consistent with §1026.52(b)(1)(ii)(A). For example, assume that a late payment occurs on January 15 and that, based on a cost determination pursuant to §1026.52(b)(1)(i), the card issuer imposes a $30 late payment fee. Another late payment occurs on July 15. The card issuer may impose another $30 late payment fee pursuant to §1026.52(b)(1)(i) or may impose a $25 late payment fee pursuant to §1026.52(b)(1)(ii)(A). However, the card issuer may not impose a $35 late payment fee pursuant to §1026.52(b)(1)(ii)(B). If the card issuer imposes a $25 fee pursuant to §1026.52(b)(1)(ii)(A) for the July 15 late payment and another late payment occurs on September 15, the card issuer may impose a $35 fee for the September 15 late payment pursuant to §1026.52(b)(1)(ii)(B).

ii. *Relationship between §1026.52(b)(1) and (b)(2).* Section 1026.52(b)(1) does not permit a card issuer to impose a fee that is inconsistent with the prohibitions in §1026.52(b)(2). For example, if §1026.52(b)(2)(i) prohibits the card issuer from imposing a late payment fee that exceeds $15, §1026.52(b)(1)(ii) does not permit the card issuer to impose a higher late payment fee.

52(b)(1)(i) Fees Based on Costs

1. *Costs incurred as a result of violations.* Section 1026.52(b)(1)(i) does not require a card issuer to base a fee on the costs incurred as a result of a specific violation of the terms or other requirements of an account. Instead, for purposes of §1026.52(b)(1)(i), a card issuer must have determined that a fee for violating the terms or other requirements of an account represents a reasonable proportion of the costs incurred by the card issuer as a result of that type of violation. A card issuer may make a single determination for all of its credit card portfolios or may make separate determinations for each portfolio. The factors relevant to this determination include:

i. The number of violations of a particular type experienced by the card issuer during a prior period of reasonable length (for example, a period of twelve months).

ii. The costs incurred by the card issuer during that period as a result of those violations.

iii. At the card issuer's option, the number of fees imposed by the card issuer as a result of those violations during that period that the card issuer reasonably estimates it will be unable to collect. *See* comment 52(b)(1)(i)–5.

iv. At the card issuer's option, reasonable estimates for an upcoming period of changes in the number of violations of that type, the resulting costs, and the number of fees that the card issuer will be unable to collect. *See* illustrative examples in comments 52(b)(1)(i)–6 through –9.

2. *Amounts excluded from cost analysis.* The following amounts are not costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of §1026.52(b)(1)(i):

i. Losses and associated costs (including the cost of holding reserves against potential losses and the cost of funding delinquent accounts).

ii. Costs associated with evaluating whether consumers who have not violated the terms or other requirements of an account are likely to do so in the future (such as the costs associated with underwriting new accounts). However, once a violation of the terms or other requirements of an account has occurred, the costs associated with preventing additional violations for a reasonable period of time are costs incurred by a card issuer as a result of violations of the terms or other requirements of an account for purposes of §1026.52(b)(1)(i).

3. *Third party charges.* As a general matter, amounts charged to the card issuer by a third party as a result of a violation of the terms or other requirements of an account are costs incurred by the card issuer for purposes of §1026.52(b)(1)(i). For example, if a card issuer is charged a specific amount by a third party for each returned payment, that amount is a cost incurred by the card issuer as a result of returned payments. However, if the amount is charged to the card issuer by an affiliate or subsidiary of the card issuer, the card issuer must have determined that the charge represents a reasonable proportion of the costs incurred by the affiliate or subsidiary as a result of the type of violation. For example, if an affiliate of a card issuer provides collection services to the card issuer on delinquent accounts, the card issuer must have determined that the amounts charged to the card issuer by the affiliate for such services represent a reasonable proportion of the costs incurred by the affiliate as a result of late payments.

4. *Amounts charged by other card issuers.* The fact that a card issuer's fees for violating the terms or other requirements of an account are comparable to fees assessed by other card issuers does not satisfy the requirements of §1026.52(b)(1)(i).

5. *Uncollected fees.* For purposes of §1026.52(b)(1)(i), a card issuer may consider fees that it is unable to collect when determining the appropriate fee amount. Fees that the card issuer is unable to collect include fees imposed on accounts that have been charged off by the card issuer, fees that have been discharged in bankruptcy, and fees that the card issuer is required to waive in order to comply with a legal requirement (such as a requirement imposed by 12 CFR Part 1026 or 50 U.S.C. app. 527). However, fees that the card issuer chooses not to impose or chooses not to collect (such as fees the card issuer chooses to waive at the request of the consumer or under a workout or temporary hardship arrangement) are not relevant for purposes of this determination. *See* illustrative examples in comments 52(b)(2)(i)–6 through –9.

6. *Late payment fees.* i. *Costs incurred as a result of late payments.* For purposes of §1026.52(b)(1)(i), the costs incurred by a card issuer as a result of late payments include the costs associated with the collection of late payments, such as the costs associated with notifying consumers of delinquencies and resolving delinquencies (including the establishment of workout and temporary hardship arrangements).

ii. *Examples.* A. *Late payment fee based on past delinquencies and costs.* Assume that, during year one, a card issuer experienced 1 million delinquencies and incurred $26 million in costs as a result of those delinquencies. For purposes of §1026.52(b)(1)(i), a $26 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

B. *Adjustment based on fees card issuer is unable to collect.* Same facts as above except that the card issuer imposed a late payment fee for each of the 1 million delinquencies experienced during year one but was unable to collect 25% of those fees (in other words, the card issuer was unable to collect 250,000 fees, leaving a total of 750,000 late payments for which the card issuer did collect or could have collected a fee). For purposes of §1026.52(b)(2)(i), a late payment fee of $35 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

C. *Adjustment based on reasonable estimate of future changes.* Same facts as paragraphs A and B above except the card issuer reasonably estimates that—based on past delinquency rates and other factors relevant to potential delinquency rates for year two—it will experience a 2% decrease in delinquencies during year two (in other words, 20,000 fewer delinquencies for a total of 980,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (25%) during year two as during year one (in other words, the card issuer will be unable to collect 245,000 fees, leaving a total of 735,000 late payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of delinquencies and other factors relevant to potential costs for year two—it will experience a 5% increase in costs during year two (in other words, $1.3 million in additional costs for a total of $27.3 million). For purposes of §1026.52(b)(1)(i), a $37 late payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of late payments during year two.

7. *Returned payment fees.* i. *Costs incurred as a result of returned payments.* For purposes of §1026.52(b)(1)(i), the costs incurred by a card issuer as a result of returned payments include:

A. Costs associated with processing returned payments and reconciling the card issuer's systems and accounts to reflect returned payments;

B. Costs associated with investigating potential fraud with respect to returned payments; and

C. Costs associated with notifying the consumer of the returned payment and arranging for a new payment.

ii. *Examples.* A. *Returned payment fee based on past returns and costs.* Assume that, during year one, a card issuer experienced 150,000 returned payments and incurred $3.1 million in costs as a result of those returned payments. For purposes of §1026.52(b)(1)(i), a $21 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

B. *Adjustment based on fees card issuer is unable to collect.* Same facts as above except that the card issuer imposed a returned payment fee for each of the 150,000 returned payments experienced during year one but was unable to collect 15% of those fees (in other words, the card issuer was unable to collect 22,500 fees, leaving a total of 127,500 returned payments for which the card issuer did collect or could have collected a fee). For purposes of §1026.52(b)(2)(i), a returned payment fee of $24 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

C. *Adjustment based on reasonable estimate of future changes.* Same facts as paragraphs A and B above except the card issuer reasonably estimates that—based on past returned payment rates and other factors relevant to potential returned payment rates for year two—it will experience a 2% increase in returned payments during year two (in other words, 3,000 additional returned payments for a total of 153,000). The card issuer also reasonably estimates that it will be unable to collect 25% of returned payment fees during year two (in other words, the card issuer will be unable to collect 38,250 fees, leaving a total of 114,750 returned payments for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of returned payments and other factors relevant to potential costs for year two—it will experience a 1% decrease in costs during year two (in other words, a $31,000 reduction in costs for a total of $3.069 million). For purposes of §1026.52(b)(1)(i), a $27 returned payment fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of returned payments during year two.

8. *Over-the-limit fees.* i. *Costs incurred as a result of over-the-limit transactions.* For purposes of §1026.52(b)(1)(i), the costs incurred by a card issuer as a result of over-the-limit transactions include:

A. Costs associated with determining whether to authorize over-the-limit transactions; and

B. Costs associated with notifying the consumer that the credit limit has been exceeded and arranging for payments to reduce the balance below the credit limit.

ii. *Costs not incurred as a result of over-the-limit transactions.* For purposes of §1026.52(b)(1)(i), costs associated with obtaining the affirmative consent of consumers to the card issuer's payment of transactions that exceed the credit limit consistent with §1026.56 are not costs incurred by a card issuer as a result of over-the-limit transactions.

iii. *Examples.* A. *Over-the-limit fee based on past fees and costs.* Assume that, during year one, a card issuer authorized 600,000 over-the-limit transactions and incurred $4.5 million in costs as a result of those over-the-limit transactions. However, because of the affirmative consent requirements in §1026.56, the card issuer was only permitted to impose 200,000 over-the-limit fees during year one. For purposes of §1026.52(b)(1)(i), a $23 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

B. *Adjustment based on fees card issuer is unable to collect.* Same facts as above except that the card issuer was unable to collect 30% of the 200,000 over-the-limit fees imposed during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer did collect or could have collected a fee). For purposes of §1026.52(b)(2)(i), an over-the-limit fee of $32 would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

C. *Adjustment based on reasonable estimate of future changes.* Same facts as paragraphs A and B above except the card issuer reasonably estimates that—based on past over-the-limit transaction rates, the percentages of over-the-limit transactions that resulted in an over-the-limit fee in the past (consistent with §1026.56), and factors relevant to potential changes in those rates and percentages for year two—it will authorize approximately the same number of over-the-limit transactions during year two (600,000) and impose approximately the same number of over-the-limit fees (200,000). The card issuer also reasonably estimates that it will be unable to collect the same percentage of fees (30%) during year two as during year one (in other words, the card issuer was unable to collect 60,000 fees, leaving a total of 140,000 over-the-limit transactions for which the card issuer will be able to collect a fee). The card issuer also reasonably estimates that—based on past changes in costs incurred as a result of over-the-limit transactions and other factors relevant to potential costs for year two—it will experience a 6% decrease in costs during year two (in other words, a $270,000 reduction in costs for a total of $4.23 million). For purposes of §1026.52(b)(1)(i), a

$30 over-the-limit fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of over-the-limit transactions during year two.

9. *Declined access check fees.* i. *Costs incurred as a result of declined access checks.* For purposes of §1026.52(b)(1)(i), the costs incurred by a card issuer as a result of declining payment on a check that accesses a credit card account include:

A. Costs associated with determining whether to decline payment on access checks;

B. Costs associated with processing declined access checks and reconciling the card issuer's systems and accounts to reflect declined access checks;

C. Costs associated with investigating potential fraud with respect to declined access checks; and

D. Costs associated with notifying the consumer and the merchant or other party that accepted the access check that payment on the check has been declined.

ii. *Example.* Assume that, during year one, a card issuer declined 100,000 access checks and incurred $2 million in costs as a result of those declined checks. The card issuer imposed a fee for each declined access check but was unable to collect 10% of those fees (in other words, the card issuer was unable to collect 10,000 fees, leaving a total of 90,000 declined access checks for which the card issuer did collect or could have collected a fee). For purposes of §1026.52(b)(1)(i), a $22 declined access check fee would represent a reasonable proportion of the total costs incurred by the card issuer as a result of declined access checks during year two.

52(b)(1)(ii) Safe Harbors

1. *Multiple violations of same type.* i. *Same billing cycle or next six billing cycles.* A card issuer cannot impose a fee for a violation pursuant to §1026.52(b)(1)(ii)(B) unless a fee has previously been imposed for the same type of violation pursuant to §1026.52(b)(1)(ii)(A). Once a fee has been imposed for a violation pursuant to §1026.52(b)(1)(ii)(A), the card issuer may impose a fee pursuant to §1026.52(b)(1)(ii)(B) for any subsequent violation of the same type until that type of violation has not occurred for a period of six consecutive complete billing cycles. A fee has been imposed for purposes of §1026.52(b)(1)(ii) even if the card issuer waives or rebates all or part of the fee.

A. *Late payments.* For purposes of §1026.52(b)(1)(ii), a late payment occurs during the billing cycle in which the payment may first be treated as late consistent with the requirements of this part and the terms or other requirements of the account.

B. *Returned payments.* For purposes of §1026.52(b)(1)(ii), a returned payment occurs during the billing cycle in which the payment is returned to the card issuer.

C. *Transactions that exceed the credit limit.* For purposes of §1026.52(b)(1)(ii), a transaction that exceeds the credit limit for an account occurs during the billing cycle in which the transaction occurs or is authorized by the card issuer.

D. *Declined access checks.* For purposes of §1026.52(b)(1)(ii), a check that accesses a credit card account is declined during the billing cycle in which the card issuer declines payment on the check.

ii. *Relationship to §§1026.52(b)(2)(ii) and 1026.56(j)(1).* If multiple violations are based on the same event or transaction such that §1026.52(b)(2)(ii) prohibits the card issuer from imposing more than one fee, the event or transaction constitutes a single violation for purposes of §1026.52(b)(1)(ii). Furthermore, consistent with §1026.56(j)(1)(i), no more than one violation for exceeding an account's credit limit can occur during a single billing cycle for purposes of §1026.52(b)(1)(ii). However, §1026.52(b)(2)(ii) does not prohibit a card issuer from imposing fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction to the extent permitted by §1026.56(j)(1). In these circumstances, the second and third over-the-limit fees permitted by §1026.56(j)(1) may be imposed pursuant to §1026.52(b)(1)(ii)(B). *See* comment 52(b)(2)(ii)–1.

iii. *Examples.* The following examples illustrate the application of §1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) with respect to credit card accounts under an open-end (not home-secured) consumer credit plan that are not charge card accounts. For purposes of these examples, assume that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

A. *Violations of same type (late payments).* A required minimum periodic payment of $50 is due on March 25. On March 26, a late payment has occurred because no payment has been received. Accordingly, consistent with §1026.52(b)(1)(ii)(A), the card issuer imposes a $25 late payment fee on March 26. In order for the card issuer to impose a $35 late payment fee pursuant to §1026.52(b)(1)(ii)(B), a second late payment must occur during the April, May, June, July, August, or September billing cycles.

1. The card issuer does not receive any payment during the March billing cycle. A required minimum periodic payment of $100 is due on April 25. On April 20, the card issuer receives a $50 payment. No further payment is received during the April billing cycle. Accordingly, consistent with §1026.52(b)(1)(ii)(B), the card issuer may impose a $35 late payment fee on April 26. Furthermore, the card issuer may impose a $35 late payment fee for any late payment that occurs during the May, June, July, August, September, or October billing cycles.

2. Same facts as in paragraph A above. On March 30, the card issuer receives a $50 payment and the required minimum periodic payments for the April, May, June, July, August, and September billing cycles are received on or before the payment due date. A required minimum periodic payment of $60 is due on October 25. On October 26, a late payment has occurred because the required minimum periodic payment due on October 25 has not been received. However, because this late payment did not occur during the six billing cycles following the March billing cycle, § 1026.52(b)(1)(ii) only permits the card issuer to impose a late payment fee of $25.

B. *Violations of different types (late payment and over the credit limit).* The credit limit for an account is $1,000. Consistent with § 1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. A required minimum periodic payment of $30 is due on August 25. On August 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 1026.52(b)(1)(ii)(A), the card issuer imposes a $25 late payment fee on August 26. On August 30, the card issuer receives a $30 payment. On September 10, a transaction causes the account balance to increase to $1,150, which exceeds the account's $1,000 credit limit. On September 11, a second transaction increases the account balance to $1,350. On September 23, the card issuer receives the $50 required minimum periodic payment due on September 25, which reduces the account balance to $1,300. On September 30, the card issuer imposes a $25 over-the-limit fee, consistent with § 1026.52(b)(1)(ii)(A). On October 26, a late payment has occurred because the $60 required minimum periodic payment due on October 25 has not been received. Accordingly, consistent with § 1026.52(b)(1)(ii)(B), the card issuer imposes a $35 late payment fee on October 26.

C. *Violations of different types (late payment and returned payment).* A required minimum periodic payment of $50 is due on July 25. On July 26, a late payment has occurred because no payment has been received. Accordingly, consistent with § 1026.52(b)(1)(ii)(A), the card issuer imposes a $25 late payment fee on July 26. On July 30, the card issuer receives a $50 payment. A required minimum periodic payment of $50 is due on August 25. On August 24, a $50 payment is received. On August 27, the $50 payment is returned to the card issuer for insufficient funds. In these circumstances, § 1026.52(b)(2)(ii) permits the card issuer to impose either a late payment fee or a returned payment fee but not both because the late payment and the returned payment result from the same event or transaction. Accordingly, for purposes of § 1026.52(b)(1)(ii), the event or transaction constitutes a single violation. However, if the card issuer imposes a late payment fee, § 1026.52(b)(1)(ii)(B) permits the issuer to impose a fee of $35 because the late payment occurred during the six billing cycles following the July billing cycle. In contrast, if the card issuer imposes a returned payment fee, the amount of the fee may be no more than $25 pursuant to § 1026.52(b)(1)(ii)(A).

2. *Adjustments based on Consumer Price Index.* For purposes of § 1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B), the Bureau shall calculate each year price level adjusted amounts using the Consumer Price Index in effect on June 1 of that year. When the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in § 1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has risen by a whole dollar, those amounts will be increased by $1.00. Similarly, when the cumulative change in the adjusted minimum value derived from applying the annual Consumer Price level to the current amounts in § 1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B) has decreased by a whole dollar, those amounts will be decreased by $1.00. The Bureau will publish adjustments to the amounts in § 1026.52(b)(1)(ii)(A) and (b)(1)(ii)(B).

i. *Historical thresholds.*

A. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $25 under § 1026.52(b)(1)(ii)(A) and $35 under § 1026.52(b)(1)(ii)(B), through December 31, 2013.

B. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $26 under § 1026.52(b)(1)(ii)(A) and $37 under § 1026.52(b)(1)(ii)(B), through December 31, 2014.

C. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under § 1026.52(b)(1)(ii)(A) and $38 under § 1026.52(b)(1)(ii)(B), through December 31, 2015.

D. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under § 1026.52(b)(1)(ii)(A), through December 31, 2016. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $37 under § 1026.52(b)(1)(ii)(B), through June 26, 2016, and $38 under § 1026.52(b)(1)(ii)(B) from June 27, 2016 through December 31, 2016.

E. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under § 1026.52(b)(1)(ii)(A) and $38 under § 1026.52(b)(1)(ii)(B), through December 31, 2017.

F. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $27 under

§1026.52(b)(1)(ii)(A) and $38 under §1026.52(b)(1)(ii)(B), through December 31, 2018.

G. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $28 under §1026.52(b)(1)(ii)(A) and $39 under §1026.52(b)(1)(ii)(B), through December 31, 2019.

H. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $29 under §1026.52(b)(1)(ii)(A) and $40 under §1026.52(b)(1)(ii)(B), through December 31, 2020.

I. Card issuers were permitted to impose a fee for violating the terms of an agreement if the fee did not exceed $29 under §1026.52(b)(1)(ii)(A) and $40 under §1026.52(b)(1)(ii)(B), through December 31, 2021.

3. *Delinquent balance for charge card accounts.* Section 1026.52(b)(1)(ii)(C) provides that, when a charge card issuer that requires payment of outstanding balances in full at the end of each billing cycle has not received the required payment for two or more consecutive billing cycles, the card issuer may impose a late payment fee that does not exceed three percent of the delinquent balance. For purposes of §1026.52(b)(1)(ii)(C), the delinquent balance is any previously billed amount that remains unpaid at the time the late payment fee is imposed pursuant to §1026.52(b)(1)(ii)(C). Consistent with §1026.52(b)(2)(ii), a charge card issuer that imposes a fee pursuant to §1026.52(b)(1)(ii)(C) with respect to a late payment may not impose a fee pursuant to §1026.52(b)(1)(ii)(B) with respect to the same late payment. The following examples illustrate the application of §1026.52(b)(1)(ii)(C):

i. Assume that a charge card issuer requires payment of outstanding balances in full at the end of each billing cycle and that the billing cycles for the account begin on the first day of the month and end on the last day of the month. At the end of the June billing cycle, the account has a balance of $1,000. On July 5, the card issuer provides a periodic statement disclosing the $1,000 balance consistent with §1026.7. During the July billing cycle, the account is used for $300 in transactions, increasing the balance to $1,300. At the end of the July billing cycle, no payment has been received and the card issuer imposes a $25 late payment fee consistent with §1026.52(b)(1)(ii)(A). On August 5, the card issuer provides a periodic statement disclosing the $1,325 balance consistent with §1026.7. During the August billing cycle, the account is used for $200 in transactions, increasing the balance to $1,525. At the end of the August billing cycle, no payment has been received. Consistent with §1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $40, which is 3% of the $1,325 balance that was due at the end of the August billing cycle. Section 1026.52(b)(1)(ii)(C) does not permit the card issuer to include the $200 in transactions that occurred during the August billing cycle.

ii. Same facts as above except that, on August 25, a $100 payment is received. Consistent with §1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $37, which is 3% of the unpaid portion of the $1,325 balance that was due at the end of the August billing cycle ($1,225).

iii. Same facts as in paragraph A above except that, on August 25, a $200 payment is received. Consistent with §1026.52(b)(1)(ii)(C), the card issuer may impose a late payment fee of $34, which is 3% of the unpaid portion of the $1,325 balance that was due at the end of the August billing cycle ($1,125). In the alternative, the card issuer may impose a late payment fee of $35 consistent with §1026.52(b)(1)(ii)(B). However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees.

52(b)(2) Prohibited fees

1. *Relationship to §1026.52(b)(1).* A card issuer does not comply with §1026.52(b) if it imposes a fee that is inconsistent with the prohibitions in §1026.52(b)(2). Thus, the prohibitions in §1026.52(b)(2) apply even if a fee is consistent with §1026.52(b)(1)(i) or (b)(1)(ii). For example, even if a card issuer has determined for purposes of §1026.52(b)(1)(i) that a $27 fee represents a reasonable proportion of the total costs incurred by the card issuer as a result of a particular type of violation, §1026.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than $27. Similarly, even if §1026.52(b)(1)(ii) permits a card issuer to impose a $25 fee, §1026.52(b)(2)(i) prohibits the card issuer from imposing that fee if the dollar amount associated with the violation is less than $25.

52(b)(2)(i) Fees That Exceed Dollar Amount Associated With Violation

1. *Late payment fees.* For purposes of §1026.52(b)(2)(i), the dollar amount associated with a late payment is the amount of the required minimum periodic payment due immediately prior to assessment of the late payment fee. Thus, §1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a late payment fee that exceeds the amount of that required minimum periodic payment. For example:

i. Assume that a $15 required minimum periodic payment is due on September 25. The card issuer does not receive any payment on or before September 25. On September 26, the card issuer imposes a late payment fee. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on September 25 ($15). Thus, under §1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

ii. Same facts as above except that, on September 25, the card issuer receives a $10 payment. No further payments are received. On September 26, the card issuer imposes a late payment fee. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the late payment is the full amount of the required minimum periodic payment due on September 25 ($15), rather than the unpaid portion of that payment ($5). Thus, under §1026.52(b)(2)(i)(A), the amount of the late payment fee cannot exceed $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

iii. Assume that a $15 required minimum periodic payment is due on October 28 and the billing cycle for the account closes on October 31. The card issuer does not receive any payment on or before November 3. On November 3, the card issuer determines that the required minimum periodic payment due on November 28 is $50. On November 5, the card issuer imposes a late payment fee. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the late payment is the amount of the required minimum periodic payment due on October 28 ($15), rather than the amount of the required minimum periodic payment due on November 28 ($50). Thus, under §1026.52(b)(2)(i)(A), the amount of that fee cannot exceed $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

2. *Returned payment fees.* For purposes of §1026.52(b)(2)(i), the dollar amount associated with a returned payment is the amount of the required minimum periodic payment due immediately prior to the date on which the payment is returned to the card issuer. Thus, §1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a returned payment fee that exceeds the amount of that required minimum periodic payment. However, if a payment has been returned and is submitted again for payment by the card issuer, there is no additional dollar amount associated with a subsequent return of that payment and §1026.52(b)(2)(i)(B) prohibits the card issuer from imposing an additional returned payment fee. For example:

i. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on March 25. The card issuer receives a check for $100 on March 23, which is returned to the card issuer for insufficient funds on March 26. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under §1026.52(b)(1)). Furthermore, §1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See* comment 52(b)(2)(ii)–1.

ii. Same facts as above except that the card issuer receives the $100 check on March 31 and the check is returned for insufficient funds on April 2. The minimum payment due on April 25 is $30. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on March 25 ($15), rather than the amount of the required minimum periodic payment due on April 25 ($30). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under §1026.52(b)(1)). Furthermore, §1026.52(b)(2)(ii) prohibits the card issuer from assessing both a late payment fee and a returned payment fee in these circumstances. *See* comment 52(b)(2)(ii)–1.

iii. Same facts as paragraph i above except that, on March 28, the card issuer presents the $100 check for payment a second time. On April 1, the check is again returned for insufficient funds. Section 1026.52(b)(2)(i)(B) prohibits the card issuer from imposing a returned payment fee based on the return of the payment on April 1.

iv. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. A minimum payment of $15 is due on August 25. The card issuer receives a check for $15 on August 23, which is not returned. The card issuer receives a check for $50 on September 5, which is returned to the card issuer for insufficient funds on September 7. Section 1026.52(b)(2)(i)(B) does not prohibit the card issuer from imposing a returned payment fee in these circumstances. Instead, for purposes of §1026.52(b)(2)(i), the dollar amount associated with the returned payment is the amount of the required minimum periodic payment due on August 25 ($15). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a returned payment fee that exceeds $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

3. *Over-the-limit fees.* For purposes of §1026.52(b)(2)(i), the dollar amount associated with extensions of credit in excess of the credit limit for an account is the total amount of credit extended by the card issuer in excess of the credit limit during the billing cycle in which the over-the-limit fee is imposed. Thus, §1026.52(b)(2)(i)(A) prohibits a card issuer from imposing an over-the-limit

fee that exceeds that amount. Nothing in §1026.52(b) permits a card issuer to impose an over-the-limit fee if imposition of the fee is inconsistent with §1026.56. The following examples illustrate the application of §1026.52(b)(2)(i)(A) to over-the-limit fees:

i. Assume that the billing cycles for a credit card account with a credit limit of $5,000 begin on the first day of the month and end on the last day of the month. Assume also that, consistent with §1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 1, the account has a $4,950 balance. On March 6, a $60 transaction is charged to the account, increasing the balance to $5,010. On March 25, a $5 transaction is charged to the account, increasing the balance to $5,015. On the last day of the billing cycle (March 31), the card issuer imposes an over-the-limit fee. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing an over-the-limit fee that exceeds $15 (even if a higher fee would be permitted under §1026.52(b)(1)).

ii. Same facts as above except that, on March 26, the card issuer receives a payment of $20, reducing the balance below the credit limit to $4,995. Nevertheless, for purposes of §1026.52(b)(2)(i), the dollar amount associated with the extensions of credit in excess of the credit limit is the total amount of credit extended by the card issuer in excess of the credit limit during the March billing cycle ($15). Thus, consistent with §1026.52(b)(2)(i)(A), the card issuer may impose an over-the-limit fee of $15.

4. *Declined access check fees*. For purposes of §1026.52(b)(2)(i), the dollar amount associated with declining payment on a check that accesses a credit card account is the amount of the check. Thus, when a check that accesses a credit card account is declined, §1026.52(b)(2)(i)(A) prohibits a card issuer from imposing a fee that exceeds the amount of that check. For example, assume that a check that accesses a credit card account is used as payment for a $50 transaction, but payment on the check is declined by the card issuer because the transaction would have exceeded the credit limit for the account. For purposes of §1026.52(b)(2)(i), the dollar amount associated with the declined check is the amount of the check ($50). Thus, §1026.52(b)(2)(i)(A) prohibits the card issuer from imposing a fee that exceeds $50. However, the amount of this fee must also comply with §1026.52(b)(1)(i) or (b)(1)(ii).

5. *Inactivity fees*. Section 1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a fee with respect to a credit card account under an open-end (not home-secured) consumer credit plan based on inactivity on that account (including the consumer's failure to use the account for a particular number or dollar amount of transactions or a particular type of transaction). For example, §1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 fee when a credit card account under an open-end (not home-secured) consumer credit plan is not used for at least $2,000 in purchases over the course of a year. Similarly, §1026.52(b)(2)(i)(B)(*2*) prohibits a card issuer from imposing a $50 annual fee on all accounts of a particular type but waiving the fee on any account that is used for at least $2,000 in purchases over the course of a year if the card issuer promotes the waiver or rebate of the annual fee for purposes of §1026.55(e). However, if the card issuer does not promote the waiver or rebate of the annual fee for purposes of §1026.55(e), §1026.52(b)(2)(i)(B)(*2*) does not prohibit a card issuer from considering account activity along with other factors when deciding whether to waive or rebate annual fees on individual accounts (such as in response to a consumer's request).

6. *Closed account fees*. Section 1026.52(b)(2)(i)(B)(*3*) prohibits a card issuer from imposing a fee based on the closure or termination of an account. For example, §1026.52(b)(2)(i)(B)(*3*) prohibits a card issuer from:

i. Imposing a one-time fee to consumers who close their accounts.

ii. Imposing a periodic fee (such as an annual fee, a monthly maintenance fee, or a closed account fee) after an account is closed or terminated if that fee was not imposed prior to closure or termination. This prohibition applies even if the fee was disclosed prior to closure or termination. *See also* comment 55(d)–1.

iii. Increasing a periodic fee (such as an annual fee or a monthly maintenance fee) after an account is closed or terminated. However, a card issuer is not prohibited from continuing to impose a periodic fee that was imposed before the account was closed or terminated.

7. *Declined transaction fees*. Section 1026.52(b)(2)(i)(B)(*1*) states that card issuers must not impose a fee when there is no dollar amount associated with the violation, such as for transactions that the card issuer declines to authorize. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, §1026.52(b)(2)(i)(B)(*1*) prohibits a card issuer from imposing declined transaction fees in connection with the credit feature, regardless of whether the declined transaction fee is imposed on the credit feature or on the

asset feature of the prepaid account. For example, if the prepaid card attempts to access credit from the covered separate credit feature accessible by the hybrid prepaid-credit card and the transaction is declined, §1026.52(b)(2)(i)(B)(*1*) prohibits the card issuer from imposing a declined transaction fee, regardless of whether the fee is imposed on the credit feature or on the asset feature of the prepaid account. Fees imposed for declining a transaction that would have only accessed the asset feature of the prepaid account and would not have accessed the covered separate credit feature accessible by the hybrid prepaid-credit are not covered by §1026.52(b)(2)(i)(B)(*1*).

52(b)(2)(ii) Multiple Fees Based on a Single Event or Transaction

1. *Single event or transaction.* Section 1026.52(b)(2)(ii) prohibits a card issuer from imposing more than one fee for violating the terms or other requirements of an account based on a single event or transaction. If §1026.56(j)(1) permits a card issuer to impose fees for exceeding the credit limit in consecutive billing cycles based on the same over-the-limit transaction, those fees are not based on a single event or transaction for purposes of §1026.52(b)(2)(ii). The following examples illustrate the application of §1026.52(b)(2)(ii). Assume for purposes of these examples that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date for the account is the twenty-fifth day of the month.

i. Assume that the required minimum periodic payment due on March 25 is $20. On March 26, the card issuer has not received any payment and imposes a late payment fee. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i), the card issuer may impose a $20 late payment fee on March 26. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing an additional late payment fee if the $20 minimum payment has not been received by a subsequent date (such as March 31).

A. On April 3, the card issuer provides a periodic statement disclosing that a $70 required minimum periodic payment is due on April 25. This minimum payment includes the $20 minimum payment due on March 25 and the $20 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Section 1026.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee based on the consumer's failure to make the $70 required minimum periodic payment on or before April 25. Accordingly, consistent with §1026.52(b)(1)(ii)(B) and (b)(2)(i), the card issuer may impose a $35 late payment fee on April 26.

B. On April 3, the card issuer provides a periodic statement disclosing that a $20 required minimum periodic payment is due on April 25. This minimum payment does not include the $20 minimum payment due on March 25 or the $20 late payment fee imposed on March 26. On April 20, the card issuer receives a $20 payment. No additional payments are received during the April billing cycle. Because the card issuer has received the required minimum periodic payment due on April 25 and because §1026.52(b)(2)(ii) prohibits the card issuer from imposing a second late payment fee based on the consumer's failure to make the $20 minimum payment due on March 25, the card issuer cannot impose a late payment fee in these circumstances.

ii. Assume that the required minimum periodic payment due on March 25 is $30.

A. On March 25, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 27. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

B. Same facts as paragraph ii.A above except that that card issuer receives the $50 check on March 27 and the check is returned for insufficient funds on March 29. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. If no payment is received on or before the next payment due date (April 25), §1026.52(b)(2)(ii) does not prohibit the card issuer from imposing a late payment fee.

iii. Assume that the required minimum periodic payment due on July 25 is $30. On July 10, the card issuer receives a $50 payment, which is not returned. On July 20, the card issuer receives a $100 payment, which is returned for insufficient funds on July 24. Consistent with §1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25. Nothing in §1026.52(b)(2)(ii) prohibits the imposition of this fee.

iv. Assume that the credit limit for an account is $1,000 and that, consistent with §1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On March 31, the balance on the account is $970 and the card issuer has not received the $35 required minimum periodic payment due on March 25. On that same date (March 31), a $70 transaction is charged to the account, which increases the balance to $1,040. Consistent with §1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 and an over-the-limit fee of $25. Section 1026.52(b)(2)(ii) does not prohibit the imposition of both fees because those fees are based on different events or transactions. No additional transactions are charged to the account during the March, April, or May billing cycles. If the account balance remains more than $35 above the credit limit on April 26, the card issuer may impose an over-the-limit fee of $35 pursuant to §1026.52(b)(1)(ii)(B), to the extent consistent with §1026.56(j)(1). Furthermore, if the account balance remains more than $35 above the credit limit on May 26, the card issuer may again impose an over-the-limit fee of $35 pursuant to §1026.52(b)(1)(ii)(B), to the extent consistent with §1026.56(j)(1). Thereafter, §1026.56(j)(1) does not permit the card issuer to impose additional over-the-limit fees unless another over-the-limit transaction occurs. However, if an over-the-limit transaction occurs during the six billing cycles following the May billing cycle, the card issuer may impose an over-the-limit fee of $35 pursuant to §1026.52(b)(1)(ii)(B).

v. Assume that the credit limit for an account is $5,000 and that, consistent with §1026.56, the consumer has affirmatively consented to the payment of transactions that exceed the credit limit. On July 23, the balance on the account is $4,950. On July 24, the card issuer receives the $100 required minimum periodic payment due on July 25, reducing the balance to $4,850. On July 26, a $75 transaction is charged to the account, which increases the balance to $4,925. On July 27, the $100 payment is returned for insufficient funds, increasing the balance to $5,025. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25 or an over-the-limit fee of $25. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vi. Assume that the required minimum periodic payment due on March 25 is $50. On March 20, the card issuer receives a check for $50, but the check is returned for insufficient funds on March 22. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a returned payment fee of $25. On March 25, the card issuer receives a second check for $50, but the check is returned for insufficient funds on March 27. Consistent with §§1026.52(b)(1)(ii)(A), (b)(1)(ii)(B), and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $35. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction.

vii. Assume that the required minimum periodic payment due on February 25 is $100. On February 25, the card issuer receives a check for $100. On March 3, the card issuer provides a periodic statement disclosing that a $120 required minimum periodic payment is due on March 25. On March 4, the $100 check is returned to the card issuer for insufficient funds. Consistent with §§1026.52(b)(1)(ii)(A) and (b)(2)(i)(A), the card issuer may impose a late payment fee of $25 or a returned payment fee of $25 with respect to the $100 payment. However, §1026.52(b)(2)(ii) prohibits the card issuer from imposing both fees because those fees would be based on a single event or transaction. On March 20, the card issuer receives a $120 check, which is not returned. No additional payments are received during the March billing cycle. Because the card issuer has received the required minimum periodic payment due on March 25 and because §1026.52(b)(2)(ii) prohibits the card issuer from imposing a second fee based on the $100 payment that was returned for insufficient funds, the card issuer cannot impose a late payment fee in these circumstances.

Section 1026.53—Allocation of Payments

1. *Required minimum periodic payment.* Section 1026.53 addresses the allocation of amounts paid by the consumer in excess of the minimum periodic payment required by the card issuer. Section 1026.53 does not limit or otherwise address the card issuer's ability to determine, consistent with applicable law and regulatory guidance, the amount of the required minimum periodic payment or how that payment is allocated. A card issuer may, but is not required to, allocate the required minimum periodic payment consistent with the requirements in §1026.53 to the extent consistent with other applicable law or regulatory guidance.

2. *Applicable rates and balances.* Section 1026.53 permits a card issuer to allocate an amount paid by the consumer in excess of the required minimum periodic payment based on the annual percentage rates and balances on the day the preceding billing cycle ends, on the day the payment is credited to the account, or on any day in between those two dates. The day used by the card issuer to determine the applicable annual percentage rates and balances for purposes of §1026.53 generally must be consistent from billing cycle to billing cycle, although the card issuer may adjust this day from time to time. For example:

i. Assume that the billing cycles for a credit card account start on the first day of the month and end on the last day of the month. On the date the March billing cycle ends (March 31), the account has a purchase balance of $500 at a promotional annual percentage rate of 5% and another purchase balance of $200 at a non-promotional annual percentage rate of 15%. On April 5, a $100 purchase to which the 15% rate applies is charged to the account. On April 15, the promotional rate expires and § 1026.55(b)(1) permits the card issuer to increase the rate that applies to the $500 balance from 5% to 18%. On April 25, the card issuer credits to the account $400 paid by the consumer in excess of the required minimum periodic payment. If the card issuer's practice is to allocate payments based on the rates and balances on the last day of the prior billing cycle, the card issuer would allocate the $400 payment to pay in full the $200 balance to which the 15% rate applied on March 31 and then allocate the remaining $200 to the $500 balance to which the 5% rate applied on March 31. In the alternative, if the card issuer's practice is to allocate payments based on the rates and balances on the day a payment is credited to the account, the card issuer would allocate the $400 payment to the $500 balance to which the 18% rate applied on April 25.

ii. Same facts as above except that, on April 25, the card issuer credits to the account $750 paid by the consumer in excess of the required minimum periodic payment. If the card issuer's practice is to allocate payments based on the rates and balances on the last day of the prior billing cycle, the card issuer would allocate the $750 payment to pay in full the $200 balance to which the 15% rate applied on March 31 and the $500 balance to which the 5% rate applied on March 31 and then allocate the remaining $50 to the $100 purchase made on April 5. In the alternative, if the card issuer's practice is to allocate payments based on the rates and balances on the day a payment is credited to the account, the card issuer would allocate the $750 payment to pay in full the $500 balance to which the 18% rate applied on April 25 and then allocate the remaining $250 to the $300 balance to which the 15% rate applied on April 25.

3. *Claims or defenses under § 1026.12(c) and billing error disputes under § 1026.13*. When a consumer has asserted a claim or defense against the card issuer pursuant to § 1026.12(c) or alleged a billing error under § 1026.13, the card issuer must apply the consumer's payment in a manner that avoids or minimizes any reduction in the amount subject to that claim, defense, or dispute. For example:

i. Assume that a credit card account has a $500 cash advance balance at an annual percentage rate of 25% and a $1,000 purchase balance at an annual percentage rate of 17%. Assume also that $200 of the cash advance balance is subject to a claim or defense under § 1026.12(c) or a billing error dispute under § 1026.13. If the consumer pays $900 in excess of the required minimum periodic payment, the card issuer must allocate $300 of the excess payment to pay in full the portion of the cash advance balance that is not subject to the claim, defense, or dispute and then allocate the remaining $600 to the $1,000 purchase balance.

ii. Same facts as above except that the consumer pays $1,400 in excess of the required minimum periodic payment. The card issuer must allocate $1,300 of the excess payment to pay in full the $300 cash advance balance that is not subject to the claim, defense, or dispute and the $1,000 purchase balance. If there are no new transactions or other amounts to which the remaining $100 can be allocated, the card issuer may apply that amount to the $200 cash advance balance that is subject to the claim, defense, or dispute. However, if the card issuer subsequently determines that a billing error occurred as asserted by the consumer, the card issuer must credit the account for the disputed amount and any related finance or other charges and send a correction notice consistent with § 1026.13(e).

4. *Balances with the same rate*. When the same annual percentage rate applies to more than one balance on an account and a different annual percentage rate applies to at least one other balance on that account, § 1026.53 generally does not require that any particular method be used when allocating among the balances with the same annual percentage rate. Under these circumstances, a card issuer may treat the balances with the same rate as a single balance or separate balances. *See* example in comment 53–5.iv. However, when a balance on a credit card account is subject to a deferred interest or similar program that provides that a consumer will not be obligated to pay interest that accrues on the balance if the balance is paid in full prior to the expiration of a specified period of time, that balance must be treated as a balance with an annual percentage rate of zero for purposes of § 1026.53 during that period of time. For example, if an account has a $1,000 purchase balance and a $2,000 balance that is subject to a deferred interest program that expires on July 1 and a 15% annual percentage rate applies to both, the balances must be treated as balances with different rates for purposes of § 1026.53 until July 1. In addition, unless the card issuer allocates amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer pursuant to § 1026.53(b)(1)(ii), § 1026.53(b)(1)(i) requires the card issuer to apply any excess payments first to the $1,000 purchase balance except during the last two billing cycles of the deferred interest period (when it must be applied first to any remaining portion of the $2,000 balance). *See* example in comment 53–5.v.

5. *Examples*. For purposes of the following examples, assume that none of the required minimum periodic payment is allocated to

the balances discussed (unless otherwise stated).

i. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $800 in excess of the required minimum periodic payment. Under §1026.53(a), the card issuer must allocate $500 to pay off the cash advance balance and then allocate the remaining $300 to the purchase balance.

ii. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20% and a purchase balance of $1,500 at an annual percentage rate of 15% and that the consumer pays $400 in excess of the required minimum periodic payment. Under §1026.53(a), the card issuer must allocate the entire $400 to the cash advance balance.

iii. Assume that a credit card account has a cash advance balance of $100 at an annual percentage rate of 20%, a purchase balance of $300 at an annual percentage rate of 18%, and a $600 protected balance on which the 12% annual percentage rate cannot be increased pursuant to §1026.55. If the consumer pays $500 in excess of the required minimum periodic payment, §1026.53(a) requires the card issuer to allocate $100 to pay off the cash advance balance, $300 to pay off the purchase balance, and $100 to the protected balance.

iv. Assume that a credit card account has a cash advance balance of $500 at an annual percentage rate of 20%, a purchase balance of $1,000 at an annual percentage rate of 15%, and a transferred balance of $2,000 that was previously at a discounted annual percentage rate of 5% but is now at an annual percentage rate of 15%. Assume also that the consumer pays $800 in excess of the required minimum periodic payment. Under §1026.53(a), the card issuer must allocate $500 to pay off the cash advance balance and allocate the remaining $300 among the purchase balance and the transferred balance in the manner the card issuer deems appropriate.

v. Assume that on January 1 a consumer uses a credit card account to make a $1,200 purchase subject to a deferred interest program under which interest accrues at an annual percentage rate of 15% but the consumer will not be obligated to pay that interest if the balance is paid in full on or before June 30. The billing cycles for this account begin on the first day of the month and end on the last day of the month. Each month from January through June, the consumer uses the account to make $200 in purchases that are not subject to the deferred interest program but are subject to the 15% rate.

A. Each month from February through June, the consumer pays $400 in excess of the required minimum periodic payment on the payment due date, which is the twenty-fifth of the month. Any interest that accrues on the purchases not subject to the deferred interest program is paid by the required minimum periodic payment. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to §1026.53(b)(1)(ii). Thus, §1026.53(b)(1)(i) requires the card issuer to allocate the $400 excess payments received on February 25, March 25, and April 25 consistent with §1026.53(a). In other words, the card issuer must allocate those payments as follows: $200 to pay off the balance not subject to the deferred interest program (which is subject to the 15% rate) and the remaining $200 to the deferred interest balance (which is treated as a balance with a rate of zero). However, §1026.53(b)(1)(i) requires the card issuer to allocate the entire $400 excess payment received on May 25 to the deferred interest balance. Similarly, §1026.53(b)(1)(i) requires the card issuer to allocate the $400 excess payment received on June 25 as follows: $200 to the deferred interest balance (which pays that balance in full) and the remaining $200 to the balance not subject to the deferred interest program.

B. Same facts as above, except that the card issuer does accept requests from consumers regarding the allocation of excess payments pursuant to §1026.53(b)(1)(ii). In addition, on April 25, the card issuer receives an excess payment of $800, which the consumer requests be allocated to pay off the $800 balance subject to the deferred interest program. Section 1026.53(b)(1)(ii) permits the card issuer to allocate the $800 excess payment in the manner requested by the consumer.

53(b) Special Rules

1. *Deferred interest and similar programs.* Section 1026.53(b)(1) applies to deferred interest or similar programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of §1026.53(b)(1), ''deferred interest'' has the same meaning as in §1026.16(h)(2) and associated commentary. Section 1026.53(b)(1) applies regardless of whether the consumer is required to make payments with respect to that balance during the specified period. However, a grace period during which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate is not a deferred interest or similar program for purposes of §1026.53(b)(1). Similarly, a temporary annual percentage rate of zero percent that applies for a specified period of time consistent with §1026.55(b)(1) is not a deferred interest or similar program for purposes of §1026.53(b)(1) unless the consumer

may be obligated to pay interest that accrues during the period if a balance is not paid in full prior to expiration of the period.

2. *Expiration of deferred interest or similar program during billing cycle.* For purposes of §1026.53(b)(1)(i), a billing cycle does not constitute one of the two billing cycles immediately preceding expiration of a deferred interest or similar program if the expiration date for the program precedes the payment due date in that billing cycle. For example, assume that a credit card account has a balance subject to a deferred interest program that expires on June 15. Assume also that the billing cycles for the account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payment is due on the twenty-fifth day of the month. The card issuer does not accept requests from consumers regarding the allocation of excess payments pursuant to §1026.53(b)(1)(ii). Because the expiration date for the deferred interest program (June 15) precedes the due date in the June billing cycle (June 25), §1026.53(b)(1)(i) requires the card issuer to allocate first to the deferred interest balance any amount paid by the consumer in excess of the required minimum periodic payment during the April and May billing cycles (as well as any amount paid by the consumer before June 15). However, if the deferred interest program expired on June 25 or on June 30 (or on any day in between), §1026.53(b)(1)(i) would apply only to the May and June billing cycles.

3. *Consumer requests.* i. *Generally.* Section 1026.53(b) does not require a card issuer to allocate amounts paid by the consumer in excess of the required minimum periodic payment in the manner requested by the consumer, provided that the card issuer instead allocates such amounts consistent with §1026.53(a) or (b)(1)(i), as applicable. For example, a card issuer may decline consumer requests regarding payment allocation as a general matter or may decline such requests when a consumer does not comply with requirements set by the card issuer (such as submitting the request in writing or submitting the request prior to or contemporaneously with submission of the payment), provided that amounts paid by the consumer in excess of the required minimum periodic payment are allocated consistent with §1026.53(a) or (b)(1)(i), as applicable. Similarly, a card issuer that accepts requests pursuant to §1026.53(b)(1)(ii) or (b)(2) must allocate amounts paid by a consumer in excess of the required minimum periodic payment consistent with §1026.53(a) or (b)(1)(i), as applicable, if the consumer does not submit a request. Furthermore, a card issuer that accepts requests pursuant to §1026.53(b)(1)(ii) or (b)(2) must allocate consistent with §1026.53(a) or (b)(1)(i), as applicable, if the consumer submits a request with which the card issuer cannot comply (such as a request that contains a mathematical error), unless the consumer submits an additional request with which the card issuer can comply.

ii. *Examples of consumer requests that satisfy §1026.53(b)(1)(ii) or (b)(2).* A consumer has made a request for purposes of §1026.53(b)(1)(ii) or (b)(2) if:

A. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account or the period of time that a balance on the account is secured.

B. The consumer completes and submits to the card issuer a form or payment coupon provided by the card issuer for the purpose of requesting that a payment or payments be allocated in a particular manner during the period of time that the deferred interest or similar program applies to a balance on the account or the period of time that a balance on the account is secured.

C. The consumer contacts the card issuer orally, electronically, or in writing and specifically requests that a payment that the card issuer has previously allocated consistent with §1026.53(a) or (b)(1)(i), as applicable, instead be allocated in a different manner.

iii. *Examples of consumer requests that do not satisfy §1026.53(b)(1)(ii) or (b)(2).* A consumer has not made a request for purposes of §1026.53(b)(1)(ii) or (b)(2) if:

A. The terms and conditions of the account agreement contain preprinted language stating that by applying to open an account, by using that account for transactions subject to a deferred interest or similar program, or by using the account to purchase property in which the card issuer holds a security interest the consumer requests that payments be allocated in a particular manner.

B. The card issuer's online application contains a preselected check box indicating that the consumer requests that payments be allocated in a particular manner and the consumer does not deselect the box.

C. The payment coupon provided by the card issuer contains preprinted language or a preselected check box stating that by submitting a payment the consumer requests that the payment be allocated in a particular manner.

D. The card issuer requires a consumer to accept a particular payment allocation method as a condition of using a deferred interest or similar program, purchasing property in which the card issuer holds a security interest, making a payment, or receiving account services or features.

Section 1026.54—Limitations on the Imposition of Finance Charges

54(a) Limitations on imposing finance charges as a result of the loss of a grace period

54(a)(1) General Rule

1. *Eligibility for grace period.* Section 1026.54 prohibits the imposition of finance charges as a result of the loss of a grace period in certain specified circumstances. Section 1026.54 does not require the card issuer to provide a grace period. Furthermore, §1026.54 does not prohibit the card issuer from placing limitations and conditions on a grace period (such as limiting application of the grace period to certain types of transactions or conditioning eligibility for the grace period on certain transactions being paid in full by a particular date), provided that such limitations and conditions are consistent with §1026.5(b)(2)(ii)(B) and §1026.54. Finally, §1026.54 does not limit the imposition of finance charges with respect to a transaction when the consumer is not eligible for a grace period on that transaction at the end of the billing cycle in which the transaction occurred. For example:

i. Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. Assume also that, for purchases made during the current billing cycle (for purposes of this example, the June billing cycle), the grace period applies from the date of the purchase until the payment due date in the following billing cycle (July 25), subject to two conditions. First, the purchase balance at the end of the preceding billing cycle (the May billing cycle) must have been paid in full by the payment due date in the current billing cycle (June 25). Second, the purchase balance at the end of the current billing cycle (the June billing cycle) must be paid in full by the following payment due date (July 25). Finally, assume that the consumer was eligible for a grace period at the start of the June billing cycle (in other words, assume that the purchase balance for the April billing cycle was paid in full by May 25).

A. If the consumer pays the purchase balance for the May billing cycle in full by June 25, then at the end of the June billing cycle the consumer is eligible for a grace period with respect to purchases made during that billing cycle. Therefore, §1026.54 limits the imposition of finance charges with respect to purchases made during the June billing cycle if the consumer does not pay the purchase balance for the June billing cycle in full by July 25. Specifically, §1026.54(a)(1)(i) prohibits the card issuer from imposing finance charges based on the purchase balance at the end of the June billing cycle for days that precede the July billing cycle. Furthermore, §1026.54(a)(1)(ii) prohibits the card issuer from imposing finance charges based on any portion of the balance at the end of the June billing cycle that was paid on or before July 25.

B. If the consumer does not pay the purchase balance for the May billing cycle in full by June 25, then the consumer is not eligible for a grace period with respect to purchases made during the June billing cycle at the end of that cycle. Therefore, §1026.54 does not limit the imposition of finance charges with respect to purchases made during the June billing cycle regardless of whether the consumer pays the purchase balance for the June billing cycle in full by July 25.

ii. Same facts as above except that the card issuer places only one condition on the provision of a grace period for purchases made during the current billing cycle (the June billing cycle): that the purchase balance at the end of the current billing cycle (the June billing cycle) be paid in full by the following payment due date (July 25). In these circumstances, §1026.54 applies to the same extent as discussed in paragraphs i.A and i.B above regardless of whether the purchase balance for the April billing cycle was paid in full by May 25.

2. *Definition of grace period.* For purposes of §§1026.5(b)(2)(ii)(B) and 1026.54, a grace period is a period within which any credit extended may be repaid without incurring a finance charge due to a periodic interest rate. The following are not grace periods for purposes of §1026.54:

i. *Deferred interest and similar programs.* A deferred interest or similar promotional program under which a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time is not a grace period for purposes of §1026.54. Thus, §1026.54 does not prohibit the card issuer from charging accrued interest to an account upon expiration of a deferred interest or similar program if the balance was not paid in full prior to expiration (to the extent consistent with §1026.55 and other applicable law and regulatory guidance).

ii. *Waivers or rebates of interest.* As a general matter, a card issuer has not provided a grace period with respect to transactions for purposes of §1026.54 if, on an individualized basis (such as in response to a consumer's request), the card issuer waives or rebates finance charges that have accrued on transactions. In addition, when a balance at the end of the preceding billing cycle is paid in full on or before the payment due date in the current billing cycle, a card issuer that waives or rebates trailing or residual interest accrued on that balance or any other transactions during the current billing cycle has not provided a grace period with respect to that balance or any other transactions for purposes of §1026.54. However, if the terms of the account provide that all interest accrued on transactions will be waived or rebated if the balance for those transactions at the end of the billing cycle during which the transactions occurred is paid in full by the following payment due date, the card issuer is providing a grace period with respect to those transactions for purposes of §1026.54. For example:

A. Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. On March 31, the balance on the account is $1,000 and the consumer is not eligible for a grace period with respect to that balance because the balance at the end of the prior billing cycle was not paid in full on March 25. On April 15, the consumer uses the account for a $500 purchase. On April 25, the card issuer receives a payment of $1,000. On May 3, the card issuer mails or delivers a periodic statement reflecting trailing or residual interest that accrued on the $1,000 balance from April 1 through April 24 as well as interest that accrued on the $500 purchase from April 15 through April 30. On May 10, the consumer requests that the trailing or residual interest charges be waived and the card issuer complies. By waiving these interest charges, the card issuer has not provided a grace period with respect to the $1,000 balance or the $500 purchase.

B. Same facts as in paragraph ii.A above except that the terms of the account state that trailing or residual interest will be waived in these circumstances or it is the card issuer's practice to waive trailing or residual interest in these circumstances. By waiving these interest charges, the card issuer has not provided a grace period with respect to the $1,000 balance or the $500 purchase.

C. Assume that the billing cycles for a credit card account begin on the first day of the month and end on the last day of the month and that the payment due date is the twenty-fifth day of the month. Assume also that, for purchases made during the current billing cycle (for purposes of this example, the June billing cycle), the terms of the account provide that interest accrued on those purchases from the date of the purchase until the payment due date in the following billing cycle (July 25) will be waived or rebated, subject to two conditions. First, the purchase balance at the end of the preceding billing cycle (the May billing cycle) must have been paid in full by the payment due date in the current billing cycle (June 25). Second, the purchase balance at the end of the current billing cycle (the June billing cycle) must be paid in full by the following payment due date (July 25). Under these circumstances, the card issuer is providing a grace period on purchases for purposes of §1026.54. Therefore, assuming that the consumer was eligible for this grace period at the start of the June billing cycle (in other words, assuming that the purchase balance for the April billing cycle was paid in full by May 25) and assuming that the consumer pays the purchase balance for the May billing cycle in full by June 25, §1026.54 applies to the imposition of finance charges with respect to purchases made during the June billing cycle. Specifically, §1026.54(a)(1)(i) prohibits the card issuer from imposing finance charges based on the purchase balance at the end of the June billing cycle for days that precede the July billing cycle. Furthermore, §1026.54(a)(1)(ii) prohibits the card issuer from imposing finance charges based on any portion of the balance at the end of the June billing cycle that was paid on or before July 25.

3. *Relationship to payment allocation requirements in §1026.53.* Card issuers must comply with the payment allocation requirements in §1026.53 even if doing so will result in the loss of a grace period.

4. *Prohibition on two-cycle balance computation method.* When a consumer ceases to be eligible for a grace period, §1026.54(a)(1)(i) prohibits the card issuer from computing the finance charge using the two-cycle average daily balance computation method. This method calculates the finance charge using a balance that is the sum of the average daily balances for two billing cycles. The first balance is for the current billing cycle, and is calculated by adding the total balance (including or excluding new purchases and deducting payments and credits) for each day in the billing cycle, and then dividing by the number of days in the billing cycle. The second balance is for the preceding billing cycle.

5. *Prohibition on imposing finance charges on amounts paid within grace period.* When a balance on a credit card account is eligible for a grace period and the card issuer receives payment for some but not all of that balance prior to the expiration of the grace period, §1026.54(a)(1)(ii) prohibits the card issuer from imposing finance charges on the portion of the balance paid. Card issuers are not required to use a particular method to comply with §1026.54(a)(1)(ii). However, when §1026.54(a)(1)(ii) applies, a card issuer is in compliance if, for example, it applies the consumer's payment to the balance subject to the grace period at the end of the preceding billing cycle (in a manner consistent with the payment allocation requirements in §1026.53) and then calculates interest charges based on the amount of the balance that remains unpaid.

6. *Examples.* Assume that the annual percentage rate for purchases on a credit card account is 15%. The billing cycle starts on the first day of the month and ends on the

last day of the month. The payment due date for the account is the twenty-fifth day of the month. For purchases made during the current billing cycle, the card issuer provides a grace period from the date of the purchase until the payment due date in the following billing cycle, provided that the purchase balance at the end of the current billing cycle is paid in full by the following payment due date. For purposes of this example, assume that none of the required minimum periodic payment is allocated to the balances discussed. During the March billing cycle, the following transactions are charged to the account: A $100 purchase on March 10, a $200 purchase on March 15, and a $300 purchase on March 20. On March 25, the purchase balance for the February billing cycle is paid in full. Thus, for purposes of § 1026.54, the consumer is eligible for a grace period on the March purchases. At the end of the March billing cycle (March 31), the consumer's total purchase balance is $600 and the consumer will not be charged interest on that balance if it is paid in full by the following due date (April 25).

i. On April 10, a $150 purchase is charged to the account. On April 25, the card issuer receives $500 in excess of the required minimum periodic payment. Section 1026.54(a)(1)(i) prohibits the card issuer from reaching back and charging interest on any of the March transactions from the date of the transaction through the end of the March billing cycle (March 31). In these circumstances, the card issuer may comply with § 1026.54(a)(1)(ii) by applying the $500 excess payment to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($100) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30). In addition, the card issuer may charge interest on the $150 purchase from the date of the transaction (April 10) through the end of the April billing cycle (April 31).

ii. Same facts as in paragraph 6 above except that, on March 18, a $250 cash advance is charged to the account at an annual percentage rate of 25%. The card issuer's grace period does not apply to cash advances, but the card issuer does provide a grace period on the March purchases because the purchase balance for the February billing cycle is paid in full on March 25. On April 25, the card issuer receives $600 in excess of the required minimum periodic payment. As required by § 1026.53, the card issuer allocates the $600 excess payment first to the balance with the highest annual percentage rate (the $250 cash advance balance). Although § 1026.54(a)(1)(i) prohibits the card issuer from charging interest on the March purchases based on days in the March billing cycle, the card issuer may charge interest on the $250 cash advance from the date of the transaction (March 18) through April 24. In these circumstances, the card issuer may comply with § 1026.54(a)(1)(ii) by applying the remainder of the excess payment ($350) to the $600 purchase balance and then charging interest only on the portion of the $600 purchase balance that remains unpaid ($250) from the start of the April billing cycle (April 1) through the end of the April billing cycle (April 30).

iii. Same facts as in paragraph 6 above except that the consumer does not pay the balance for the February billing cycle in full on March 25 and therefore is not eligible for a grace period on the March purchases. Under these circumstances, § 1026.54 does not apply and the card issuer may charge interest from the date of each transaction through April 24 and interest on the remaining $100 from April 25 through the end of the April billing cycle (April 25).

Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

55(a) General Rule

1. *Increase in rate, fee, or charge.* Section 1026.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under § 1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on a credit card account unless specifically permitted by one of the exceptions in § 1026.55(b). Except as specifically provided in § 1026.55(b), this prohibition applies even if the circumstances under which an increase will occur are disclosed in advance. The following examples illustrate the general application of § 1026.55(a) and (b). Additional examples illustrating specific aspects of the exceptions in § 1026.55(b) are provided in the commentary to those exceptions.

i. *Account-opening disclosure of non-variable rate for six months, then variable rate.* Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a non-variable rate of 15% and will apply for six months. The card issuer also discloses that, after six months, the annual percentage rate for purchases will be a variable rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. Furthermore, the card issuer discloses that the annual percentage rate for cash advances is the same variable rate that will apply to purchases after six months. Finally, the card issuer discloses that, to the extent consistent with § 1026.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer makes a late payment. The payment due date for the account is the twenty-fifth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase and cash advance balances.

A. *Change-in-terms rate increase for new transactions after first year*. On January 15 of year one, the consumer uses the account to make a $2,000 purchase and a $500 cash advance. No other transactions are made on the account. At the start of each quarter, the card issuer may adjust the variable rate that applies to the $500 cash advance consistent with changes in the index (pursuant to §1026.55(b)(2)). All required minimum periodic payments are received on or before the payment due date until May of year one, when the payment due on May 25 is received by the creditor on May 28. At this time, the card issuer is prohibited by §1026.55 from increasing the rates that apply to the $2,000 purchase, the $500 cash advance, or future purchases and cash advances. Six months after account opening (July 1), the card issuer may begin to accrue interest on the $2,000 purchase at the previously-disclosed variable rate determined using an 8-point margin (pursuant to §1026.55(b)(1)). Because no other increases in rate were disclosed at account opening, the card issuer may not subsequently increase the variable rate that applies to the $2,000 purchase and the $500 cash advance (except due to increases in the index pursuant to §1026.55(b)(2)). On November 16, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 12 percentage points). On December 15, the consumer makes a $100 purchase. On January 1 of year two, the card issuer may increase the margin used to determine the variable rate that applies to new purchases to 12 percentage points (pursuant to §1026.55(b)(3)). However, §1026.55(b)(3)(ii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to the $2,000 purchase balance. Furthermore, although the $100 purchase occurred more than 14 days after provision of the §1026.9(c) notice, §1026.55(b)(3)(iii) does not permit the card issuer to apply the variable rate determined using the 12-point margin to that purchase because it occurred during the first year after account opening. On January 15 of year two, the consumer makes a $300 purchase. The card issuer may apply the variable rate determined using the 12-point margin to the $300 purchase.

B. *Account becomes more than 60 days delinquent during first year*. Same facts as above except that the required minimum periodic payment due on May 25 of year one is not received by the card issuer until July 30 of year one. Because the card issuer received the required minimum periodic payment more than 60 days after the payment due date, §1026.55(b)(4) permits the card issuer to increase the annual percentage rate applicable to the $2,000 purchase, the $500 cash advance, and future purchases and cash advances. However, §1026.55(b)(4)(i) requires the card issuer to first comply with the notice requirements in §1026.9(g). Thus, if the card issuer provided a §1026.9(g) notice on July 25 stating that all rates on the account would be increased to the 30% penalty rate, the card issuer could apply that rate beginning on September 8 to all balances and to future transactions.

ii. *Account-opening disclosure of non-variable rate for six months, then increased non-variable rate for six months, then variable rate; change-in-terms rate increase for new transactions after first year*. Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases will increase as follows: A non-variable rate of 5% for six months; a non-variable rate of 10% for an additional six months; and thereafter a variable rate that is currently 15% and will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index not under the card issuer's control. The payment due date for the account is the fifteenth day of the month and the required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance. On January 15 of year one, the consumer uses the account to make a $1,500 purchase. Six months after account opening (July 1), the card issuer may begin to accrue interest on the $1,500 purchase at the previously-disclosed 10% non-variable rate (pursuant to §1026.55(b)(1)). On September 15, the consumer uses the account for a $700 purchase. On November 16, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two (calculated using the same index and an increased margin of 8 percentage points). One year after account opening (January 1 of year two), the card issuer may begin accruing interest on the $2,200 purchase balance at the previously-disclosed variable rate determined using a 5-point margin (pursuant to §1026.55(b)(1)). Section 1026.55 does not permit the card issuer to apply the variable rate determined using the 8-point margin to the $2,200 purchase balance. Furthermore, §1026.55 does not permit the card issuer to subsequently increase the variable rate determined using the 5-point margin that applies to the $2,200 purchase balance (except due to increases in the index pursuant to §1026.55(b)(2)). The card issuer may, however, apply the variable rate determined using the 8-point margin to purchases made on or after January 1 of year two (pursuant to §1026.55(b)(3)).

iii. *Change-in-terms rate increase for new transactions after first year; penalty rate increase after first year*. Assume that, at account opening on January 1 of year one, a card issuer discloses that the annual percentage rate for purchases is a variable rate determined by adding a margin of 6 percentage points to a publicly-available index outside of the card issuer's control. The card issuer also discloses that, to the extent consistent with §1026.55 and other applicable law, a non-variable penalty rate of 28% may apply if the consumer makes a late payment. The due date for the account is the fifteenth of the month. On May 30 of year two, the account has a purchase balance of $1,000. On May 31, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer of a new variable rate that will apply on July 16 for all purchases made on or after June 15 (calculated by using the same index and an increased margin of 8 percentage points). On June 14, the consumer makes a $500 purchase. On June 15, the consumer makes a $200 purchase. On July 1, the card issuer has not received the payment due on June 15 and provides the consumer with a notice pursuant to §1026.9(g) stating that the 28% penalty rate will apply as of August 15 to all transactions made on or after July 16 and that, if the consumer becomes more than 60 days late, the penalty rate will apply to all balances on the account. On July 17, the consumer makes a $300 purchase.

A. *Account does not become more than 60 days delinquent.* The payment due on June 15 of year two is received on July 2. On July 16, §1026.55(b)(3)(ii) permits the card issuer to apply the variable rate determined using the 8-point margin disclosed in the §1026.9(c) notice to the $200 purchase made on June 15 but does not permit the card issuer to apply this rate to the $1,500 purchase balance. On August 15, §1026.55(b)(3)(ii) permits the card issuer to apply the 28% penalty rate disclosed at account opening and in the §1026.9(g) notice to the $300 purchase made on July 17 but does not permit the card issuer to apply this rate to the $1,500 purchase balance (which remains at the variable rate determined using the 6-point margin) or the $200 purchase (which remains at the variable rate determined using the 8-point margin).

B. *Account becomes more than 60 days delinquent after provision of §1026.9(g) notice.* Same facts as above except the payment due on June 15 of year two has not been received by August 15. Section 1026.55(b)(4) permits the card issuer to apply the 28% penalty rate to the $1,500 purchase balance and the $200 purchase because it has not received the June 15 payment within 60 days after the due date. However, in order to do so, §1026.55(b)(4)(i) requires the card issuer to first provide an additional notice pursuant to §1026.9(g). This notice must be sent no earlier than August 15, which is the first day the account became more than 60 days' delinquent. If the notice is sent on August 15, the card issuer may begin accruing interest on the $1,500 purchase balance and the $200 purchase at the 28% penalty rate beginning on September 29.

2. *Relationship to grace period.* Nothing in §1026.55 prohibits a card issuer from assessing interest due to the loss of a grace period to the extent consistent with §1026.5(b)(2)(ii)(B) and §1026.54. In addition, a card issuer has not reduced an annual percentage rate on a credit card account for purposes of §1026.55 if the card issuer does not charge interest on a balance or a portion thereof based on a payment received prior to the expiration of a grace period. For example, if the annual percentage rate for purchases on an account is 15% but the card issuer does not charge any interest on a $500 purchase balance because that balance was paid in full prior to the expiration of the grace period, the card issuer has not reduced the 15% purchase rate to 0% for purposes of §1026.55.

3. *Fees in connection with covered separate credit features accessible by hybrid prepaid-credit cards.* With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61 where the credit feature is a credit card account under an open-end (not home-secured) consumer credit plan, §1026.55(a) prohibits card issuers from increasing an annual percentage rate or any fee or charge required to be disclosed under §1026.6(b)(2)(ii), (iii), or (xii) on a credit card account unless specifically permitted by one of the exceptions in §1026.55(b). This is true regardless of whether these fees or annual percentage rates are imposed on the asset feature of the prepaid account or on the credit feature.

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan.* Section 1026.55(a) does not apply to any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under §1026.6(b)(3). See §1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under §1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in §1026.61.

55(b) Exceptions

1. *Exceptions not mutually exclusive.* A card issuer generally may increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to an exception set forth in §1026.55(b) even if that increase would not be permitted under a different exception. For example, although a card issuer cannot increase an annual percentage rate pursuant to §1026.55(b)(1) unless that rate is provided for a specified period of at least six months, the

card issuer may increase an annual percentage rate during a specified period due to an increase in an index consistent with §1026.55(b)(2). Similarly, although §1026.55(b)(3) does not permit a card issuer to increase an annual percentage rate during the first year after account opening, the card issuer may increase the rate during the first year after account opening pursuant to §1026.55(b)(4) if the required minimum periodic payment is not received within 60 days after the due date. However, if §1026.55(b)(4)(ii) requires a card issuer to decrease the rate, fee, or charge that applies to a balance while the account is subject to a workout or temporary hardship arrangement or subject to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, the card issuer may not impose a higher rate, fee, or charge on that balance pursuant to §1026.55(b)(5) or (b)(6) upon completion or failure of the arrangement or once 50 U.S.C. app. 527 or the similar Federal or state statute or regulation no longer applies. For example, assume that, on January 1, the annual percentage rate that applies to a $1,000 balance is increased from 12% to 30% pursuant to §1026.55(b)(4). On February 1, the rate on that balance is decreased from 30% to 15% consistent with §1026.55(b)(5) as a part of a workout or temporary hardship arrangement. On July 1, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $1,000 balance from 15% to 12%. If the consumer subsequently completes or fails to comply with the terms of the workout or temporary hardship arrangement, the card issuer may not increase the 12% rate that applies to any remaining portion of the $1,000 balance pursuant to §1026.55(b)(5).

2. *Relationship between exceptions in §1026.55(b) and notice requirements in §1026.9.* Nothing in §1026.55 alters the requirements in §1026.9(c) and (g) that creditors provide written notice at least 45 days prior to the effective date of certain increases in annual percentage rates, fees, and charges.

i. *14-day rule in §1026.55(b)(3)(ii).* Although §1026.55(b)(3)(ii) permits a card issuer that discloses an increased rate pursuant to §1026.9(c) or (g) to apply that rate to transactions that occur more than 14 days after provision of the notice, the card issuer cannot begin to accrue interest at the increased rate until that increase goes into effect, consistent with §1026.9(c) or (g). For example, if on May 1 a card issuer provides a notice pursuant to §1026.9(c) stating that a rate will increase from 15% to 18% on June 15, §1026.55(b)(3)(ii) permits the card issuer to apply the 18% rate to transactions that occur on or after May 16. However, neither §1026.55 nor §1026.9(c) permits the card issuer to begin accruing interest at the 18% rate on those transactions until June 15. See additional examples in comment 55(b)(3)–4.

ii. *Mid-cycle increases; application of balance computation methods.* Once an increased rate has gone into effect, the card issuer cannot calculate interest charges based on that increased rate for days prior to the effective date. Assume that, in the example in paragraph i above, the billing cycles for the account begin on the first day of the month and end on the last day of the month. If, for example, the card issuer uses the average daily balance computation method, it cannot apply the 18% rate to the average daily balance for the entire June billing cycle because that rate did not become effective until June 15. However, the card issuer could apply the 15% rate to the average daily balance from June 1 through June 14 and the 18% rate to the average daily balance from June 15 through June 30. Similarly, if the card issuer that uses the daily balance computation method, it could apply the 15% rate to the daily balance for each day from June 1 through June 14 and the 18% rate to the daily balance for each day from June 15 through June 30.

iii. *Mid-cycle increases; delayed implementation of increase.* If §1026.55(b) and §1026.9(b), (c), or (g) permit a card issuer to apply an increased annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without relinquishing the ability to apply that rate, fee, or charge. Thus, in the example in paragraphs i and ii above, the card issuer could delay application of the 18% rate until the start of the next billing cycle (April 1) without relinquishing its ability to apply that rate under §1026.55(b)(3). Similarly, assume that, at account opening on January 1, a card issuer discloses that a non-variable annual percentage rate of 10% will apply to purchases for six months and a non-variable rate of 15% will apply thereafter. The first day of each billing cycle for the account is the fifteenth of the month. If the six-month period expires on July 1, the card issuer may delay application of the 15% rate until the start of the next billing cycle (July 15) without relinquishing its ability to apply that rate under §1026.55(b)(1).

3. *Application of a lower rate, fee, or charge.* Nothing in §1026.55 prohibits a card issuer from lowering an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). However, a card issuer that does so cannot subsequently increase the rate, fee, or charge unless permitted by one of the exceptions in §1026.55(b). The following examples illustrate the application of the rule:

i. *Application of lower rate during first year.* Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% will apply to purchases. The card issuer also discloses that, to the extent consistent with §1026.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance.

A. *Temporary rate returns to standard rate at expiration.* On September 30 of year one, the account has a purchase balance of $1,400 at the 15% rate. On October 1, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from October 1 through March 31 of year two) and that, beginning on April 1 of year two, the rate for purchases will increase to the 15% non-variable rate disclosed at account opening. The card issuer does not apply the 5% rate to the $1,400 purchase balance. On October 14 of year one, the consumer makes a $300 purchase at the 5% rate. On January 15 of year two, the consumer makes a $150 purchase at the 5% rate. On April 1 of year two, the card issuer may begin accruing interest on the $300 purchase and the $150 purchase at 15% as disclosed in the §1026.9(c) notice (pursuant to §1026.55(b)(1)).

B. *Penalty rate increase.* Same facts as above except that the required minimum periodic payment due on November 10 of year one is not received until November 15. Section 1026.55 does not permit the card issuer to increase any annual percentage rate on the account at this time. The card issuer may apply the 30% penalty rate to new transactions beginning on April 1 of year two pursuant to §1026.55(b)(3) by providing a §1026.9(g) notice informing the consumer of this increase no later than February 14 of year two. The card issuer may not, however, apply the 30% penalty rate to the $1,400 purchase balance as of September 30 of year one, the $300 purchase on October 15 of year one, or the $150 purchase on January 15 of year two.

ii. *Application of lower rate at end of first year.* Assume that, at account opening on January 1 of year one, a card issuer discloses that a non-variable annual percentage rate of 15% will apply to purchases for one year and discloses that, after the first year, the card issuer will apply a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On December 31 of year one, the account has a purchase balance of $3,000.

A. *Notice of extension of existing temporary rate provided consistent with §1026.55(b)(1)(i).* On December 15 of year one, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the existing 15% rate will continue to apply until July 1 of year two. The notice further states that, on July 1 of year two, the variable rate disclosed at account opening will apply. On July 1 of year two, §1026.55(b)(1) permits the card issuer to apply that variable rate to any remaining portion of the $3,000 balance and to new transactions.

B. *Notice of new temporary rate provided consistent with §1026.55(b)(1)(i).* On December 15 of year one, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer of a new variable rate that will apply on January 1 of year two that is lower than the variable rate disclosed at account opening. The new variable rate is calculated using the same index and a reduced margin of 8 percentage points. The notice further states that, on July 1 of year two, the margin will increase to the margin disclosed at account opening (10 percentage points). On July 1 of year two, §1026.55(b)(1) permits the card issuer to increase the margin used to determine the variable rate that applies to new purchases to 10 percentage points and to apply that rate to any remaining portion of the $3,000 purchase balance.

C. *No notice provided.* Same facts as in paragraph ii.B above except that the card issuer does not send a notice on December 15 of year one. Instead, on January 1 of year two, the card issuer lowers the margin used to determine the variable rate to 8 percentage points and applies that rate to the $3,000 purchase balance and to new purchases. Section 1026.9 does not require advance notice in these circumstances. However, unless the account becomes more than 60 days' delinquent, §1026.55 does not permit the card issuer to subsequently increase the rate that applies to the $3,000 purchase balance except due to increases in the index (pursuant to §1026.55(b)(2)).

iii. *Application of lower rate after first year.* Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 10% will apply to purchases for one year, after which that rate will increase to a non-variable rate of 15%. The card issuer also discloses that, to the extent consistent with §1026.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the tenth of the month. The required minimum periodic payments are applied to accrued interest and fees but do not reduce the purchase balance.

A. *Effect of 14-day period.* On June 30 of year two, the account has a purchase balance of $1,000 at the 15% rate. On July 1, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the rate for new purchases will decrease to a non-variable rate of 5% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a non-variable rate of 17%. On July 15 of year two, the consumer makes a $200 purchase. On July 16, the consumer makes a $100 purchase. On January 1 of year three, the card issuer may begin accruing interest on the $100 purchase at 17% (pursuant to §1026.55(b)(1)). However, §1026.55(b)(1)(ii)(B) does not permit the card issuer to apply the 17% rate to the $200 purchase because that transaction occurred within 14 days after provision of the §1026.9(c) notice. Instead, the card issuer may apply the 15% rate that applied to purchases prior to provision of the §1026.9(c) notice. In addition, if the card issuer applied the 5% rate to the $1,000 purchase balance, §1026.55(b)(ii)(A) would not permit the card issuer to increase the rate that applies to that balance on January 1 of year three to a rate that is higher than 15% that previously applied to the balance.

B. *Penalty rate increase*. Same facts as above except that the required minimum periodic payment due on August 25 is received on August 30. At this time, §1026.55 does not permit the card issuer to increase the annual percentage rates that apply to the $1,000 purchase balance, the $200 purchase, or the $100 purchase. Instead, those rates can only be increased as discussed in paragraph iii.A above. However, if the card issuer provides a notice pursuant to §1026.9(c) or (g) on September 1, §1026.55(b)(3) permits the card issuer to apply an increased rate (such as the 17% purchase rate or the 30% penalty rate) to transactions that occur on or after September 16 beginning on October 16.

C. *Application of lower temporary rate during specified period*. Same facts as in paragraph iii above. On June 30 of year two, the account has a purchase balance of $1,000 at the 15% non-variable rate. On July 1, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the rate for the $1,000 balance and new purchases will decrease to a non-variable rate of 12% for six months (from July 1 through December 31 of year two) and that, beginning on January 1 of year three, the rate for purchases will increase to a variable rate that is currently 20% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. On August 15 of year two, the consumer makes a $500 purchase. On October 1, the card issuer provides another notice pursuant to §1026.9(c) informing the consumer that the rate for the $1,000 balance, the $500 purchase, and new purchases will decrease to a non-variable rate of 5% for six months (from October 1 of year two through March 31 of year three) and that, beginning on April 1 of year three, the rate for purchases will increase to a variable rate that is currently 23% and is determined by adding a margin of 13 percentage points to the previously-disclosed index. On November 15 of year two, the consumer makes a $300 purchase. On April 1 of year three, §1026.55 permits the card issuer to begin accruing interest using the following rates for any remaining portion of the following balances: The 15% non-variable rate for the $1,000 balance; the variable rate determined using the 10-point margin for the $500 purchase; and the variable rate determined using the 13-point margin for the $300 purchase.

4. *Date on which transaction occurred*. When a transaction occurred for purposes of §1026.55 is generally determined by the date of the transaction. However, if a transaction that occurred within 14 days after provision of a §1026.9(c) or (g) notice is not charged to the account prior to the effective date of the change or increase, the card issuer may treat the transaction as occurring more than 14 days after provision of the notice for purposes of §1026.55. See example in comment 55(b)(3)–4.iii.B. In addition, when a merchant places a ''hold'' on the available credit on an account for an estimated transaction amount because the actual transaction amount will not be known until a later date, the date of the transaction for purposes of §1026.55 is the date on which the card issuer receives the actual transaction amount from the merchant. See example in comment 55(b)(3)–4.iii.A.

5. *Category of transactions*. For purposes of §1026.55, a ''category of transactions'' is a type or group of transactions to which an annual percentage rate applies that is different than the annual percentage rate that applies to other transactions. Similarly, a type or group of transactions is a ''category of transactions'' for purposes of §1026.55 if a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) applies to those transactions that is different than the fee or charge that applies to other transactions. For example, purchase transactions, cash advance transactions, and balance transfer transactions are separate categories of transactions for purposes of §1026.55 if a card issuer applies different annual percentage rates to each. Furthermore, if, for example, the card issuer applies different annual percentage rates to different types of purchase transactions (such as one rate for purchases of gasoline or purchases over $100 and a different rate for all other purchases), each type constitutes a separate category of transactions for purposes of §1026.55.

55(b)(1) Temporary rate, fee, or charge exception

1. *Relationship to §1026.9(c)(2)(v)(B)*. A card issuer that has complied with the disclosure requirements in §1026.9(c)(2)(v)(B) has also complied with the disclosure requirements in §1026.55(b)(1)(i).

2. *Period of six months or longer.* A temporary annual percentage rate, fee, or charge must apply for a specified period of six months or longer before a card issuer can increase that rate, fee, or charge pursuant to §1026.55(b)(1). The specified period must expire no less than six months after the date on which the card issuer provides the consumer with the disclosures required by §1026.55(b)(1)(i) or, if later, the date on which the account can be used for transactions to which the temporary rate, fee, or charge applies. Section 1026.55(b)(1) does not prohibit a card issuer from limiting the application of a temporary annual percentage rate, fee, or charge to a particular category of transactions (such as to balance transfers or to purchases over $100). However, in circumstances where the card issuer limits application of the temporary rate, fee, or charge to a single transaction, the specified period must expire no less than six months after the date on which that transaction occurred. The following examples illustrate the application of §1026.55(b)(1):

i. Assume that on January 1 a card issuer offers a consumer a 5% annual percentage rate on purchases made during the months of January through June. A 15% rate will apply thereafter. On February 15, a $500 purchase is charged to the account. On June 15, a $200 purchase is charged to the account. On July 1, the card issuer may begin accruing interest at the 15% rate on the $500 purchase and the $200 purchase (pursuant to §1026.55(b)(1)).

ii. Same facts as above except that on January 1 the card issuer offered the 5% rate on purchases beginning in the month of February. Section 1026.55(b)(1) would not permit the card issuer to begin accruing interest at the 15% rate on the $500 purchase and the $200 purchase until August 1.

iii. Assume that on October 31 of year one the annual percentage rate for purchases is 17%. On November 1, the card issuer offers the consumer a 0% rate for six months on purchases made during the months of November and December. The 17% rate will apply thereafter. On November 15, a $500 purchase is charged to the account. On December 15, a $300 purchase is charged to the account. On January 15 of year two, a $150 purchase is charged to the account. Section 1026.55(b)(1) would not permit the card issuer to begin accruing interest at the 17% rate on the $500 purchase and the $300 purchase until May 1 of year two. However, the card issuer may accrue interest at the 17% rate on the $150 purchase beginning on January 15 of year two.

iv. Assume that on June 1 of year one a card issuer offers a consumer a 0% annual percentage rate for six months on the purchase of an appliance. An 18% rate will apply thereafter. On September 1, a $5,000 transaction is charged to the account for the purchase of an appliance. Section 1026.55(b)(1) would not permit the card issuer to begin accruing interest at the 18% rate on the $5,000 transaction until March 1 of year two.

v. Assume that on May 31 of year one the annual percentage rate for purchases is 15%. On June 1, the card issuer offers the consumer a 5% rate for six months on a balance transfer of at least $1,000. The 15% rate will apply thereafter. On June 15, a $3,000 balance is transferred to the account. On July 15, a $200 purchase is charged to the account. Section 1026.55(b)(1) would not permit the card issuer to begin accruing interest at the 15% rate on the $3,000 transferred balance until December 15. However, the card issuer may accrue interest at the 15% rate on the $200 purchase beginning on July 15.

vi. Same facts as in paragraph v above except that the card issuer offers the 5% rate for six months on all balance transfers of at least $1,000 during the month of June and a $2,000 balance is transferred to the account on June 30 (in addition to the $3,000 balance transfer on June 15). Because the 5% rate is not limited to a particular transaction, §1026.55(b)(1) permits the card issuer to begin accruing interest on the $3,000 and $2,000 transferred balances on December 1.

vii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is $0 until January 1 of year two, when the fee will increase to $50. On January 1 of year two, the card issuer may impose the $50 annual fee. However, the issuer must also comply with the notice requirements in §1026.9(e).

viii. Assume that a card issuer discloses at account opening on January 1 of year one that the monthly maintenance fee for the account is $0 until July 1 of year one, when the fee will increase to $10. Beginning on July 1 of year one, the card issuer may impose the $10 monthly maintenance fee (to the extent consistent with §1026.52(a)).

3. *Deferred interest and similar promotional programs.* i. *Application of §1026.55.* The general prohibition in §1026.55(a) applies to the imposition of accrued interest upon the expiration of a deferred interest or similar promotional program under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. However, the exception in §1026.55(b)(1) also applies to these programs, provided that the specified period is six months or longer and that, prior to the commencement of the period, the card issuer discloses the length of the period and the rate at which interest will accrue on the balance subject to the deferred interest or similar program if that balance is not paid in full prior to expiration of the period. See comment 9(c)(2)(v)–9. For purposes of §1026.55, "deferred interest" has the same meaning as in §1026.16(h)(2) and associated commentary.

ii. *Examples*. A. *Deferred interest offer at account opening*. Assume that, at account opening on January 1 of year one, the card issuer discloses the following with respect to a deferred interest program: ''No interest on purchases made in January of year one if paid in full by December 31 of year one. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 20%.'' On January 15 of year one, the consumer makes a purchase of $2,000. No other transactions are made on the account. The terms of the deferred interest program require the consumer to make minimum periodic payments with respect to the deferred interest balance, and the payment due on April 1 is not received until April 10. Section 1026.55 does not permit the card issuer to charge to the account interest that has accrued on the $2,000 purchase at this time. Furthermore, if the consumer pays the $2,000 purchase in full on or before December 31 of year one, § 1026.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. If, however, the $2,000 purchase has not been paid in full by January 1 of year two, § 1026.55(b)(1) permits the card issuer to charge to the account the interest accrued on that purchase at the 20% rate during year one (to the extent consistent with other applicable law).

B. *Deferred interest offer after account opening*. Assume that a card issuer discloses at account opening on January 1 of year one that the rate that applies to purchases is a variable annual percentage rate that is currently 18% and will be adjusted quarterly by adding a margin of 8 percentage points to a publicly-available index not under the card issuer's control. The card issuer also discloses that, to the extent consistent with § 1026.55 and other applicable law, a non-variable penalty rate of 30% may apply if the consumer's required minimum periodic payment is received after the payment due date, which is the first of the month. On June 30 of year two, the consumer uses the account for a $1,000 purchase in response to an offer of a deferred interest program. Under the terms of this program, interest on the purchase will accrue at the variable rate for purchases but the consumer will not be obligated to pay that interest if the purchase is paid in full by December 31 of year three. The terms of the deferred interest program require the consumer to make minimum periodic payments with respect to the deferred interest balance, and the payment due on September 1 of year two is not received until September 6. Section 1026.55 does not permit the card issuer to charge to the account interest that has accrued on the $1,000 purchase at this time. Furthermore, if the consumer pays the $1,000 purchase in full on or before December 31 of year three, § 1026.55 does not permit the card issuer to charge to the account any interest that has accrued on that purchase. On December 31 of year three, the $1,000 purchase has been paid in full. Under these circumstances, the card issuer may not charge any interest accrued on the $1,000 purchase.

C. *Application of § 1026.55(b)(4) to deferred interest programs*. Same facts as in paragraph ii.B above except that, on November 2 of year two, the card issuer has not received the required minimum periodic payments due on September 1, October 1, or November 1 of year two and sends a § 1026.9(c) or (g) notice stating that interest accrued on the $1,000 purchase since June 30 of year two will be charged to the account on December 17 of year two and thereafter interest will be charged on the $1,000 purchase consistent with the variable rate for purchases. On December 17 of year two, § 1026.55(b)(4) permits the card issuer to charge to the account interest accrued on the $1,000 purchase since June 30 of year two and § 1026.55(b)(3) permits the card issuer to begin charging interest on the $1,000 purchase consistent with the variable rate for purchases. However, if the card issuer receives the required minimum periodic payments due on January 1, February 1, March 1, April 1, May 1, and June 1 of year three, § 1026.55(b)(4)(ii) requires the card issuer to cease charging the account for interest on the $1,000 purchase no later than the first day of the next billing cycle. See comment 55(b)(4)–3.iii. However, § 1026.55(b)(4)(ii) does not require the card issuer to waive or credit the account for interest accrued on the $1,000 purchase since June 30 of year two. If the $1,000 purchase is paid in full on December 31 of year three, the card issuer is not permitted to charge to the account interest accrued on the $1,000 purchase after June 1 of year three.

4. *Contingent or discretionary increases*. Section 1026.55(b)(1) permits a card issuer to increase a temporary annual percentage rate, fee, or charge upon the expiration of a specified period of time. However, § 1026.55(b)(1) does not permit a card issuer to apply an increased rate, fee, or charge that is contingent on a particular event or occurrence or that may be applied at the card issuer's discretion. The following examples illustrate rate increases that are not permitted by § 1026.55:

i. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 15% applies to purchases but that all rates on an account may be increased to a non-variable penalty rate of 30% if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. On March 1, the account has a $2,000 purchase balance. The payment due on March 15 is not received until March 20. Section 1026.55 does not permit the card issuer to apply the 30% penalty rate to the $2,000 purchase balance. However, pursuant to §1026.55(b)(3), the card issuer could provide a §1026.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 30% rate (or a different rate) will apply to new transactions.

ii. Assume that a card issuer discloses at account opening on January 1 of year one that a non-variable annual percentage rate of 5% applies to transferred balances but that this rate will increase to a non-variable rate of 18% if the consumer does not use the account for at least $200 in purchases each billing cycle. On July 1, the consumer transfers a balance of $4,000 to the account. During the October billing cycle, the consumer uses the account for $150 in purchases. Section 1026.55 does not permit the card issuer to apply the 18% rate to the $4,000 transferred balance or the $150 in purchases. However, pursuant to §1026.55(b)(3), the card issuer could provide a §1026.9(c) or (g) notice on or before November 16 informing the consumer that, on January 1 of year two, the 18% rate (or a different rate) will apply to new transactions.

iii. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for the account is $10 but may be increased to $50 if a consumer's required minimum periodic payment is received after the payment due date, which is the fifteenth of the month. The payment due on July 15 is not received until July 23. Section 1026.55 does not permit the card issuer to impose the $50 annual fee at this time. Furthermore, §1026.55(b)(3) does not permit the card issuer to increase the $10 annual fee during the first year after account opening. However, §1026.55(b)(3) does permit the card issuer to impose the $50 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with §1026.9(c) and the consumer does not reject that increase pursuant to §1026.9(h).

iv. Assume that a card issuer discloses at account opening on January 1 of year one that the annual fee for a credit card account under an open-end (not home-secured) consumer credit plan is $0 but may be increased to $100 if the consumer's balance in a deposit account provided by the card issuer or its affiliate or subsidiary falls below $5,000. On June 1 of year one, the balance on the deposit account is $4,500. Section 1026.55 does not permit the card issuer to impose the $100 annual fee at this time. Furthermore, §1026.55(b)(3) does not permit the card issuer to increase the $0 annual fee during the first year after account opening. However, §1026.55(b)(3) does permit the card issuer to impose the $100 fee (or a different fee) on January 1 of year two if, on or before November 16 of year one, the issuer informs the consumer of the increased fee consistent with §1026.9(c) and the consumer does not reject that increase pursuant to §1026.9(h).

5. *Application of increased fees and charges.* Section 1026.55(b)(1)(ii) limits the ability of a card issuer to apply an increased fee or charge to certain transactions. However, to the extent consistent with §1026.55(b)(3), (c), and (d), a card issuer generally is not prohibited from increasing a fee or charge that applies to the account as a whole. *See* comments 55(c)(1)–3 and 55(d)–1.

55(b)(2) Variable rate exception

1. *Increases due to increase in index.* Section 1026.55(b)(2) provides that an annual percentage rate that varies according to an index that is not under the card issuer's control and is available to the general public may be increased due to an increase in the index. This section does not permit a card issuer to increase the rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase. However, from time to time, a card issuer may change the day on which index values are measured to determine changes to the rate.

2. *Index not under card issuer's control.* A card issuer may increase a variable annual percentage rate pursuant to §1026.55(b)(2) only if the increase is based on an index or indices outside the card issuer's control. For purposes of §1026.55(b)(2), an index is under the card issuer's control if:

i. The index is the card issuer's own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the *Wall Street Journal*, even if the card issuer's own prime rate is one of several rates used to establish the published rate.

ii. The variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. A card issuer is permitted, however, to establish a fixed maximum rate that does not permit the variable rate to increase consistent with increases in an index. For example, assume that, under the terms of an account, a variable rate will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index. When the account is opened, the index is 10% and therefore the variable rate is 15%. If the terms of the account provide that the variable rate will not decrease below 15% even if the index decreases below 10%, the card issuer cannot increase that rate pursuant to §1026.55(b)(2). However, §1026.55(b)(2) does not prohibit the card issuer from providing in the terms of the account that the variable rate will not increase above a certain amount (such as 20%).

iii. The variable rate can be calculated based on any index value during a period of time (such as the 90 days preceding the last day of a billing cycle). A card issuer is permitted, however, to provide in the terms of the account that the variable rate will be calculated based on the average index value during a specified period. In the alternative, the card issuer is permitted to provide in the terms of the account that the variable rate will be calculated based on the index value on a specific day (such as the last day of a billing cycle). For example, assume that the terms of an account provide that a variable rate will be adjusted at the beginning of each quarter by adding a margin of 7 percentage points to a publicly-available index. At account opening at the beginning of the first quarter, the variable rate is 17% (based on an index value of 10%). During the first quarter, the index varies between 9.8% and 10.5% with an average value of 10.1%. On the last day of the first quarter, the index value is 10.2%. At the beginning of the second quarter, §1026.55(b)(2) does not permit the card issuer to increase the variable rate to 17.5% based on the first quarter's maximum index value of 10.5%. However, if the terms of the account provide that the variable rate will be calculated based on the average index value during the prior quarter, §1026.55(b)(2) permits the card issuer to increase the variable rate to 17.1% (based on the average index value of 10.1% during the first quarter). In the alternative, if the terms of the account provide that the variable rate will be calculated based on the index value on the last day of the prior quarter, §1026.55(b)(2) permits the card issuer to increase the variable rate to 17.2% (based on the index value of 10.2% on the last day of the first quarter).

3. *Publicly available.* The index or indices must be available to the public. A publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the account.

4. *Changing a non-variable rate to a variable rate.* Section 1026.55 generally prohibits a card issuer from changing a non-variable annual percentage rate to a variable annual percentage rate because such a change can result in an increase. However, a card issuer may change a non-variable rate to a variable rate to the extent permitted by one of the exceptions in §1026.55(b). For example, §1026.55(b)(1) permits a card issuer to change a non-variable rate to a variable rate upon expiration of a specified period of time. Similarly, following the first year after the account is opened, §1026.55(b)(3) permits a card issuer to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in §1026.9(b), (c) or (g)).

5. *Changing a variable rate to a non-variable rate.* Nothing in §1026.55 prohibits a card issuer from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by §1026.9(c). For example, assume that on March 1 a variable annual percentage rate that is currently 15% applies to a balance of $2,000 and the card issuer sends a notice pursuant to §1026.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 15. On April 15, the card issuer may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

6. *Substitution of index.* A card issuer may change the index and margin used to determine the annual percentage rate under §1026.55(b)(2) if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it produces a rate substantially similar to the rate in effect when the original index became unavailable.

55(b)(3) Advance notice exception

1. *Relationship to §1026.9(h).* A card issuer may not increase a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to §1026.55(b)(3) if the consumer has rejected the increased fee or charge pursuant to §1026.9(h).

2. *Notice provided pursuant to §1026.9(b) and (c).* If an increased annual percentage rate, fee, or charge is disclosed pursuant to both §1026.9(b) and (c), that rate, fee, or charge may only be applied to transactions that occur more than 14 days after provision of the §1026.9(c) notice as provided in §1026.55(b)(3)(ii).

3. *Account opening.* i. *Multiple accounts with same card issuer.* When a consumer has a credit card account with a card issuer and the consumer opens a new credit card account with the same card issuer (or its affiliate or subsidiary), the opening of the new account constitutes the opening of a credit card account for purposes of §1026.55(b)(3)(iii) if, more than 30 days after the new account is opened, the consumer has the option to obtain additional extensions of credit on each account. For example, assume that, on January 1 of year one, a consumer opens a credit card account with a card issuer. On July 1 of year one, the consumer opens a second credit card account with that card issuer. On July 15, a $1,000 balance is transferred from the first account to the second account. The opening of the second account constitutes

the opening of a credit card account for purposes of §1026.55(b)(3)(iii) so long as, on August 1, the consumer has the option to engage in transactions using either account. Under these circumstances, the card issuer could not increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) on the second account pursuant to §1026.55(b)(3) until July 1 of year two (which is one year after the second account was opened).

ii. *Substitution, replacement or consolidation.* A. *Generally.* A credit card account has not been opened for purposes of §1026.55(b)(3)(iii) when a credit card account issued by a card issuer is substituted, replaced, or consolidated with another credit card account issued by the same card issuer (or its affiliate or subsidiary). Circumstances in which a credit card account has not been opened for purposes of §1026.55(b)(3)(iii) include when:

1. A retail credit card account is replaced with a cobranded general purpose credit card account that can be used at a wider number of merchants;

2. A credit card account is replaced with another credit card account offering different features;

3. A credit card account is consolidated or combined with one or more other credit card accounts into a single credit card account; or

4. A credit card account acquired through merger or acquisition is replaced with a credit card account issued by the acquiring card issuer.

B. *Limitation.* A card issuer that replaces or consolidates a credit card account with another credit card account issued by the card issuer (or its affiliate or subsidiary) may not increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) in a manner otherwise prohibited by §1026.55. For example, assume that, on January 1 of year one, a consumer opens a credit card account with an annual percentage rate of 15% for purchases. On July 1 of year one, the account is replaced with a credit card account that offers different features (such as rewards on purchases). Under these circumstances, §1026.55(b)(3)(iii) prohibits the card issuer from increasing the annual percentage rate for new purchases to a rate that is higher than 15% pursuant to §1026.55(b)(3) until January 1 of year two (which is one year after the first account was opened).

4. *Examples.* i. *Change-in-terms rate increase; temporary rate increase; 14-day period.* Assume that an account is opened on January 1 of year one. On March 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 15%. On March 15, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 18% on May 1. The notice further states that the 18% rate will apply for six months (until November 1) and that thereafter the card issuer will apply a variable rate that is currently 22% and is determined by adding a margin of 12 percentage points to a publicly-available index that is not under the card issuer's control. The fourteenth day after provision of the notice is March 29 and, on that date, the consumer makes a $200 purchase. On March 30, the consumer makes a $1,000 purchase. On May 1, the card issuer may begin accruing interest at 18% on the $1,000 purchase made on March 30 (pursuant to §1026.55(b)(3)). Section 1026.55(b)(3)(ii) does not permit the card issuer to apply the 18% rate to the $2,200 purchase balance as of March 29 because that balance reflects transactions that occurred prior to or within 14 days after the provision of the §1026.9(c) notice. After six months (November 2), the card issuer may begin accruing interest on any remaining portion of the $1,000 purchase at the previously-disclosed variable rate determined using the 12-point margin (pursuant to §1026.55(b)(1) and (b)(3)).

ii. *Checks that access an account.* Assume that a card issuer discloses at account opening on January 1 of year one that the annual percentage rate that applies to cash advances is a variable rate that is currently 24% and will be adjusted quarterly by adding a margin of 14 percentage points to a publicly available index not under the card issuer's control. On July 1 of year two, the card issuer provides checks that access the account and, pursuant to §1026.9(b)(3)(i)(A), discloses that a promotional rate of 15% will apply to credit extended by use of the checks until January 1 of year three, after which the cash advance rate determined using the 14-point margin will apply. On July 9 of year two, the consumer uses one of the checks to pay for a $500 transaction. Beginning on January 1 of year three, the card issuer may apply the cash advance rate determined using the 14-point margin to any remaining portion of the $500 transaction (pursuant to §1026.55(b)(1) and (b)(3)).

iii. *Hold on available credit; 14-day period.* Assume that an account is opened on January 1 of year one. On September 14 of year two, the account has a purchase balance of $2,000 at a non-variable annual percentage rate of 17%. On September 15, the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that the rate for new purchases will increase to a non-variable rate of 20% on October 30. The fourteenth day after provision of the notice is September 29. On September 28, the consumer uses the credit card to check into a hotel and the hotel obtains authorization for a $1,000 hold on the account to ensure there is adequate available credit to cover the anticipated cost of the stay.

A. The consumer checks out of the hotel on October 2. The actual cost of the stay is

$1,100 because of additional incidental costs. On October 2, the hotel charges the $1,100 transaction to the account. For purposes of §1026.55(b)(3), the transaction occurred on October 2. Therefore, on October 30, §1026.55(b)(3) permits the card issuer to apply the 20% rate to new purchases and to the $1,100 transaction. However, §1026.55(b)(3)(ii) does not permit the card issuer to apply the 20% rate to any remaining portion of the $2,000 purchase balance.

B. Same facts as above except that the consumer checks out of the hotel on September 29. The actual cost of the stay is $250, but the hotel does not charge this amount to the account until November 1. For purposes of §1026.55(b)(3), the card issuer may treat the transaction as occurring more than 14 days after provision of the §1026.9(c) notice (*i.e.,* after September 29). Accordingly, the card issuer may apply the 20% rate to the $250 transaction.

5. *Application of increased fees and charges. See* comment 55(c)(1)–3.

6. *Delayed implementation of increase.* Section 1026.55(b)(3)(iii) does not prohibit a card issuer from notifying a consumer of an increase in an annual percentage rate, fee, or charge consistent with §1026.9(b), (c), or (g). However, §1026.55(b)(3)(iii) does prohibit application of an increased rate, fee, or charge during the first year after the account is opened, while the account is closed, or while the card issuer does not permit the consumer to use the account for new transactions. If §1026.9(b), (c), or (g) permits a card issuer to apply an increased rate, fee, or charge on a particular date and the account is closed on that date or the card issuer does not permit the consumer to use the account for new transactions on that date, the card issuer may delay application of the increased rate, fee, or charge until the first day of the following billing cycle without relinquishing the ability to apply that rate, fee, or charge (assuming the increase is otherwise consistent with §1026.55). *See* examples in comment 55(b)–2.iii. However, if the account is closed or the card issuer does not permit the consumer to use the account for new transactions on the first day of the following billing cycle, then the card issuer must provide a new notice of the increased rate, fee, or charge consistent with §1026.9(b), (c), or (g).

7. *Date on which account may first be used by consumer to engage in transactions.* For purposes of §1026.55(b)(3)(iii), an account is considered open no earlier than the date on which the account may first be used by the consumer to engage in transactions. An account is considered open for purposes of §1026.55(b)(3)(iii) on any date that the card issuer may consider the account open for purposes of §1026.52(a)(1). *See* comment 52(a)(1)–4.

55(b)(4) Delinquency exception

1. *Receipt of required minimum periodic payment within 60 days of due date.* Section 1026.55(b)(4) applies when a card issuer has not received the consumer's required minimum periodic payment within 60 days after the due date for that payment. In order to satisfy this condition, a card issuer that requires monthly minimum payments generally must not have received two consecutive required minimum periodic payments. Whether a required minimum periodic payment has been received for purposes of §1026.55(b)(4) depends on whether the amount received is equal to or more than the first outstanding required minimum periodic payment. For example, assume that the required minimum periodic payments for a credit card account are due on the fifteenth day of the month. On May 13, the card issuer has not received the $50 required minimum periodic payment due on March 15 or the $150 required minimum periodic payment due on April 15. The sixtieth day after the March 15 payment due date is May 14. If the card issuer receives a $50 payment on May 14, §1026.55(b)(4) does not apply because the payment is equal to the required minimum periodic payment due on March 15 and therefore the account is not more than 60 days delinquent. However, if the card issuer instead received a $40 payment on May 14, §1026.55(b)(4) would apply beginning on May 15 because the payment is less than the required minimum periodic payment due on March 15. Furthermore, if the card issuer received the $50 payment on May 15, §1026.55(b)(4) would apply because the card issuer did not receive the required minimum periodic payment due on March 15 within 60 days after the due date for that payment.

2. *Relationship to §1026.9(g)(3)(i)(B).* A card issuer that has complied with the disclosure requirements in §1026.9(g)(3)(i)(B) has also complied with the disclosure requirements in §1026.55(b)(4)(i).

3. *Reduction in rate pursuant to §1026.55(b)(4)(ii).* Section 1026.55(b)(4)(ii) provides that, if the card issuer receives six consecutive required minimum periodic payments on or before the payment due date beginning with the first payment due following the effective date of the increase, the card issuer must reduce any annual percentage rate, fee, or charge increased pursuant to §1026.55(b)(4) to the annual percentage rate, fee, or charge that applied prior to the increase with respect to transactions that occurred prior to or within 14 days after provision of the §1026.9(c) or (g) notice.

i. *Six consecutive payments immediately following effective date of increase.* Section 1026.55(b)(4)(ii) does not apply if the card issuer does not receive six consecutive required minimum periodic payments on or before the payment due date beginning with the payment due immediately following the effective date of the increase, even if, at some later point in time, the card issuer receives six consecutive required minimum periodic payments on or before the payment due date.

ii. *Rate, fee, or charge that does not exceed rate, fee, or charge that applied before increase.* Although §1026.55(b)(4)(ii) requires the card issuer to reduce an annual percentage rate, fee, or charge increased pursuant to §1026.55(b)(4) to the annual percentage rate, fee, or charge that applied prior to the increase, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge consistent with any of the other exceptions in §1026.55(b). For example, if a temporary rate applied prior to the §1026.55(b)(4) increase and the temporary rate expired before a reduction in rate pursuant to §1026.55(b)(4)(ii), the card issuer may apply an increased rate to the extent consistent with §1026.55(b)(1). Similarly, if a variable rate applied prior to the §1026.55(b)(4) increase, the card issuer may apply any increase in that variable rate to the extent consistent with §1026.55(b)(2).

iii. *Delayed implementation of reduction.* If §1026.55(b)(4)(ii) requires a card issuer to reduce an annual percentage rate, fee, or charge on a date that is not the first day of a billing cycle, the card issuer may delay application of the reduced rate, fee, or charge until the first day of the following billing cycle.

iv. *Examples.* The following examples illustrate the application of §1026.55(b)(4)(ii):

A. Assume that the billing cycles for an account begin on the first day of the month and end on the last day of the month and that the required minimum periodic payments are due on the fifteenth day of the month. Assume also that the account has a $5,000 purchase balance to which a non-variable annual percentage rate of 15% applies. On May 16 of year one, the card issuer has not received the required minimum periodic payments due on the fifteenth day of March, April, or May and sends a §1026.9(c) or (g) notice stating that the annual percentage rate applicable to the $5,000 balance and to new transactions will increase to 28% effective July 1. On July 1, §1026.55(b)(4) permits the card issuer to apply the 28% rate to the $5,000 balance and to new transactions. The card issuer receives the required minimum periodic payments due on the fifteenth day of July, August, September, October, November, and December. On January 1 of year two, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 15%. The card issuer is not required to reduce the rate that applies to any transactions that occurred on or after May 31 (which is the fifteenth day after provision of the §1026.9(c) or (g) notice).

B. Same facts as paragraph iv.A above except that the 15% rate that applied to the $5,000 balance prior to the §1026.55(b)(4) increase was scheduled to increase to 20% on August 1 of year one (pursuant to §1026.55(b)(1)). On January 1 of year two, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 20%.

C. Same facts as paragraph iv.A above except that the 15% rate that applied to the $5,000 balance prior to the §1026.55(b)(4) increase was scheduled to increase to 20% on March 1 of year two (pursuant to §1026.55(b)(1)). On January 1 of year two, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to 15%.

D. Same facts as paragraph iv.A above except that the 15% rate that applied to the $5,000 balance prior to the §1026.55(b)(4) increase was a variable rate that was determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control (consistent with §1026.55(b)(2)). On January 1 of year two, §1026.55(b)(4)(ii) requires the card issuer to reduce the rate that applies to any remaining portion of the $5,000 balance to the variable rate determined using the 10-point margin.

E. For an example of the application of §1026.55(b)(4)(ii) to deferred interest or similar programs, see comment 55(b)(1)–3.ii.C.

55(b)(5) Workout and temporary hardship arrangement exception

1. *Scope of exception.* Nothing in §1026.55(b)(5) permits a card issuer to alter the requirements of §1026.55 pursuant to a workout or temporary hardship arrangement. For example, a card issuer cannot increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) pursuant to a workout or temporary hardship arrangement unless otherwise permitted by §1026.55. In addition, a card issuer cannot require the consumer to make payments with respect to a protected balance that exceed the payments permitted under §1026.55(c).

2. *Relationship to §1026.9(c)(2)(v)(D).* A card issuer that has complied with the disclosure requirements in §1026.9(c)(2)(v)(D) has also complied with the disclosure requirements in §1026.55(b)(5)(i). See comment 9(c)(2)(v)–10. Thus, although the disclosures required by §1026.55(b)(5)(i) must generally be provided in writing prior to commencement of the arrangement, a card issuer may comply with §1026.55(b)(5)(i) by complying with §1026.9(c)(2)(v)(D), which states that the disclosure of the terms of the arrangement may be made orally by telephone, provided that the card issuer mails or delivers a written disclosure of the terms of the arrangement

to the consumer as soon as reasonably practicable after the oral disclosure is provided.

3. *Rate, fee, or charge that does not exceed rate, fee, or charge that applied before workout or temporary hardship arrangement.* Upon the completion or failure of a workout or temporary hardship arrangement, §1026.55(b)(5)(ii) prohibits the card issuer from applying to any transactions that occurred prior to commencement of the arrangement an annual percentage rate, fee, or charge that exceeds the annual percentage rate, fee, or charge that applied to those transactions prior to commencement of the arrangement. However, this provision does not prohibit the card issuer from applying an increased annual percentage rate, fee, or charge upon completion or failure of the arrangement, to the extent consistent with any of the other exceptions in §1026.55(b). For example, if a temporary rate applied prior to the arrangement and that rate expired during the arrangement, the card issuer may apply an increased rate upon completion or failure of the arrangement to the extent consistent with §1026.55(b)(1). Similarly, if a variable rate applied prior to the arrangement, the card issuer may apply any increase in that variable rate upon completion or failure of the arrangement to the extent consistent with §1026.55(b)(2).

4. *Examples.* i. Assume that an account is subject to a $50 annual fee and that, consistent with §1026.55(b)(4), the margin used to determine a variable annual percentage rate that applies to a $5,000 balance is increased from 5 percentage points to 15 percentage points. Assume also that the card issuer and the consumer subsequently agree to a workout arrangement that reduces the annual fee to $0 and reduces the margin back to 5 points on the condition that the consumer pay a specified amount by the payment due date each month. If the consumer does not pay the agreed-upon amount by the payment due date, §1026.55(b)(5) permits the card issuer to increase the annual fee to $50 and increase the margin for the variable rate that applies to the $5,000 balance up to 15 percentage points.

ii. Assume that a consumer fails to make four consecutive monthly minimum payments totaling $480 on a consumer credit card account with a balance of $6,000 and that, consistent with §1026.55(b)(4), the annual percentage rate that applies to that balance is increased from a non-variable rate of 15% to a non-variable penalty rate of 30%. Assume also that the card issuer and the consumer subsequently agree to a temporary hardship arrangement that reduces all rates on the account to 0% on the condition that the consumer pay an amount by the payment due date each month that is sufficient to cure the $480 delinquency within six months. If the consumer pays the agreed-upon amount by the payment due date during the six-month period and cures the delinquency, §1026.55(b)(5) permits the card issuer to increase the rate that applies to any remaining portion of the $6,000 balance to 15% or any other rate up to the 30% penalty rate.

55(b)(6) Servicemembers Civil Relief Act exception

1. *Rate, fee, or charge that does not exceed rate, fee, or charge that applied before decrease.* When a rate or a fee or charge subject to §1026.55 has been decreased pursuant to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, §1026.55(b)(6) permits the card issuer to increase the rate, fee, or charge once 50 U.S.C. app. 527 or the similar statute or regulation no longer applies. However, §1026.55(b)(6) prohibits the card issuer from applying to any transactions that occurred prior to the decrease a rate, fee, or charge that exceeds the rate, fee, or charge that applied to those transactions prior to the decrease (except to the extent permitted by one of the other exceptions in §1026.55(b)). For example, if a temporary rate applied prior to a decrease in rate pursuant to 50 U.S.C. app. 527 and the temporary rate expired during the period that 50 U.S.C. app. 527 applied to the account, the card issuer may apply an increased rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with §1026.55(b)(1). Similarly, if a variable rate applied prior to a decrease in rate pursuant to 50 U.S.C. app. 527, the card issuer may apply any increase in that variable rate once 50 U.S.C. app. 527 no longer applies to the extent consistent with §1026.55(b)(2).

2. *Decreases in rates, fees, and charges to amounts consistent with 50 U.S.C. app. 527 or similar statute or regulation.* If a card issuer deceases an annual percentage rate or a fee or charge subject to §1026.55 pursuant to 50 U.S.C. app. 527 or a similar Federal or state statute or regulation and if the card issuer also decreases other rates, fees, or charges (such as the rate that applies to new transactions) to amounts that are consistent with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation, the card issuer may increase those rates, fees, and charges consistent with §1026.55(b)(6).

3. *Example.* Assume that on December 31 of year one the annual percentage rate that applies to a $5,000 balance on a credit card account is a variable rate that is determined by adding a margin of 10 percentage points to a publicly-available index that is not under the card issuer's control. The account is also subject to a monthly maintenance fee of $10. On January 1 of year two, the card issuer reduces the rate that applies to the $5,000 balance to a non-variable rate of 6% and ceases to impose the $10 monthly maintenance fee and other fees (including late payment fees) pursuant to 50 U.S.C. app. 527.

The card issuer also decreases the rate that applies to new transactions to 6%. During year two, the consumer uses the account for $1,000 in new transactions. On January 1 of year three, 50 U.S.C. app. 527 ceases to apply and the card issuer provides a notice pursuant to §1026.9(c) informing the consumer that on February 15 of year three the variable rate determined using the 10-point margin will apply to any remaining portion of the $5,000 balance and to any remaining portion of the $1,000 balance. The notice also states that the $10 monthly maintenance fee and other fees (including late payment fees) will resume on February 15 of year three. Consistent with §1026.9(c)(2)(iv)(B), the card issuer is not required to provide a right to reject in these circumstances. On February 15 of year three, §1026.55(b)(6) permits the card issuer to begin accruing interest on any remaining portion of the $5,000 and $1,000 balances at the variable rate determined using the 10-point margin and to resume imposing the $10 monthly maintenance fee and other fees (including late payment fees).

55(c) Treatment of protected balances

55(c)(1) Definition of protected balance

1. *Example of protected balance.* Assume that, on March 15 of year two, an account has a purchase balance of $1,000 at a non-variable annual percentage rate of 12% and that, on March 16, the card issuer sends a notice pursuant to §1026.9(c) informing the consumer that the annual percentage rate for new purchases will increase to a non-variable rate of 15% on May 1. The fourteenth day after provision of the notice is March 29. On March 29, the consumer makes a $100 purchase. On March 30, the consumer makes a $150 purchase. On May 1, §1026.55(b)(3)(ii) permits the card issuer to begin accruing interest at 15% on the $150 purchase made on March 30 but does not permit the card issuer to apply that 15% rate to the $1,100 purchase balance as of March 29. Accordingly, the protected balance for purposes of §1026.55(c) is the $1,100 purchase balance as of March 29. The $150 purchase made on March 30 is not part of the protected balance.

2. *First year after account opening.* Section 1026.55(c) applies to amounts owed for a category of transactions to which an increased annual percentage rate or an increased fee or charge cannot be applied after the rate, fee, or charge for that category of transactions has been increased pursuant to §1026.55(b)(3). Because §1026.55(b)(3)(iii) does not permit a card issuer to increase an annual percentage rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) during the first year after account opening, §1026.55(c) does not apply to balances during the first year after account opening.

3. *Increased fees and charges.* Except as provided in §1026.55(b)(3)(iii), §1026.55(b)(3) permits a card issuer to increase a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) after complying with the applicable notice requirements in §1026.9(b) or (c), provided that the increased fee or charge is not applied to a protected balance. To the extent consistent with §1026.55(b)(3)(iii), a card issuer is not prohibited from increasing a fee or charge that applies to the account as a whole or to balances other than the protected balance. For example, after the first year following account opening, a card issuer generally may add or increase an annual or a monthly maintenance fee for an account after complying with the notice requirements in §1026.9(c), including notifying the consumer of the right to reject the new or increased fee under §1026.9(h). However, except as otherwise provided in §1026.55(b), an increased fee or charge cannot be applied to an account while the account is closed or while the card issuer does not permit the consumer to use the account for new transactions. *See* §1026.55(b)(3)(iii); *see also* §§1026.52(b)(2)(i)(B)*(3)* and 1026.55(d)(1). Furthermore, if the consumer rejects an increase in a fee or charge pursuant to §1026.9(h), the card issuer is prohibited from applying the increased fee or charge to the account and from imposing any other fee or charge solely as a result of the rejection. *See* §1026.9(h)(2)(i) and (ii); comment 9(h)(2)(ii)–2.

4. *Changing balance computation method.* Nothing in §1026.55 prohibits a card issuer from changing the balance computation method that applies to new transactions as well as protected balances.

55(c)(2) Repayment of protected balance

1. *No less beneficial to the consumer.* A card issuer may provide a method of repaying the protected balance that is different from the methods listed in §1026.55(c)(2) so long as the method used is no less beneficial to the consumer than one of the listed methods. A method is no less beneficial to the consumer if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated using the method for the account before the effective date of the increase. Similarly, a method is no less beneficial to the consumer if the method amortizes the balance in five years or longer or if the method results in a required minimum periodic payment that is equal to or less than a minimum payment calculated consistent with §1026.55(c)(2)(iii). For example:

i. If at account opening the cardholder agreement stated that the required minimum periodic payment would be either the total of fees and interest charges plus 1% of the total amount owed or $20 (whichever is greater), the card issuer may require the consumer to make a minimum payment of $20 even if doing so would pay off the balance in less than five years or constitute more than 2% of the balance plus fees and interest charges.

ii. A card issuer could increase the percentage of the balance included in the required minimum periodic payment from 2% to 5% so long as doing so would not result in amortization of the balance in less than five years.

iii. A card issuer could require the consumer to make a required minimum periodic payment that amortizes the balance in four years so long as doing so would not more than double the percentage of the balance included in the minimum payment prior to the date on which the increased annual percentage rate, fee, or charge became effective.

Paragraph 55(c)(2)(ii)

1. *Amortization period starting from effective date of increase.* Section 1026.55(c)(2)(ii) provides for an amortization period for the protected balance of no less than five years, starting from the date on which the increased annual percentage rate or fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii) became effective. A card issuer is not required to recalculate the required minimum periodic payment for the protected balance if, during the amortization period, that balance is reduced as a result of the allocation of payments by the consumer in excess of that minimum payment consistent with §1026.53 or any other practice permitted by these rules and other applicable law.

2. *Amortization when applicable rate is variable.* If the annual percentage rate that applies to the protected balance varies with an index, the card issuer may adjust the interest charges included in the required minimum periodic payment for that balance accordingly in order to ensure that the balance is amortized in five years. For example, assume that a variable rate that is currently 15% applies to a protected balance and that, in order to amortize that balance in five years, the required minimum periodic payment must include a specific amount of principal plus all accrued interest charges. If the 15% variable rate increases due to an increase in the index, the creditor may increase the required minimum periodic payment to include the additional interest charges.

Paragraph 55(c)(2)(iii)

1. *Portion of required minimum periodic payment on other balances.* Section 1026.55(c)(2)(iii) addresses the portion of the required minimum periodic payment based on the protected balance. Section 1026.55(c)(2)(iii) does not limit or otherwise address the card issuer's ability to determine the portion of the required minimum periodic payment based on other balances on the account or the card issuer's ability to apply that portion of the minimum payment to the balances on the account.

2. *Example.* Assume that the method used by a card issuer to calculate the required minimum periodic payment for a credit card account requires the consumer to pay either the total of fees and accrued interest charges plus 2% of the total amount owed or $50, whichever is greater. Assume also that the account has a purchase balance of $2,000 at an annual percentage rate of 15% and a cash advance balance of $500 at an annual percentage rate of 20% and that the card issuer increases the rate for purchases to 18% but does not increase the rate for cash advances. Under §1026.55(c)(2)(iii), the card issuer may require the consumer to pay fees and interest plus 4% of the $2,000 purchase balance. Section 1026.55(c)(2)(iii) does not limit the card issuer's ability to increase the portion of the required minimum periodic payment that is based on the cash advance balance.

55(d) Continuing application

1. *Closed accounts.* If a credit card account under an open-end (not home-secured) consumer credit plan with a balance is closed, §1026.55 continues to apply to that balance. For example, if a card issuer or a consumer closes a credit card account with a balance, §1026.55(d)(1) prohibits the card issuer from increasing the annual percentage rate that applies to that balance or imposing a periodic fee based solely on that balance that was not charged before the account was closed (such as a closed account fee) unless permitted by one of the exceptions in §1026.55(b).

2. *Acquired accounts.* If, through merger or acquisition (for example), a card issuer acquires a credit card account under an open-end (not home-secured) consumer credit plan with a balance, §1026.55 continues to apply to that balance. For example, if a credit card account has a $1,000 purchase balance with an annual percentage rate of 15% and the card issuer that acquires that account applies an 18% rate to purchases, §1026.55(d)(1) prohibits the card issuer from applying the 18% rate to the $1,000 balance unless permitted by one of the exceptions in §1026.55(b).

3. *Balance transfers.* i. *Between accounts issued by the same creditor.* If a balance is transferred from a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor to another credit account issued by the same creditor or its affiliate or subsidiary, §1026.55 continues to apply to that balance. For example, if a credit card account has a $2,000 purchase balance with an annual percentage rate of 15% and that balance is transferred to another

credit card account issued by the same creditor that applies an 18% rate to purchases, §1026.55(d)(2) prohibits the creditor from applying the 18% rate to the $2,000 balance unless permitted by one of the exceptions in §1026.55(b). However, the creditor would not generally be prohibited from charging a new periodic fee (such as an annual fee) on the second account so long as the fee is not based solely on the $2,000 balance and the creditor has notified the consumer of the fee either by providing written notice 45 days before imposing the fee pursuant to §1026.9(c) or by providing account-opening disclosures pursuant to §1026.6(b). See also §1026.55(b)(3)(iii); comment 55(b)(3)–3; comment 5(b)(1)(i)–6. Additional circumstances in which a balance is considered transferred for purposes of §1026.55(d)(2) include when:

A. A retail credit card account with a balance is replaced or substituted with a cobranded general purpose credit card account that can be used with a broader merchant base;

B. A credit card account with a balance is replaced or substituted with another credit card account offering different features;

C. A credit card account with a balance is consolidated or combined with one or more other credit card accounts into a single credit card account; and

D. A credit card account is replaced or substituted with a line of credit that can be accessed solely by an account number.

ii. *Between accounts issued by different creditors.* If a balance is transferred to a credit card account under an open-end (not home-secured) consumer credit plan issued by a creditor from a credit card account issued by a different creditor or an institution that is not an affiliate or subsidiary of the creditor that issued the account to which the balance is transferred, §1026.55(d)(2) does not prohibit the creditor to which the balance is transferred from applying its account terms to that balance, provided that those terms comply with this part. For example, if a credit card account issued by creditor A has a $1,000 purchase balance at an annual percentage rate of 15% and the consumer transfers that balance to a credit card account with a purchase rate of 17% issued by creditor B, creditor B may apply the 17% rate to the $1,000 balance. However, creditor B may not subsequently increase the rate on that balance unless permitted by one of the exceptions in §1026.55(b).

55(e) Promotional waivers or rebates of interest, fees, and other charges

1. *Generally.* Nothing in §1026.55 prohibits a card issuer from waiving or rebating finance charges due to a periodic interest rate or a fee or charge required to be disclosed under §1026.6(b)(2)(ii), (b)(2)(iii), or (b)(2)(xii). However, if a card issuer promotes and applies the waiver or rebate to an account, the card issuer cannot temporarily or permanently cease or terminate any portion of the waiver or rebate on that account unless permitted by one of the exceptions in §1026.55(b). For example:

i. A card issuer applies an annual percentage rate of 15% to balance transfers but promotes a program under which all of the interest accrued on transferred balances will be waived or rebated for one year. If, prior to the commencement of the one-year period, the card issuer discloses the length of the period and the annual percentage rate that will apply to transferred balances after expiration of that period consistent with §1026.55(b)(1)(i), §1026.55(b)(1) permits the card issuer to begin imposing interest charges on transferred balances after one year. Furthermore, if, during the one-year period, a required minimum periodic payment is not received within 60 days of the payment due date, §1026.55(b)(4) permits the card issuer to begin imposing interest charges on transferred balances (after providing a notice consistent with §1026.9(g) and §1026.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, §1026.55 does not permit the card issuer to begin imposing interest charges on transferred balances until the expiration of the one-year period.

ii. A card issuer imposes a monthly maintenance fee of $10 but promotes a program under which the fee will be waived or rebated for the six months following account opening. If, prior to account opening, the card issuer discloses the length of the period and the monthly maintenance fee that will be imposed after expiration of that period consistent with §1026.55(b)(1)(i), §1026.55(b)(1) permits the card issuer to begin imposing the monthly maintenance fee six months after account opening. Furthermore, if, during the six-month period, a required minimum periodic payment is not received within 60 days of the payment due date, §1026.55(b)(4) permits the card issuer to begin imposing the monthly maintenance fee (after providing a notice consistent with §1026.9(c) and §1026.55(b)(4)(i)). However, if a required minimum periodic payment is not more than 60 days delinquent or if the consumer otherwise violates the terms or other requirements of the account, §1026.55 does not permit the card issuer to begin imposing the monthly maintenance fee until the expiration of the six-month period.

2. *Promotion of waiver or rebate.* For purposes of §1026.55(e), a card issuer generally promotes a waiver or rebate if the card issuer discloses the waiver or rebate in an advertisement (as defined in §1026.2(a)(2)). *See* comment 2(a)(2)–1. In addition, a card issuer generally promotes a waiver or rebate for purposes of §1026.55(e) if the card issuer

discloses the waiver or rebate in communications regarding existing accounts (such as communications regarding a promotion that encourages additional or different uses of an existing account). However, a card issuer does not promote a waiver or rebate for purposes of §1026.55(e) if the advertisement or communication relates to an inquiry or dispute about a specific charge or to interest, fees, or charges that have already been waived or rebated.

i. *Examples of promotional communications.* The following are examples of circumstances in which a card issuer is promoting a waiver or rebate for purposes of §1026.55(e):

A. A card issuer discloses the waiver or rebate in a newspaper, magazine, leaflet, promotional flyer, catalog, sign, or point-of-sale display, unless the disclosure relates to interest, fees, or charges that have already been waived.

B. A card issuer discloses the waiver or rebate on radio or television or through electronic advertisements (such as on the Internet), unless the disclosure relates to interest, fees, or charges that have already been waived or rebated.

C. A card issuer discloses a waiver or rebate to individual consumers, such as by telephone, letter, or electronic communication, through direct mail literature, or on or with account statements, unless the disclosure relates to an inquiry or dispute about a specific charge or to interest, fees, or charges that have already been waived or rebated.

ii. *Examples of non-promotional communications.* The following are examples of circumstances in which a card issuer is not promoting a waiver or rebate for purposes of §1026.55(e):

A. After a card issuer has waived or rebated interest, fees, or other charges subject to §1026.55 with respect to an account, the issuer discloses the waiver or rebate to the accountholder on the periodic statement or by telephone, letter, or electronic communication. However, if the card issuer also discloses prospective waivers or rebates in the same communication, the issuer is promoting a waiver or rebate for purposes of §1026.55(e).

B. A card issuer communicates with a consumer about a waiver or rebate of interest, fees, or other charges subject to §1026.55 in relation to an inquiry or dispute about a specific charge, including a dispute under §§1026.12 or 1026.13.

C. A card issuer waives or rebates interest, fees, or other charges subject to §1026.55 in order to comply with a legal requirement (such as the limitations in §1026.52(a)).

D. A card issuer discloses a grace period, as defined in §1026.5(b)(2)(ii)(*3*).

E. A card issuer provides a period after the payment due date during which interest, fees, or other charges subject to §1026.55 are waived or rebated even if a payment has not been received.

F. A card issuer provides benefits (such as rewards points or cash back on purchases or finance charges) that can be applied to the account as credits, provided that the benefits are not promoted as reducing interest, fees, or other charges subject to §1026.55.

3. *Relationship of §1026.55(e) to grace period.* Section 1026.55(e) does not apply to the waiver of finance charges due to a periodic rate consistent with a grace period, as defined in §1026.5(b)(2)(ii)(*3*).

Section 1026.56—Requirements for Over-the-Limit Transactions

56(b) Opt-in requirement.

1. *Policy and practice of declining over-the-limit transactions.* Section 1026.56(b)(1)(i)–(v), including the requirements to provide notice and obtain consumer consent, do not apply to any card issuer that has a policy and practice of declining to pay any over-the-limit transactions for the consumer's credit card account when the card issuer has a reasonable belief that completing a transaction will cause the consumer to exceed the consumer's credit limit for that account. For example, if a card issuer only authorizes those transactions which, at the time of authorization, would not cause the consumer to exceed a credit limit, it is not subject to the requirement to provide consumers notice and an opportunity to affirmatively consent to the card issuer's payment of over-the-limit transactions. However, if an over-the-limit transaction is paid without the consumer providing affirmative consent, the card issuer may not charge a fee for paying the transaction.

2. *Over-the-limit transactions not required to be authorized or paid.* Section 1026.56 does not require a card issuer to authorize or pay an over-the-limit transaction even if the consumer has affirmatively consented to the card issuer's over-the-limit service.

3. *Examples of reasonable opportunity to provide affirmative consent.* A card issuer provides a reasonable opportunity for the consumer to provide affirmative consent to the card issuer's payment of over-the-limit transactions when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. A card issuer provides such reasonable methods if:

i. *On the application.* The card issuer provides the notice on the application form that the consumer can fill out to request the service as part of the application;

ii. *By mail.* The card issuer provides a form with the account-opening disclosures or the periodic statement for the consumer to fill out and mail to affirmatively request the service;

iii. *By telephone.* The card issuer provides a readily available telephone line that consumers may call to provide affirmative consent.

iv. *By electronic means.* The card issuer provides an electronic means for the consumer to affirmatively consent. For example, a card issuer could provide a form that can be accessed and processed at its Web site, where the consumer can check a box to opt in and confirm that choice by clicking on a button that affirms the consumer's consent.

4. *Separate consent required.* A consumer's affirmative consent, or opt-in, to a card issuer's payment of over-the-limit transactions must be obtained separately from other consents or acknowledgments obtained by the card issuer. For example, a consumer's signature on a credit application to request a credit card would not by itself sufficiently evidence the consumer's consent to the card issuer's payment of over-the-limit transactions. However, a card issuer may obtain a consumer's affirmative consent by providing a blank signature line or a check box on the application that the consumer can sign or select to request the over-the-limit service, provided that the signature line or check box is used solely for purposes of evidencing the choice and not for any other purpose, such as to also obtain consumer consents for other account services or features or to receive disclosures electronically.

5. *Written confirmation.* A card issuer may comply with the requirement in §1026.56(b)(1)(iv) to provide written confirmation of the consumer's decision to affirmatively consent, or opt in, to the card issuer's payment of over-the-limit transactions by providing the consumer a copy of the consumer's completed opt-in form or by sending a letter or notice to the consumer acknowledging that the consumer has elected to opt into the card issuer's service. A card issuer may also satisfy the written confirmation requirement by providing the confirmation on the first periodic statement sent after the consumer has opted in. For example, a card issuer could provide a written notice consistent with §1026.56(e)(2) on the periodic statement. A card issuer may not, however, assess any over-the-limit fees or charges on the consumer's credit card account unless and until the card issuer has sent the written confirmation. Thus, if a card issuer elects to provide written confirmation on the first periodic statement after the consumer has opted in, it would not be permitted to assess any over-the-limit fees or charges until the next statement cycle.

56(b)(2) Completion of over-the-limit transactions without consumer consent

1. *Examples of over-the-limit transactions paid without consumer consent.* Section 1026.56(b)(2) provides that a card issuer may pay an over-the-limit transaction even if the consumer has not provided affirmative consent, so long as the card issuer does not impose a fee or charge for paying the transaction. The prohibition on imposing fees for paying an over-the-limit transaction applies even in circumstances where the card issuer is unable to avoid paying a transaction that exceeds the consumer's credit limit.

i. *Transactions not submitted for authorization.* A consumer has not affirmatively consented to a card issuer's payment of over-the-limit transactions. The consumer purchases a $3 cup of coffee using his credit card. Because of the small dollar amount of the transaction, the merchant does not submit the transaction to the card issuer for authorization. The transaction causes the consumer to exceed the credit limit. Under these circumstances, the card issuer is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the card issuer's over-the-limit service.

ii. *Settlement amount exceeds authorization amount.* A consumer has not affirmatively consented to a card issuer's payment of over-the-limit transactions. The consumer uses his credit card at a pay-at-the-pump fuel dispenser to purchase $50 of fuel. Before permitting the consumer to use the fuel pump, the merchant verifies the validity of the card by requesting an authorization hold of $1. The subsequent $50 transaction amount causes the consumer to exceed his credit limit. Under these circumstances, the card issuer is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the card issuer's over-the-limit service.

iii. *Intervening charges.* A consumer has not affirmatively consented to a card issuer's payment of over-the-limit transactions. The consumer makes a $50 purchase using his credit card. However, before the $50 transaction is charged to the consumer's account, a separate recurring charge is posted to the account. The $50 purchase then causes the consumer to exceed his credit limit. Under these circumstances, the card issuer is prohibited from imposing a fee or charge on the consumer's credit card account for paying the over-the-limit transaction because the consumer has not opted in to the card issuer's over-the-limit service.

2. *Permissible fees or charges when a consumer has not consented.* Section 1026.56(b)(2) does not preclude a card issuer from assessing fees or charges other than over-the-limit fees when an over-the-limit transaction is completed. For example, if a consumer has not opted in, the card issuer may assess a balance transfer fee in connection with a balance transfer, provided such a fee is assessed

whether or not the transfer exceeds the credit limit. Section 1026.56(b)(2) does not limit the card issuer's ability to debit the consumer's account for the amount of the over-the-limit transaction if the card issuer is permitted to do so under applicable law. The card issuer may also assess interest charges in connection with the over-the-limit transaction.

56(c) Method of election

1. *Card issuer-determined methods.* A card issuer may determine the means available to consumers to affirmatively consent, or opt in, to the card issuer's payment of over-the-limit transactions. For example, a card issuer may decide to obtain consents in writing, electronically, or orally, or through some combination of these methods. Section 1026.56(c) further requires, however, that such methods must be made equally available for consumers to revoke a prior consent. Thus, for example, if a card issuer allows a consumer to consent in writing or electronically, it must also allow the consumer to revoke that consent in writing or electronically.

2. *Electronic requests.* A consumer consent or revocation request submitted electronically is not considered a consumer disclosure for purposes of the E-Sign Act.

56(d) Timing and placement of notices

1. *Contemporaneous notice for oral or electronic consent.* Under §1026.56(d)(1)(ii), if a card issuer seeks to obtain consent from the consumer orally or by electronic means, the card issuer must provide a notice containing the disclosures in §1026.56(e)(1) prior to and as part of the process of obtaining the consumer's consent.

56(e) Content

1. *Amount of over-the-limit fee.* See Model Forms G–25(A) and G–25(B) for guidance on how to disclose the amount of the over-the-limit fee.

2. *Notice content.* In describing the consumer's right to affirmatively consent to a card issuer's payment of over-the-limit transactions, the card issuer may explain that any transactions that exceed the consumer's credit limit will be declined if the consumer does not consent to the service. In addition, the card issuer should explain that even if a consumer consents, the payment of over-the-limit transactions is at the discretion of the card issuer. For example, the card issuer may indicate that it may decline a transaction for any reason, such as if the consumer is past due or significantly over the limit. The card issuer may also disclose the consumer's right to revoke consent.

56(f) Joint relationships

1. *Authorized users.* Section 1026.56(f) does not permit a card issuer to treat a request to opt in to or to revoke a prior request for the card issuer's payment of over-the-limit transactions from an authorized user that is not jointly liable on a credit card account as a consent or revocation request for that account.

56(g) Continuing right to opt in or revoke opt-in

1. *Fees or charges for over-the-limit transactions incurred prior to revocation.* Section 1026.56(g) provides that a consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the card issuer to waive or reverse any over-the-limit fees or charges assessed to the consumer's account for transactions that occurred prior to the card issuer's implementation of the consumer's revocation request. Nor does this requirement prevent the card issuer from assessing over-the-limit fees in subsequent cycles if the consumer's account balance continues to exceed the credit limit after the payment due date as a result of an over-the-limit transaction that occurred prior to the consumer's revocation of consent.

56(h) Duration of opt-in

1. *Card issuer ability to stop paying over-the-limit transactions after consumer consent.* A card issuer may cease paying over-the-limit transactions for consumers that have previously opted in at any time and for any reason. For example, a card issuer may stop paying over-the-limit transactions for a consumer to respond to changes in the credit risk presented by the consumer.

56(j) Prohibited practices

1. *Periodic fees or charges.* A card issuer may charge an over-the-limit fee or charge only if the consumer has exceeded the credit limit during the billing cycle. Thus, a card issuer may not impose any recurring or periodic fees for paying over-the-limit transactions (for example, a monthly "over-the-limit protection" service fee), even if the consumer has affirmatively consented to or opted in to the service, unless the consumer has in fact exceeded the credit limit during that cycle.

2. *Examples of limits on fees or charges imposed per billing cycle.* Section 1026.56(j)(1) generally prohibits a card issuer from assessing a fee or charge due to the same over-the-limit transaction for more than three billing cycles. The following examples illustrate the prohibition.

i. Assume that a consumer has opted into a card issuer's payment of over-the-limit transactions. The consumer exceeds the credit limit during the December billing cycle and does not make sufficient payment to bring the account balance back under the limit for four consecutive cycles. The consumer does not engage in any additional transactions during this period. In this case, § 1026.56(j)(1) would permit the card issuer to charge a maximum of three over-the-limit fees for the December over-the-limit transaction.

ii. Assume the same facts as above except that the consumer makes sufficient payment to reduce his account balance by the payment due date during the February billing cycle. The card issuer may charge over-the-limit fees for the December and January billing cycles. However, because the consumer's account balance was below the credit limit by the payment due date for the February billing cycle, the card issuer may not charge an over-the-limit fee for the February billing cycle.

iii. Assume the same facts as in paragraph i, except that the consumer engages in another over-the-limit transaction during the February billing cycle. Because the consumer has obtained an additional extension of credit which causes the consumer to exceed his credit limit, the card issuer may charge over-the-limit fees for the December transaction on the January, February and March billing statements, and additional over-the-limit fees for the February transaction on the April and May billing statements. The card issuer may not charge an over-the-limit fee for each of the December and the February transactions on the March billing statement because it is prohibited from imposing more than one over-the-limit fee during a billing cycle.

3. *Replenishment of credit line.* Section 1026.56(j)(2) does not prevent a card issuer from delaying replenishment of a consumer's available credit where appropriate, for example, where the card issuer may suspect fraud on the credit card account. However, a card issuer may not assess an over-the-limit fee or charge if the over-the-limit transaction is caused by the card issuer's decision not to promptly replenish the available credit after the consumer's payment is credited to the consumer's account.

4. *Examples of conditioning.* Section 1026.56(j)(3) prohibits a card issuer from conditioning or otherwise tying the amount of a consumer's credit limit on the consumer affirmatively consenting to the card issuer's payment of over-the-limit transactions where the card issuer assesses an over-the-limit fee for the transaction. The following examples illustrate the prohibition.

i. *Amount of credit limit.* Assume that a card issuer offers a credit card with a credit limit of $1,000. The consumer is informed that if the consumer opts in to the payment of the card issuer's payment of over-the-limit transactions, the initial credit limit would be increased to $1,300. If the card issuer would have offered the credit card with the $1,300 credit limit but for the fact that the consumer did not consent to the card issuer's payment of over-the-limit transactions, the card issuer would not be in compliance with § 1026.56(j)(3). Section 1026.56(j)(3) prohibits the card issuer from tying the consumer's opt-in to the card issuer's payment of over-the-limit transactions as a condition of obtaining the credit card with the $1,300 credit limit.

ii. *Access to credit.* Assume the same facts as above, except that the card issuer declines the consumer's application altogether because the consumer has not affirmatively consented or opted in to the card issuer's payment of over-the-limit transactions. The card issuer is not in compliance with § 1026.56(j)(3) because the card issuer has required the consumer's consent as a condition of obtaining credit.

5. *Over-the-limit fees caused by accrued fees or interest.* Section 1026.56(j)(4) prohibits a card issuer from imposing any over-the-limit fees or charges on a consumer's account if the consumer has exceeded the credit limit solely because charges imposed as part of the plan as described in § 1026.6(b)(3) were charged to the consumer's account during the billing cycle. For example, a card issuer may not assess an over-the-limit fee or charge even if the credit limit was exceeded due to fees for services requested by the consumer if such fees would constitute charges imposed as part of the plan (such as fees for voluntary debt cancellation or suspension coverage). Section 1026.56(j)(4) does not, however, restrict card issuers from assessing over-the-limit fees or charges due to accrued finance charges or fees from prior cycles that have subsequently been added to the account balance. The following examples illustrate the prohibition.

i. Assume that a consumer has opted in to a card issuer's payment of over-the-limit transactions. The consumer's account has a credit limit of $500. The billing cycles for the account begin on the first day of the month and end on the last day of the month. The account is not eligible for a grace period as defined in § 1026.5(b)(2)(ii)(B)(3). On December 31, the only balance on the account is a purchase balance of $475. On that same date, $50 in fees charged as part of the plan under § 1026.6(b)(3)(i) and interest charges are imposed on the account, increasing the total balance at the end of the December billing cycle to $525. Although the total balance exceeds the $500 credit limit, § 1026.56(j)(4) prohibits the card issuer from imposing an over-the-limit fee or charge for the December billing cycle in these circumstances because the consumer's credit limit was exceeded solely because of the imposition of fees and interest charges during that cycle.

ii. Same facts as above except that, on December 31, the only balance on the account is a purchase balance of $400. On that same date, $50 in fees imposed as part of the plan under §1026.6(b)(3)(i), including interest charges, are imposed on the account, increasing the total balance at the end of the December billing cycle to $450. The consumer makes a $25 payment by the January payment due date and the remaining $25 in fees imposed as part of the plan in December is added to the outstanding balance. On January 25, an $80 purchase is charged to the account. At the close of the cycle on January 31, an additional $20 in fees imposed as part of the plan are imposed on the account, increasing the total balance to $525. Because §1026.56(j)(4) does not require the issuer to consider fees imposed as part of the plan for the prior cycle in determining whether an over-the-limit fee may be properly assessed for the current cycle, the issuer need not take into account the remaining $25 in fees and interest charges from the December cycle in determining whether fees imposed as part of the plan caused the consumer to exceed the credit limit during the January cycle. Thus, under these circumstances, §1026.56(j)(4) does not prohibit the card issuer from imposing an over-the-limit fee or charge for the January billing cycle because the $20 in fees imposed as part of the plan for the January billing cycle did not cause the consumer to exceed the credit limit during that cycle.

6. *Additional restrictions on over-the-limit fees*. See §1026.52(b).

Section 1026.57—Reporting and Marketing Rules for College Student Open-End Credit

57(a) Definitions

57(a)(1) College student credit card

1. *Definition*. The definition of college student credit card excludes home-equity lines of credit accessed by credit cards and overdraft lines of credit accessed by debit cards. A college student credit card includes a college affinity card within the meaning of TILA section 127(r)(1)(A). In addition, a card may fall within the scope of the definition regardless of the fact that it is not intentionally targeted at or marketed to college students. For example, an agreement between a college and a card issuer may provide for marketing of credit cards to alumni, faculty, staff, and other non-student consumers who have a relationship with the college, but also contain provisions that contemplate the issuance of cards to students. A credit card issued to a student at the college in connection with such an agreement qualifies as a college student credit card. The definition of college student credit card includes a hybrid prepaid-credit card as defined by §1026.61 that is issued to any college student where the card can access a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan. The definition of college student credit card also includes a prepaid account as defined in §1026.61 that is issued to any college student where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by §1026.61 may be added in the future to the prepaid account.

57(a)(5) College credit card agreement

1. *Definition*. Section 1026.57(a)(5) defines ''college credit card agreement'' to include any business, marketing or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the issuance of credit cards to full-time or part-time students. Business, marketing or promotional agreements may include a broad range of arrangements between a card issuer and an institution of higher education or affiliated organization, including arrangements that do not meet the criteria to be considered college affinity card agreements as discussed in TILA section 127(r)(1)(A). For example, TILA section 127(r)(1)(A) specifies that under a college affinity card agreement, the card issuer has agreed to make a donation to the institution or affiliated organization, the card issuer has agreed to offer discounted terms to the consumer, or the credit card will display pictures, symbols, or words identified with the institution or affiliated organization; even if these conditions are not met, an agreement may qualify as a college credit card agreement, if the agreement is a business, marketing or promotional agreement that contemplates the issuance of college student credit cards to college students currently enrolled (either full-time or part-time) at the institution. An agreement may qualify as a college credit card agreement even if marketing of cards under the agreement is targeted at alumni, faculty, staff, and other non-student consumers, as long as cards may also be issued to students in connection with the agreement. This definition also includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if the agreement provides for the addition of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by §1026.61 to prepaid accounts previously issued to full-time or part-time students. This definition also includes a business, marketing, or promotional agreement between a card issuer and a college or university (or an affiliated organization, such as an alumni club or a foundation) if (1) the

agreement provides for the issuance of prepaid accounts as defined in §1026.61 to full-time or part-time students; and (2) a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined by §1026.61 may be added in the future to the prepaid account.

57(b) Public disclosure of agreements

1. *Public disclosure.* Section 1026.57(b) requires an institution of higher education to publicly disclose any contract or other agreement made with a card issuer or creditor for the purpose of marketing a credit card. Examples of publicly disclosing such contracts or agreements include, but are not limited to, posting such contracts or agreements on the institution's Web site or making such contracts or agreements available upon request, provided the procedures for requesting the documents are reasonable and free of cost to the requestor, and the requested contracts or agreements are provided within a reasonable time frame.

2. *Redaction prohibited.* An institution of higher education must publicly disclose any contract or other agreement made with a card issuer for the purpose of marketing a credit card in its entirety and may not redact any portion of such contract or agreement. Any clause existing in such contracts or agreements, providing for the confidentiality of any portion of the contract or agreement, would be invalid to the extent it restricts the ability of the institution of higher education to publicly disclose the contract or agreement in its entirety.

3. *Credit card accounts in connection with prepaid accounts.* Section 1026.57(b) applies to any contract or other agreement that an institution of higher education makes with a card issuer or creditor for the purpose of marketing either (1) the addition of a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in §1026.61 to prepaid accounts previously issued to full-time or part-time students; or (2) new prepaid accounts as defined in §1026.61 where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in §1026.61 may be added in the future to the prepaid account. Thus, under §1026.57(b), an institution of higher education must publicly disclose such agreements.

57(c) Prohibited inducements

1. *Tangible item clarified.* A tangible item includes any physical item, such as a gift card, a t-shirt, or a magazine subscription, that a card issuer or creditor offers to induce a college student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor. Tangible items do not include non-physical inducements such as discounts, rewards points, or promotional credit terms.

2. *Inducement clarified.* If a tangible item is offered to a person whether or not that person applies for or opens an open-end consumer credit plan, the tangible item has not been offered to induce the person to apply for or open the plan. For example, refreshments offered to a college student on campus that are not conditioned on whether the student has applied for or agreed to open an open-end consumer credit plan would not violate §1026.57(c).

3. *Near campus clarified.* A location that is within 1,000 feet of the border of the campus of an institution of higher education, as defined by the institution of higher education, is considered near the campus of an institution of higher education.

4. *Mailings included.* The prohibition in §1026.57(c) on offering a tangible item to a college student to induce such student to apply for or open an open-end consumer credit plan offered by such card issuer or creditor applies to any solicitation or application mailed to a college student at an address on or near the campus of an institution of higher education.

5. *Related event clarified.* An event is related to an institution of higher education if the marketing of such event uses the name, emblem, mascot, or logo of an institution of higher education, or other words, pictures, symbols identified with an institution of higher education in a way that implies that the institution of higher education endorses or otherwise sponsors the event.

6. *Reasonable procedures for determining if applicant is a student.* Section 1026.57(c) applies solely to offering a tangible item to a college student. Therefore, a card issuer or creditor may offer any person who is not a college student a tangible item to induce such person to apply for or open an open-end consumer credit plan offered by such card issuer or creditor, on campus, near campus, or at an event sponsored by or related to an institution of higher education. The card issuer or creditor must have reasonable procedures for determining whether an applicant is a college student before giving the applicant the tangible item. For example, a card issuer or creditor may ask whether the applicant is a college student as part of the application process. The card issuer or creditor may rely on the representations made by the applicant.

7. *Credit card accounts in connection with prepaid accounts.* Section 1026.57(c) applies to (1) the application for or opening of a covered separate credit feature that is a credit card account under an open-end (not home-

secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in §1026.61 that is being added to a prepaid account previously issued to a full-time or part-time student as well as (2) the application for or opening of a prepaid account as defined in §1026.61 where a covered separate credit feature that is a credit card account under an open-end (not home-secured) consumer credit plan accessible by a hybrid prepaid-credit card as defined in §1026.61 may be added in the future to the prepaid account.

57(d) Annual report to the Bureau

57(d)(2) Contents of report

1. *Memorandum of understanding.* Section 1026.57(d)(2) requires that the report to the Bureau include, among other items, a copy of any memorandum of understanding between the card issuer and the institution (or affiliated organization) that ''directly or indirectly relates to the college credit card agreement or that controls or directs any obligations or distribution of benefits between any such entities.'' Such a memorandum of understanding includes any document that amends the college credit card agreement, or that constitutes a further agreement between the parties as to the interpretation or administration of the agreement. For example, a memorandum of understanding required to be included in the report would include a document that provides details on the dollar amounts of payments from the card issuer to the university, to supplement the original agreement which only provided for payments in general terms (e.g., as a percentage). A memorandum of understanding for these purposes would not include email (or other) messages that merely discuss matters such as the addresses to which payments should be sent or the names of contact persons for carrying out the agreement.

Section 1026.58—Internet Posting of Credit Card Agreements

58(b) Definitions

58(b)(1) Agreement

1. *Inclusion of pricing information.* For purposes of this section, a credit card agreement is deemed to include certain information, such as annual percentage rates and fees, even if the issuer does not otherwise include this information in the basic credit contract. This information is listed under the defined term ''pricing information'' in §1026.58(b)(7). For example, the basic credit contract may not specify rates, fees and other information that constitutes pricing information as defined in §1026.58(b)(7); instead, such information may be provided to the cardholder in a separate document sent along with the card. However, this information nevertheless constitutes part of the agreement for purposes of §1026.58.

2. *Provisions contained in separate documents included.* A credit card agreement is defined as the written document or documents evidencing the terms of the legal obligation, or the prospective legal obligation, between a card issuer and a consumer for a credit card account under an open-end (not home-secured) consumer credit plan. An agreement therefore may consist of several documents that, taken together, define the legal obligation between the issuer and consumer. For example, provisions that mandate arbitration or allow an issuer to unilaterally alter the terms of the card issuer's or consumer's obligation are part of the agreement even if they are provided to the consumer in a document separate from the basic credit contract.

58(b)(2) Amends

1. *Substantive changes.* A change to an agreement is substantive, and therefore is deemed an amendment of the agreement, if it alters the rights or obligations of the parties. Section 1026.58(b)(2) provides that any change in the pricing information, as defined in §1026.58(b)(7), is deemed to be substantive. Examples of other changes that generally would be considered substantive include:

i. Addition or deletion of a provision giving the issuer or consumer a right under the agreement, such as a clause that allows an issuer to unilaterally change the terms of an agreement.

ii. Addition or deletion of a provision giving the issuer or consumer an obligation under the agreement, such as a clause requiring the consumer to pay an additional fee.

iii. Changes that may affect the cost of credit to the consumer, such as changes in a provision describing how the minimum payment will be calculated.

iv. Changes that may affect how the terms of the agreement are construed or applied, such as changes in a choice-of-law provision.

v. Changes that may affect the parties to whom the agreement may apply, such as provisions regarding authorized users or assignment of the agreement.

2. *Non-substantive changes.* Changes that generally would not be considered substantive include, for example:

i. Correction of typographical errors that do not affect the meaning of any terms of the agreement.

ii. Changes to the card issuer's corporate name, logo, or tagline.

iii. Changes to the format of the agreement, such as conversion to a booklet from a full-sheet format, changes in font, or changes in margins.

iv. Changes to the name of the credit card to which the program applies.

v. Reordering sections of the agreement without affecting the meaning of any terms of the agreement.

vi. Adding, removing, or modifying a table of contents or index.

vii. Changes to titles, headings, section numbers, or captions.

58(b)(4) Card issuer

1. *Card issuer clarified.* Section 1026.58(b)(4) provides that, for purposes of §1026.58, card issuer or issuer means the entity to which a consumer is legally obligated, or would be legally obligated, under the terms of a credit card agreement. For example, Bank X and Bank Y work together to issue credit cards. A consumer that obtains a credit card issued pursuant to this arrangement between Bank X and Bank Y is subject to an agreement that states "This is an agreement between you, the consumer, and Bank X that governs the terms of your Bank Y Credit Card." The card issuer in this example is Bank X, because the agreement creates a legally enforceable obligation between the consumer and Bank X. Bank X is the issuer even if the consumer applied for the card through a link on Bank Y's Web site and the cards prominently feature the Bank Y logo on the front of the card.

2. *Use of third-party service providers.* An institution that is the card issuer as defined in §1026.58(b)(4) has a legal obligation to comply with the requirements of §1026.58. However, a card issuer generally may use a third-party service provider to satisfy its obligations under §1026.58, provided that the issuer acts in accordance with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance. In some cases, an issuer may wish to arrange for the institution with which it partners to issue credit cards to fulfill the requirements of §1026.58 on the issuer's behalf. For example, Retailer and Bank work together to issue credit cards. Under the §1026.58(b)(4) definition, Bank is the issuer of these credit cards for purposes of §1026.58. However, Retailer services the credit card accounts, including mailing account opening materials and periodic statements to cardholders. While Bank is responsible for ensuring compliance with §1026.58, Bank may arrange for Retailer (or another appropriate third-party service provider) to submit credit card agreements to the Bureau under §1026.58 on Bank's behalf. Bank must comply with regulatory guidance regarding use of third-party service providers and other applicable regulatory guidance.

3. *Partner institution Web sites.* i. As explained in comments 58(d)–2 and 58(e)–3, if an issuer provides cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is deemed to maintain that Web site for purposes of §1026.58. Such a Web site is deemed to be maintained by the issuer for purposes of §1026.58 even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. A partner institution's Web site is an example of a third-party Web site that may be deemed to be maintained by the issuer for purposes of §1026.58. For example, Retailer and Bank work together to issue credit cards. Under the §1026.58(b)(4) definition, Bank is the issuer of these credit cards for purposes of §1026.58. Bank does not have a Web site. However, cardholders can access information about their individual accounts, such as balance information and copies of statements, through a Web site maintained by Retailer. Retailer designs the Web site and owns and maintains the information technology infrastructure that supports the Web site. The Web site is branded and held out to the public as belonging to Retailer. Because cardholders can access information about their individual accounts through this Web site, the Web site is deemed to be maintained by Bank for purposes of §1026.58. Bank therefore may comply with §1026.58(d) by ensuring that agreements offered to the public are posted on Retailer's Web site in accordance with §1026.58(d). Bank may comply with §1026.58(e) by ensuring that cardholders can request copies of their individual agreements through Retailer's Web site in accordance with §1026.58(e)(1). Bank need not create and maintain a Web site branded and held out to the public as belonging to Bank in order to comply with §§1026.58(d) and (e) as long as Bank ensures that Retailer's Web site complies with these sections.

ii. In addition, §1026.58(d)(1) provides that, with respect to an agreement offered solely for accounts under one or more private label credit card plans, an issuer may comply with §1026.58(d) by posting the agreement on the publicly available Web site of at least one of the merchants at which credit cards issued under each private label credit card plan with 10,000 or more open accounts may be used. This rule is not conditioned on cardholders' ability to access account-specific information through the merchant's Web site.

58(b)(5) Offers

1. *Cards offered to limited groups.* A card issuer is deemed to offer a credit card agreement to the public even if the issuer solicits, or accepts applications from, only a limited group of persons. For example, a card issuer may market affinity cards to students and

alumni of a particular educational institution, or may solicit only high-net-worth individuals for a particular card; in these cases, the agreement would be considered to be offered to the public. Similarly, agreements for credit cards issued by a credit union are considered to be offered to the public even though such cards are available only to credit union members.

2. *Individualized agreements.* A card issuer is deemed to offer a credit card agreement to the public even if the terms of the agreement are changed immediately upon opening of an account to terms not offered to the public.

58(b)(6) Open account

1. *Open account clarified.* The definition of open account includes a credit card account under an open-end (not home-secured) consumer credit plan if either (i) the cardholder can obtain extensions of credit on the account; or (ii) there is an outstanding balance on the account that has not been charged off. Under this definition, an account that meets either of these criteria is considered to be open even if the account is inactive. Similarly, if an account has been closed for new activity (for example, due to default by the cardholder), but the cardholder is still making payments to pay off the outstanding balance, the account is considered open.

58(b)(8) Private Label Credit Card Account and Private Label Credit Card Plan

1. *Private label credit card account.* The term private label credit card account means a credit card account under an open-end (not home-secured) consumer credit plan with a credit card that can be used to make purchases only at a single merchant or an affiliated group of merchants. This term applies to any such credit card account, regardless of whether it is issued by the merchant or its affiliate or by an unaffiliated third party.

2. *Co-branded credit cards.* The term private label credit card account does not include accounts with so-called co-branded credit cards. Credit cards that display the name, mark, or logo of a merchant or affiliated group of merchants as well as the mark, logo, or brand of payment network are generally referred to as co-branded cards. While these credit cards may display the brand of the merchant or affiliated group of merchants as the dominant brand on the card, such credit cards are usable at any merchant that participates in the payment network. Because these credit cards can be used at multiple unaffiliated merchants, accounts with such credit cards are not considered private label credit card accounts under § 1026.58(b)(8).

3. *Affiliated group of merchants.* The term ''affiliated group of merchants'' means two or more affiliated merchants or other persons that are related by common ownership or common corporate control. For example, the term would include franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among each other, by contract or otherwise, to accept a credit card bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, several local clothing retailers jointly agree to issue credit cards called the ''Main Street Fashion Card'' that can be used to make purchases only at those retailers. For purposes of this section, these retailers would be considered an affiliated group of merchants.

4. *Private label credit card plan.* i. Which credit card accounts issued by a particular issuer constitute a private label credit card plan is determined by where the credit cards can be used. All of the private label credit card accounts issued by a particular card issuer with credit cards usable at the same merchant or affiliated group of merchants constitute a single private label credit card plan, regardless of whether the rates, fees, or other terms applicable to the individual credit card accounts differ. For example, a card issuer has 3,000 open private label credit card accounts with credit cards usable only at Merchant A and 5,000 open private label credit card accounts with credit cards usable only at Merchant B and its affiliates. The card issuer has two separate private label credit card plans, as defined by § 1026.58(b)(8)—one plan consisting of 3,000 open accounts with credit cards usable only at Merchant A and another plan consisting of 5,000 open accounts with credit cards usable only at Merchant B and its affiliates.

ii. The example above remains the same regardless of whether (or the extent to which) the terms applicable to the individual open accounts differ. For example, assume that, with respect to the card issuer's 3,000 open accounts with credit cards usable only at Merchant A in the example above, 1,000 of the open accounts have a purchase APR of 12 percent, 1,000 of the open accounts have a purchase APR of 15 percent, and 1,000 of the open accounts have a purchase APR of 18 percent. All of the 5,000 open accounts with credit cards usable only at Merchant B and Merchant B's affiliates have the same 15 percent purchase APR. The card issuer still has only two separate private label credit card plans, as defined by § 1026.58(b)(8). The open accounts with credit cards usable only at Merchant A do not constitute three separate private label credit card plans under § 1026.58(b)(8), even though the accounts are subject to different terms.

58(c) Submission of Agreements to Bureau

58(c)(1) Quarterly Submissions

1. *Quarterly submission requirement.* Section 1026.58(c)(1) requires card issuers to send quarterly submissions to the Bureau no later than the first business day on or after January 31, April 30, July 31, and October 31 of each year. For example, a card issuer has already submitted three credit card agreements to the Bureau. On October 15, the card issuer stops offering agreement A. On November 20, the card issuer amends agreement B. On December 1, the issuer starts offering a new agreement D. The card issuer must submit to the Bureau no later than the first business day on or after January 31 (i) notification that the card issuer is withdrawing agreement A, because it is no longer offered to the public; (ii) the amended version of agreement B; and (iii) agreement D.

2. *No quarterly submission required.* i. Under §1026.58(c)(1), a card issuer is not required to make any submission to the Bureau at a particular quarterly submission deadline if, during the previous calendar quarter, the card issuer did not take any of the following actions:

A. Offering a new credit card agreement that was not submitted to the Bureau previously.

B. Amending an agreement previously submitted to the Bureau.

C. Ceasing to offer an agreement previously submitted to the Bureau.

ii. For example, a card issuer offers five agreements to the public as of September 30 and submits these to the Bureau by October 31, as required by §1026.58(c)(1). Between September 30 and December 31, the card issuer continues to offer all five of these agreements to the public without amending them and does not begin offering any new agreements. The card issuer is not required to make any submission to the Bureau by the following January 31.

3. *Quarterly submission of complete set of updated agreements.* Section 1026.58(c)(1) permits a card issuer to submit to the Bureau on a quarterly basis a complete, updated set of the credit card agreements the card issuer offers to the public. For example, a card issuer offers agreements A, B, and C to the public as of March 31. The card issuer submits each of these agreements to the Bureau by April 30 as required by §1026.58(c)(1). On May 15, the card issuer amends agreement A, but does not make any changes to agreements B or C. As of June 30, the card issuer continues to offer amended agreement A and agreements B and C to the public. At the next quarterly submission deadline, July 31, the card issuer must submit the entire amended agreement A and is not required to make any submission with respect to agreements B and C. The card issuer may either: (i) Submit the entire amended agreement A and make no submission with respect to agreements B and C; or (ii) submit the entire amended agreement A and also resubmit agreements B and C. A card issuer may choose to resubmit to the Bureau all of the agreements it offered to the public as of a particular quarterly submission deadline even if the card issuer has not introduced any new agreements or amended any agreements since its last submission and continues to offer all previously submitted agreements.

58(c)(3) Amended Agreements

1. *No requirement to resubmit agreements not amended.* Under §1026.58(c)(3), if a credit card agreement has been submitted to the Bureau, the agreement has not been amended, and the card issuer continues to offer the agreement to the public, no additional submission regarding that agreement is required. For example, a credit card issuer begins offering an agreement in October and submits the agreement to the Bureau the following January 31, as required by §1026.58(c)(1). As of March 31, the card issuer has not amended the agreement and is still offering the agreement to the public. The card issuer is not required to submit anything to the Bureau regarding that agreement by April 30.

2. *Submission of amended agreements.* If a card issuer amends a credit card agreement previously submitted to the Bureau, §1026.58(c)(3) requires the card issuer to submit the entire amended agreement to the Bureau. The issuer must submit the amended agreement to the Bureau by the first quarterly submission deadline after the last day of the calendar quarter in which the change became effective. However, the issuer is required to submit the amended agreement to the Bureau only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in which the change became effective. For example, a card issuer submits an agreement to the Bureau on October 31. On November 15, the issuer changes the balance computation method used under the agreement. Because an element of the pricing information has changed, the agreement has been amended for purposes of §1026.58(c)(3). On December 31, the last business day of the calendar quarter in which the change in the balance computation method became effective, the issuer still offers the agreement to the public as amended on November 15. The issuer must submit the entire amended agreement to the Bureau no later than January 31.

3. *Agreements amended but no longer offered to the public.* A card issuer should submit an amended agreement to the Bureau under §1026.58(c)(3) only if the issuer offered the amended agreement to the public as of the last business day of the calendar quarter in

which the amendment became effective. Agreements that are not offered to the public as of the last day of the calendar quarter should not be submitted to the Bureau. For example, on December 31 a card issuer offers two agreements, Agreement A and Agreement B. The issuer submits these agreements to the Bureau by January 31 as required by §1026.58. On February 15, the issuer amends both Agreement A and Agreement B. On February 28, the issuer stops offering Agreement A to the public. On March 15, the issuer amends Agreement B a second time. As a result, on March 31, the last business day of the calendar quarter, the issuer offers to the public one agreement—Agreement B as amended on March 15. By the April 30 quarterly submission deadline, the issuer must (i) notify the Bureau that it is withdrawing Agreement A because Agreement A is no longer offered to the public; and (ii) submit to the Bureau Agreement B as amended on March 15. The issuer should not submit to the Bureau either Agreement A as amended on February 15 or the earlier version of Agreement B (as amended on February 15), as neither was offered to the public on March 31, the last business day of the calendar quarter.

4. *Change-in-terms notices not permissible.* Section 1026.58(c)(3) requires that if an agreement previously submitted to the Bureau is amended, the card issuer must submit the entire revised agreement to the Bureau. A card issuer may not fulfill this requirement by submitting a change-in-terms or similar notice covering only the terms that have changed. In addition, amendments must be integrated into the text of the agreement (or the addenda described in §1026.58(c)(8)), not provided as separate riders. For example, a card issuer changes the purchase APR associated with an agreement the issuer has previously submitted to the Bureau. The purchase APR for that agreement was included in the addendum of pricing information, as required by §1026.58(c)(8). The card issuer may not submit a change-in-terms or similar notice reflecting the change in APR, either alone or accompanied by the original text of the agreement and original pricing information addendum. Instead, the card issuer must revise the pricing information addendum to reflect the change in APR and submit to the Bureau the entire text of the agreement and the entire revised addendum, even though no changes have been made to the provisions of the agreement and only one item on the pricing information addendum has changed.

58(c)(4) Withdrawal of Agreements

1. *Notice of withdrawal of agreement.* Section 1026.58(c)(4) requires a card issuer to notify the Bureau if any agreement previously submitted to the Bureau by that issuer is no longer offered to the public by the first quarterly submission deadline after the last day of the calendar quarter in which the card issuer ceased to offer the agreement. For example, on January 5 a card issuer stops offering to the public an agreement it previously submitted to the Bureau. The card issuer must notify the Bureau that the agreement is being withdrawn by April 30, the first quarterly submission deadline after March 31, the last day of the calendar quarter in which the card issuer stopped offering the agreement.

58(c)(5) De Minimis Exception

1. *Relationship to other exceptions.* The de minimis exception is distinct from the private label credit card exception under §1026.58(c)(6) and the product testing exception under §1026.58(c)(7). The de minimis exception provides that a card issuer with fewer than 10,000 open credit card accounts is not required to submit any agreements to the Bureau, regardless of whether those agreements qualify for the private label credit card exception or the product testing exception. In contrast, the private label credit card exception and the product testing exception provide that a card issuer is not required to submit to the Bureau agreements offered solely in connection with certain types of credit card plans with fewer than 10,000 open accounts, regardless of the card issuer's total number of open accounts.

2. *De minimis exception.* Under §1026.58(c)(5), a card issuer is not required to submit any credit card agreements to the Bureau under §1026.58(c)(1) if the card issuer has fewer than 10,000 open credit card accounts as of the last business day of the calendar quarter. For example, a card issuer offers five credit card agreements to the public as of September 30. However, the card issuer has only 2,000 open credit card accounts as of September 30. The card issuer is not required to submit any agreements to the Bureau by October 31 because the issuer qualifies for the de minimis exception.

3. *Date for determining whether card issuer qualifies clarified.* Whether a card issuer qualifies for the de minimis exception is determined as of the last business day of each calendar quarter. For example, as of December 31, a card issuer offers three agreements to the public and has 9,500 open credit card accounts. As of January 30, the card issuer still offers three agreements, but has 10,100 open accounts. As of March 31, the card issuer still offers three agreements, but has only 9,700 open accounts. Even though the card issuer had 10,100 open accounts at one time during the calendar quarter, the card issuer qualifies for the de minimis exception because the number of open accounts was less than 10,000 as of March 31. The card issuer therefore is not required to submit

any agreements to the Bureau under §1026.58(c)(1) by April 30.

4. *Date for determining whether card issuer ceases to qualify clarified.* Whether a card issuer has ceased to qualify for the de minimis exception under §1026.58(c)(5) is determined as of the last business day of the calendar quarter, For example, as of June 30, a card issuer offers three agreements to the public and has 9,500 open credit card accounts. The card issuer is not required to submit any agreements to the Bureau under §1026.58(c)(1) because the card issuer qualifies for the de minimis exception. As of July 15, the card issuer still offers the same three agreements, but now has 10,000 open accounts. The card issuer is not required to take any action at this time, because whether a card issuer qualifies for the de minimis exception under §1026.58(c)(5) is determined as of the last business day of the calendar quarter. As of September 30, the card issuer still offers the same three agreements and still has 10,000 open accounts. Because the card issuer had 10,000 open accounts as of September 30, the card issuer ceased to qualify for the de minimis exception and must submit the three agreements it offers to the Bureau by October 31, the next quarterly submission deadline.

5. *Option to withdraw agreements clarified.* Section 1026.58(c)(5) provides that if a card issuer that did not previously qualify for the de minimis exception qualifies for the de minimis exception, the card issuer must continue to make quarterly submissions to the Bureau as required by §1026.58(c)(1) until the card issuer notifies the Bureau that the issuer is withdrawing all agreements it previously submitted to the Bureau. For example, a card issuer has 10,001 open accounts and offers three agreements to the public as of December 31. The card issuer has submitted each of the three agreements to the Bureau as required under §1026.58(c)(1). As of March 31, the card issuer has only 9,999 open accounts. The card issuer has two options. First, the card issuer may notify the Bureau that the card issuer is withdrawing each of the three agreements it previously submitted. Once the card issuer has notified the Bureau, the card issuer is no longer required to make quarterly submissions to the Bureau under §1026.58(c)(1). Alternatively, the card issuer may choose not to notify the Bureau that it is withdrawing its agreements. In this case, the card issuer must continue making quarterly submissions to the Bureau as required by §1026.58(c)(1). The card issuer might choose not to withdraw its agreements if, for example, the card issuer believes that it likely will cease to qualify for the de minimis exception again in the near future.

58(c)(6) Private Label Credit Card Exception

1. *Private label credit card exception.* i. Under §1026.58(c)(6)(i), a card issuer is not required to submit to the Bureau a credit card agreement if, as of the last business day of the calendar quarter, the agreement (A) is offered for accounts under one or more private label credit card plans each of which has fewer than 10,000 open accounts; and (B) is not offered to the public other than for accounts under such a plan. For example, a card issuer offers to the public a credit card agreement offered solely for private label credit card accounts with credit cards that can be used only at Merchant A. The card issuer has 8,000 open accounts with such credit cards usable only at Merchant A. The card issuer is not required to submit this agreement to the Bureau under §1026.58(c)(1) because the agreement is offered for a private label credit card plan with fewer than 10,000 open accounts, and the credit card agreement is not offered to the public other than for accounts under that private label credit card plan.

ii. In contrast, assume the same card issuer also offers to the public a different credit card agreement that is offered solely for private label credit card accounts with credit cards usable only at Merchant B. The card issuer has 12,000 open accounts with such credit cards usable only at Merchant B. The private label credit card exception does not apply. Although this agreement is offered for a private label credit card plan (*i.e.*, the 12,000 private label credit card accounts with credit cards usable only at Merchant B), and the agreement is not offered to the public other than for accounts under that private label credit card plan, the private label credit card plan has more than 10,000 open accounts. (The card issuer still is not required to submit to the Bureau the agreement offered in connection with credit cards usable only at Merchant A, as each agreement is evaluated separately under the private label credit card exception.)

2. *Card issuers with small private label and other credit card plans.* Whether the private label credit card exception applies is determined on an agreement-by-agreement basis. Therefore, some agreements offered by a card issuer may qualify for the private label credit card exception even though the card issuer also offers other agreements that do not qualify, such as agreements offered for accounts with cards usable at multiple unaffiliated merchants or agreements offered for accounts under private label plans with 10,000 or more open accounts.

3. *De minimis exception distinguished.* The private label credit card exception under §1026.58(c)(6) is distinct from the de minimis exception under §1026.58(c)(5). The private label credit card exception exempts card issuers from submitting certain agreements

to the Bureau regardless of the card issuer's overall size as measured by total number of open accounts. In contrast, the de minimis exception exempts a particular card issuer from submitting any credit card agreements to the Bureau if the card issuer has fewer than 10,000 total open accounts. For example, a card issuer offers to the public two credit card agreements. Agreement A is offered solely for private label credit card accounts with credit cards usable only at Merchant A. The card issuer has 5,000 open credit card accounts with such credit cards usable only at Merchant A. Agreement B is offered solely for credit card accounts with cards usable at multiple unaffiliated merchants that participate in a major payment network. The card issuer has 40,000 open credit card accounts with such payment network cards. The card issuer is not required to submit agreement A to the Bureau under §1026.58(c)(1) because agreement A qualifies for the private label credit card exception under §1026.58(c)(6). Agreement A is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (*i.e.*, the 5,000 accounts with credit cards usable only at Merchant A) and is not otherwise offered to the public. The card issuer is required to submit agreement B to the Bureau under §1026.58(c)(1). The card issuer does not qualify for the de minimis exception under §1026.58(c)(5) because it has more than 10,000 open accounts, and agreement B does not qualify for the private label credit card exception under §1026.58(c)(6) because it is not offered solely for accounts under a private label credit card plan with fewer than 10,000 open accounts.

4. *Agreement otherwise offered to the public.* i. An agreement qualifies for the private label exception only if it is offered for accounts under one or more private label credit card plans with fewer than 10,000 open accounts and is not offered to the public other than for accounts under such a plan. For example, a card issuer offers a single agreement to the public. The agreement is offered for private label credit card accounts with credit cards usable only at Merchant A. The card issuer has 9,000 such open accounts with credit cards usable only at Merchant A. The agreement also is offered for credit card accounts with credit cards usable at multiple unaffiliated merchants that participate in a major payment network. The agreement does not qualify for the private label credit card exception. The agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts. However, the agreement also is offered to the public for accounts that are not part of a private label credit card plan and therefore does not qualify for the private label credit card exception.

ii. Similarly, an agreement does not qualify for the private label credit card exception if it is offered in connection with one private label credit card plan with fewer than 10,000 open accounts and one private label credit card plan with 10,000 or more open accounts. For example, a card issuer offers a single credit card agreement to the public. The agreement is offered for two types of accounts. The first type of account is a private label credit card account with a credit card usable only at Merchant A. The second type of account is a private label credit card account with a credit card usable only at Merchant B. The card issuer has 10,000 such open accounts with credit cards usable only at Merchant A and 5,000 such open accounts with credit cards usable only at Merchant B. The agreement does not qualify for the private label credit card exception. While the agreement is offered for accounts under a private label credit card plan with fewer than 10,000 open accounts (*i.e.*, the 5,000 open accounts with credit cards usable only at Merchant B), the agreement is also offered for accounts not under such a plan (*i.e.*, the 10,000 open accounts with credit cards usable only at Merchant A).

5. *Agreement used for multiple small private label plans.* The private label exception applies even if the same agreement is used for more than one private label credit card plan with fewer than 10,000 open accounts. For example, a card issuer has 15,000 total open private label credit card accounts. Of these, 7,000 accounts have credit cards usable only at Merchant A, 5,000 accounts have credit cards usable only at Merchant B, and 3,000 accounts have credit cards usable only at Merchant C. The card issuer offers to the public a single credit card agreement that is offered for all three types of accounts and is not offered for any other type of account. The card issuer is not required to submit the agreement to the Bureau under §1026.58(c)(1). The agreement is used for three different private label credit card plans (*i.e.*, the accounts with credit cards usable at Merchant A, the accounts with credit cards usable at Merchant B, and the accounts with credit cards usable at Merchant C), each of which has fewer than 10,000 open accounts, and the card issuer does not offer the agreement for any other type of account. The agreement therefore qualifies for the private label credit card exception under §1026.58(c)(6).

6. *Multiple agreements used for one private label credit card plan.* The private label credit card exception applies even if a card issuer offers more than one agreement in connection with a particular private label credit card plan. For example, a card issuer has 5,000 open private label credit card accounts with credit cards usable only at Merchant A. The card issuer offers to the public three different agreements each of which may be used in connection with private label credit card accounts with credit cards usable only at Merchant A. The agreements are not offered

for any other type of credit card account. The card issuer is not required to submit any of the three agreements to the Bureau under §1026.58(c)(1) because each of the agreements is used for a private label credit card plan which has fewer than 10,000 open accounts and none of the three is offered to the public other than for accounts under such a plan.

58(c)(8) Form and content of agreements submitted to the Bureau

1. *''As of'' date clarified.* Agreements submitted to the Bureau must contain the provisions of the agreement and pricing information in effect as of the last business day of the preceding calendar quarter. For example, on June 1, a card issuer decides to decrease the purchase APR associated with one of the agreements it offers to the public. The change in the APR will become effective on August 1. If the card issuer submits the agreement to the Bureau on July 31 (for example, because the agreement has been otherwise amended), the agreement submitted should not include the new lower APR because that APR was not in effect on June 30, the last business day of the preceding calendar quarter.

2. *Pricing agreement addendum.* Pricing information must be set forth in the separate addendum described in §1026.58(c)(8)(ii)(A) even if it is also stated elsewhere in the agreement.

3. *Pricing agreement variations do not constitute separate agreements.* Pricing information that may vary from one cardholder to another depending on the cardholder's creditworthiness or state of residence or other factors must be disclosed by setting forth all the possible variations or by providing a range of possible variations. Two agreements that differ only with respect to variations in the pricing information do not constitute separate agreements for purposes of this section. For example, a card issuer offers two types of credit card accounts that differ only with respect to the purchase APR. The purchase APR for one type of account is 15 percent, while the purchase APR for the other type of account is 18 percent. The provisions of the agreement and pricing information for the two types of accounts are otherwise identical. The card issuer should not submit to the Bureau one agreement with a pricing information addendum listing a 15 percent purchase APR and another agreement with a pricing information addendum listing an 18 percent purchase APR. Instead, the card issuer should submit to the Bureau one agreement with a pricing information addendum listing possible purchase APRs of 15 or 18 percent.

4. *Optional variable terms addendum.* Examples of provisions that might be included in the variable terms addendum include a clause that is required by law to be included in credit card agreements in a particular state but not in other states (unless, for example, a clause is included in the agreement used for all cardholders under a heading such as ''For State X Residents''), the name of the credit card plan to which the agreement applies (if this information is included in the agreement), or the name of a charitable organization to which donations will be made in connection with a particular card (if this information is included in the agreement).

5. *Integrated agreement requirement.* Card issuers may not provide provisions of the agreement or pricing information in the form of change-in-terms notices or riders. The only two addenda that may be submitted as part of an agreement are the pricing information addendum and optional variable terms addendum described in §1026.58(c)(8). Changes in provisions or pricing information must be integrated into the body of the agreement, pricing information addendum, or optional variable terms addendum described in §1026.58(c)(8). For example, it would be impermissible for a card issuer to submit to the Bureau an agreement in the form of a terms and conditions document dated January 1, 2005, four subsequent change in terms notices, and 2 addenda showing variations in pricing information. Instead, the card issuer must submit a document that integrates the changes made by each of the change in terms notices into the body of the original terms and conditions document and a single addendum displaying variations in pricing information.

58(d) Posting of Agreements Offered to the Public

1. *Requirement applies only to agreements submitted to the Bureau.* Card issuers are only required to post and maintain on their publicly available Web site the credit card agreements that the card issuer must submit to the Bureau under §1026.58(c). If, for example, a card issuer is not required to submit any agreements to the Bureau because the card issuer qualifies for the de minimis exception under §1026.58(c)(5), the card issuer is not required to post and maintain any agreements on its Web site under §1026.58(d). Similarly, if a card issuer is not required to submit a specific agreement to the Bureau, such as an agreement that qualifies for the private label exception under §1026.58(c)(6), the card issuer is not required to post and maintain that agreement under §1026.58(d) (either on the card issuer's publicly available Web site or on the publicly available Web sites of merchants at which private label credit cards can be used). (The card issuer in both of these cases is still required to provide each individual cardholder with access to his or her specific credit card agreement under §1026.58(e) by posting and maintaining the agreement on the card issuer's Web site or

by providing a copy of the agreement upon the cardholder's request.)

2. *Card issuers that do not otherwise maintain Web sites.* Unlike §1026.58(e), §1026.58(d) does not include a special rule for card issuers that do not otherwise maintain a Web site. If a card issuer is required to submit one or more agreements to the Bureau under §1026.58(c), that card issuer must post those agreements on a publicly available Web site it maintains (or, with respect to an agreement for a private label credit card, on the publicly available Web site of at least one of the merchants at which the card may be used, as provided in §1026.58(d)(1)). If an issuer provides cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party Web site, the issuer is considered to maintain that Web site for purposes of §1026.58. Such a third-party Web site is deemed to be maintained by the issuer for purposes of §1026.58(d) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. Therefore, issuers that provide cardholders with access to account-specific information through a third-party Web site can comply with §1026.58(d) by ensuring that the agreements the issuer submits to the Bureau are posted on the third-party Web site in accordance with §1026.58(d). (In contrast, the §1026.58(d)(1) rule regarding agreements for private label credit cards is not conditioned on cardholders' ability to access account-specific information through the merchant's Web site.)

3. *Private label credit card plans.* i. Section 1026.58(d) provides that, with respect to an agreement offered solely for accounts under one or more private label credit card plans, a card issuer may comply by posting and maintaining the agreement on the Web site of at least one of the merchants at which the cards issued under each private label credit card plan with 10,000 or more open accounts may be used. For example, a card issuer has 100,000 open private label credit card accounts. Of these, 75,000 open accounts have credit cards usable only at Merchant A and 25,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

ii. The card issuer is required to submit the agreement to the Bureau under §1026.58(c)(1). (The card issuer has more than 10,000 open accounts, so the §1026.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label credit card plans (*i.e.*, one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but both of these plans have more than 10,000 open accounts, so the §1026.58(c)(6) private label credit card exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the §1026.58(c)(7) product test exception does not apply.)

iii. Because the card issuer is required to submit the agreement to the Bureau under §1026.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under §1026.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with §1026.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of Merchant A *and* the publicly available Web site of at least one of Merchants B, C and D. It would not be sufficient for the card issuer to post the agreement on Merchant A's Web site alone because §1026.58(d) requires the card issuer to post the agreement on the publicly available Web site of "at least one of the merchants at which cards issued under *each* private label credit card plan may be used" (emphasis added).

iv. In contrast, assume that a card issuer has 100,000 open private label credit card accounts. Of these, 5,000 open accounts have credit cards usable only at Merchant A and 95,000 open accounts have credit cards usable only at Merchant B and Merchant B's affiliates, Merchants C and D. The card issuer offers to the public a single credit card agreement that is offered for both of these types of accounts and is not offered for any other type of account.

v. The card issuer is required to submit the agreement to the Bureau under §1026.58(c)(1). (The card issuer has more than 10,000 open accounts, so the §1026.58(c)(5) de minimis exception does not apply. The agreement is offered solely for two different private label credit card plans (*i.e.*, one plan consisting of the accounts with credit cards usable at Merchant A and one plan consisting of the accounts with credit cards usable at Merchant B and its affiliates, Merchants C and D), but one of these plans has more than 10,000 open accounts, so the §1026.58(c)(6) private label credit card exception does not apply. Finally, the agreement is not offered solely in connection with a product test by the card issuer, so the §1026.58(c)(7) product test exception does not apply.)

vi. Because the card issuer is required to submit the agreement to the Bureau under §1026.58(c)(1), the card issuer is required to post and maintain the agreement on the card issuer's publicly available Web site under §1026.58(d). However, because the agreement is offered solely for accounts under one or more private label credit card plans, the card issuer may comply with §1026.58(d) in either of two ways. First, the card issuer may comply by posting and maintaining the agreement on the card issuer's own publicly available Web site. Alternatively, the card issuer may comply by posting and maintaining the agreement on the publicly available Web site of at least one of Merchants B, C and D. The card issuer is not required to post and maintain the agreement on the publicly available Web site of Merchant A because the card issuer's private label credit card plan consisting of accounts with cards usable only at Merchant A has fewer than 10,000 open accounts.

58(e) Agreements for All Open Accounts

1. *Requirement applies to all open accounts.* The requirement to provide access to credit card agreements under §1026.58(e) applies to all open credit card accounts, regardless of whether such agreements are required to be submitted to the Bureau pursuant to §1026.58(c) (or posted on the card issuer's Web site pursuant to §1026.58(d)). For example, a card issuer that is not required to submit agreements to the Bureau because it qualifies for the de minimis exception under §1026.58(c)(5)) would still be required to provide cardholders with access to their specific agreements under §1026.58(e). Similarly, an agreement that is no longer offered to the public would not be required to be submitted to the Bureau under §1026.58(c), but would still need to be provided to the cardholder to whom it applies under §1026.58(e).

2. *Readily available telephone line.* Section 1026.58(e) provides that card issuers that provide copies of cardholder agreements upon request must provide the cardholder with the ability to request a copy of their agreement by calling a readily available telephone line. To satisfy the readily available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt response. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

3. *Issuers without interactive Web sites.* Section 1026.58(e)(2) provides that a card issuer that does not maintain a Web site from which cardholders can access specific information about their individual accounts is not required to provide a cardholder with the ability to request a copy of the agreement by using the card issuer's Web site. A card issuer without a Web site of any kind could comply by disclosing the telephone number on each periodic statement; a card issuer with a non-interactive Web site could comply in the same way, or alternatively could comply by displaying the telephone number on the card issuer's Web site. An issuer is considered to maintain an interactive Web site for purposes of the §1026.58(e)(2) special rule if the issuer provide cardholders with access to specific information about their individual accounts, such as balance information or copies of statements, through a third-party interactive Web site. Such a Web site is deemed to be maintained by the issuer for purposes of §1026.58(e)(2) even where, for example, an unaffiliated entity designs the Web site and owns and maintains the information technology infrastructure that supports the Web site, cardholders with credit cards from multiple issuers can access individual account information through the same Web site, and the Web site is not labeled, branded, or otherwise held out to the public as belonging to the issuer. An issuer that provides cardholders with access to specific information about their individual accounts through such a Web site is not permitted to comply with the special rule in §1026.58(e)(2). Instead, such an issuer must comply with §1026.58(e)(1).

4. *Deadline for providing requested agreements clarified.* Sections 1026.58(e)(1)(ii) and (e)(2) require that credit card agreements provided upon request must be sent to the cardholder or otherwise made available to the cardholder in electronic or paper form no later than 30 days after the cardholder's request is received. For example, if a card issuer chooses to respond to a cardholder's request by mailing a paper copy of the cardholder's agreement, the card issuer must mail the agreement no later than 30 days after receipt of the cardholder's request. Alternatively, if a card issuer chooses to respond to a cardholder's request by posting the cardholder's agreement on the card issuer's Web site, the card issuer must post the agreement on its Web site no later than 30 days after receipt of the cardholder's request. Section 1026.58(e)(3)(v) provides that a card issuer may provide cardholder agreements in either electronic or paper form regardless of the form of the cardholder's request.

58(g) Temporary Suspension of Agreement Submission Requirement

1. *Suspended quarterly submission requirement.* Pursuant to §1026.58(g)(1), card issuers

are not required to make quarterly submissions to the Bureau, as otherwise required by §1026.58(c), for the submissions that would otherwise be due by the first business day on or after April 30, 2015; July 31, 2015; October 31, 2015; and January 31, 2016. Specifically, a card issuer is not required to submit information about the issuer and its agreements pursuant to §1026.58(c)(1)(i), new credit card agreements pursuant to §1026.58(c)(1)(ii), amended agreements pursuant to §1026.58(c)(1)(iii) and (c)(3), or notification of withdrawn agreements pursuant to §1026.58(c)(1)(iv) and (c)(4) through (7) for those four quarters.

2. *Resuming submission of credit card agreements to the Bureau*. Beginning with the submission due on the first business day on or after April 30, 2016, card issuers shall resume submitting credit card agreements on a quarterly basis to the Bureau pursuant to §1026.58(c). A card issuer shall submit agreements for the prior calendar quarter (that is, the calendar quarter ending March 31, 2016), as specified in §1026.58(c)(1)(ii) through (iv) and (c)(3) through (7), to the Bureau no later than the first business day on or after April 30, 2016.

i. Specifically, the submission due on the first business day on or after April 30, 2016 shall contain, as applicable:

A. Identifying information about the card issuer and the agreements submitted, including the issuer's name, address, and identifying number (such as an RSSD ID number or tax identification number), pursuant to §1026.58(c)(1)(i);

B. The credit card agreements that the card issuer offered to the public as of the last business day of the calendar quarter ending March 31, 2016 that the card issuer had not previously submitted to the Bureau as of the first business day on or after January 31, 2015, pursuant to §1026.58(c)(1)(ii);

C. Any credit card agreement previously submitted to the Bureau that was amended since the last business day of the calendar quarter ending December 31, 2014 and that the card issuer offered to the public as of the last business day of the calendar quarter ending March 31, 2016, pursuant to §1026.58(c)(1)(iii) and (c)(3); and

D. Notification regarding any credit card agreement previously submitted to the Bureau that the issuer is withdrawing, pursuant to §1026.58(c)(1)(iv) and (c)(4) through (7).

ii. In lieu of the submission described in comment 58(g)–2.i.B through D, §1026.58(c)(1) permits a card issuer to submit to the Bureau a complete, updated set of the credit card agreements the card issuer offered to the public as of the calendar quarter ending March 31, 2016. *See* comment 58(c)(1)–3.

3. *Continuing obligation to post agreements on a card issuer's own Web site*. Section 1026.58(d) requires a card issuer to post and maintain on its publicly available Web site the credit card agreements that the issuer is required to submit to the Bureau under §1026.58(c). Pursuant to §1026.58(g)(2), during the temporary suspension period set forth in §1026.58(g)(1), a card issuer shall continue to post its agreements to its own publicly available Web site as required by §1026.58(d) using the agreements it would have otherwise submitted to the Bureau under §1026.58(c). For example, for purposes of §1026.58(d)(4), a card issuer must continue to update the agreements posted on its own Web site at least as frequently as the quarterly schedule required for submission of agreements to the Bureau set forth in §1026.58(c)(1), notwithstanding the temporary suspension of submission requirements in §1026.58(g)(1). Similarly, for purposes of §1026.58(d)(2), agreements posted by a card issuer on its own Web site must continue to conform to the form and content requirements set forth in §1026.58(c)(8).

Section 1026.59—Reevaluation of Rate Increases

59(a) General Rule

59(a)(1) Evaluation of Increased Rate

1. *Types of rate increases covered*. Section 1026.59(a) applies both to increases in annual percentage rates imposed on a consumer's account based on that consumer's credit risk or other circumstances specific to that consumer and to increases in annual percentage rates imposed based on factors that are not specific to the consumer, such as changes in market conditions or the issuer's cost of funds.

2. *Rate increases actually imposed*. Under §1026.59(a), a card issuer must review changes in factors only if the increased rate is actually imposed on the consumer's account. For example, if a card issuer increases the penalty rate for a credit card account under an open-end (not home-secured) consumer credit plan and the consumer's account has no balances that are currently subject to the penalty rate, the card issuer is required to provide a notice pursuant to §1026.9(c) of the change in terms, but the requirements of §1026.59 do not apply. However, if the consumer's account later becomes subject to the penalty rate, the card issuer is required to provide a notice pursuant to §1026.9(g) and the requirements of §1026.59 begin to apply upon imposition of the penalty rate. Similarly, if a card issuer raises the cash advance rate applicable to a consumer's account but the consumer engages in no cash advance transactions to which that increased rate is applied, the card issuer is required to provide a notice pursuant to §1026.9(c) of the change in terms, but the requirements of §1026.59 do not apply. If the consumer subsequently engages in a cash advance transaction, the requirements of §1026.59 begin to apply at that time.

3. *Change in type of rate.* i. *Generally.* A change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate is not a rate increase for purposes of §1026.59, if the rate in effect immediately prior to the change in type of rate is equal to or greater than the rate in effect immediately after the change. For example, a change from a variable rate of 15.99% to a non-variable rate of 15.99% is not a rate increase for purposes of §1026.59 at the time of the change. *See* §1026.55 for limitations on the permissibility of changing from a non-variable rate to a variable rate.

ii. *Change from non-variable rate to variable rate.* A change from a non-variable to a variable rate constitutes a rate increase for purposes of §1026.59 if the variable rate exceeds the non-variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a non-variable annual percentage rate of 12% applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to §1026.9(c)(2), the rate on all new transactions is changed to a variable rate that is currently 12% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control. The change from the 12% non-variable rate to the 12% variable rate on January 1 of year 2 is not a rate increase for purposes of §1026.59(a). On April 1 of year 2, the value of the variable rate increases to 12.5%. The increase in the rate from 12% to 12.5% is a rate increase for purposes of §1026.59, and the card issuer must begin periodically conducting reviews of the account pursuant to §1026.59. The increase that must be evaluated for purposes of §1026.59 is the increase from a non-variable rate of 12% to a variable rate of 12.5%.

iii. *Change from variable rate to non-variable rate.* A change from a variable to a non-variable rate constitutes a rate increase for purposes of §1026.59 if the non-variable rate exceeds the variable rate that would have applied if the change in type of rate had not occurred. For example, assume a new credit card account under an open-end (not home-secured) consumer credit plan is opened on January 1 of year 1 and that a variable annual percentage rate that is currently 15% and is determined by adding a margin of 10 percentage points to a publicly-available index not under the card issuer's control applies to all transactions on the account. On January 1 of year 2, upon 45 days' advance notice pursuant to §1026.9(c)(2), the rate on all existing balances and new transactions is changed to a non-variable rate that is currently 15%. The change from the 15% variable rate to the 15% non-variable rate on January 1 of year 2 is not a rate increase for purposes of §1026.59(a). On April 1 of year 2, the value of the variable rate that would have applied to the account decreases to 12.5%. Accordingly, on April 1 of year 2, the non-variable rate of 15% exceeds the 12.5% variable rate that would have applied but for the change in type of rate. At this time, the change to the non-variable rate of 15% constitutes a rate increase for purposes of §1026.59, and the card issuer must begin periodically conducting reviews of the account pursuant to §1026.59. The increase that must be evaluated for purposes of §1026.59 is the increase from a variable rate of 12.5% to a non-variable rate of 15%.

4. *Rate increases prior to effective date of rule.* For increases in annual percentage rates made on or after January 1, 2009, and prior to August 22, 2010, §1026.59(a) requires the card issuer to review the factors described in §1026.59(d) and reduce the rate, as appropriate, if the rate increase is of a type for which 45 days' advance notice would currently be required under §1026.9(c)(2) or (g). For example, 45 days' notice is not required under §1026.9(c)(2) if the rate increase results from the increase in the index by which a properly-disclosed variable rate is determined in accordance with §1026.9(c)(2)(v)(C) or if the increase occurs upon expiration of a specified period of time and disclosures complying with §1026.9(c)(2)(v)(B) have been provided. The requirements of §1026.59 do not apply to such rate increases.

5. *Amount of rate decrease.* i. *General.* Even in circumstances where a rate reduction is required, §1026.59 does not require that a card issuer decrease the rate that applies to a credit card account to the rate that was in effect prior to the rate increase subject to §1026.59(a). The amount of the rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures under §1026.59(b) for consideration of factors described in §1026.59(a) and (d). For example, assume a consumer's rate on new purchases is increased from a variable rate of 15.99% to a variable rate of 23.99% based on the consumer's making a required minimum periodic payment five days late. The consumer makes all of the payments required on the account on time for the six months following the rate increase. Assume that the card issuer evaluates the account by reviewing the factors on which the increase in an annual percentage rate was originally based, in accordance with §1026.59(d)(1)(i). The card issuer is not required to decrease the consumer's rate to the 15.99% that applied prior to the rate increase. However, the card issuer's policies and procedures for performing the review required by §1026.59(a) must be reasonable, as required by §1026.59(b), and must take into account any reduction in the consumer's credit risk based upon the consumer's timely payments.

ii. *Change in type of rate.* If the rate increase subject to §1026.59 involves a change from a variable rate to a non-variable rate or from a non-variable rate to a variable rate, §1026.59 does not require that the issuer reinstate the same type of rate that applied prior to the change. However, the amount of any rate decrease that is required must be determined based upon the card issuer's reasonable policies and procedures under §1026.59(b) for consideration of factors described in §1026.59(a) and (d).

59(a)(2) Rate Reductions

59(a)(2)(ii) Applicability of Rate Reduction

1. *Applicability of reduced rate to new transactions.* Section 1026.59(a)(2)(ii) requires, in part, that any reduction in rate required pursuant to §1026.59(a)(1) must apply to new transactions that occur after the effective date of the rate reduction, if those transactions would otherwise have been subject to the increased rate described in §1026.59(a)(1). A credit card account may have multiple types of balances, for example, purchases, cash advances, and balance transfers, to which different rates apply. For example, assume a new credit card account opened on January 1 of year one has a rate applicable to purchases of 15% and a rate applicable to cash advances and balance transfers of 20%. Effective March 1 of year two, consistent with the limitations in §1026.55 and upon giving notice required by §1026.9(c)(2), the card issuer raises the rate applicable to new purchases to 18% based on market conditions. The only transaction in which the consumer engages in year two is a $1,000 purchase made on July 1. The rate for cash advances and balance transfers remains at 20%. Based on a subsequent review required by §1026.59(a)(1), the card issuer determines that the rate on purchases must be reduced to 16%. Section 1026.59(a)(2)(ii) requires that the 16% rate be applied to the $1,000 purchase made on July 1 and to all new purchases. The rate for new cash advances and balance transfers may remain at 20%, because there was no rate increase applicable to those types of transactions and, therefore, the requirements of §1026.59(a) do not apply.

59(c) Timing

1. *In general.* The issuer may review all of its accounts subject to §1026.59(a) at the same time once every six months, may review each account once each six months on a rolling basis based on the date on which the rate was increased for that account, or may otherwise review each account not less frequently than once every six months.

2. *Example.* A card issuer increases the rates applicable to one half of its credit card accounts on June 1, 2011. The card issuer increases the rates applicable to the other half of its credit card accounts on September 1, 2011. The card issuer may review the rate increases for all of its credit card accounts on or before December 1, 2011, and at least every six months thereafter. In the alternative, the card issuer may first review the rate increases for the accounts that were repriced on June 1, 2011 on or before December 1, 2011, and may first review the rate increases for the accounts that were repriced on September 1, 2011 on or before March 1, 2012.

3. *Rate increases prior to effective date of rule.* For increases in annual percentage rates applicable to a credit card account under an open-end (not home-secured) consumer credit plan on or after January 1, 2009 and prior to August 22, 2010, §1026.59(c) requires that the first review for such rate increases be conducted prior to February 22, 2011.

59(d) Factors

1. *Change in factors.* A creditor that complies with §1026.59(a) by reviewing the factors it currently considers in determining the annual percentage rates applicable to similar new credit card accounts may change those factors from time to time. When a creditor changes the factors it considers in determining the annual percentage rates applicable to similar new credit card accounts from time to time, it may comply with §1026.59(a) by reviewing the set of factors it considered immediately prior to the change in factors for a brief transition period, or may consider the new factors. For example, a creditor changes the factors it uses to determine the rates applicable to similar new credit card accounts on January 1, 2012. The creditor reviews the rates applicable to its existing accounts that have been subject to a rate increase pursuant to §1026.59(a) on January 25, 2012. The creditor complies with §1026.59(a) by reviewing, at its option, either the factors that it considered on December 31, 2011 when determining the rates applicable to similar new credit card accounts or the factors that it considers as of January 25, 2012. For purposes of compliance with §1026.59(d), a transition period of 60 days from the change of factors constitutes a brief transition period.

2. *Comparison of existing account to factors used for similar new accounts.* Under §1026.59(a), if a creditor evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need not result in existing accounts being subject to exactly the same rates and rate structure as a creditor imposes on similar new accounts. For example, a creditor may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of

the LIBOR index. The account that the creditor is required to review pursuant to §1026.59(a) may have variable rates that were determined by adding a different margin, depending on different factors, to a published prime rate. In performing the review required by §1026.59(a), the creditor may review the factors it uses to determine the rates applicable to similar new accounts. If a rate reduction is required, however, the creditor need not base the variable rate for the existing account on the LIBOR index but may continue to use the published prime rate. Section 1026.59(a) requires, however, that the rate on the existing account after the reduction, as determined by adding the published prime rate and margin, be comparable to the rate, as determined by adding the margin and LIBOR, charged on a new account for which the factors are comparable.

3. *Similar new credit card accounts.* A card issuer complying with §1026.59(d)(1)(ii) is required to consider the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan. For example, a card issuer may review different factors in determining the annual percentage rate that applies to credit card plans for which the consumer pays an annual fee and receives rewards points than it reviews in determining the rates for credit card plans with no annual fee and no rewards points. Similarly, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards than it reviews in determining the rates applicable to credit cards that can be used at a wider variety of merchants. In addition, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards usable only at Merchant A than it may review for private label credit cards usable only at Merchant B. However, §1026.59(d)(1)(ii) requires a card issuer to review the factors it considers when determining the rates for new credit card accounts with similar features that are offered for similar purposes.

4. *No similar new credit card accounts.* In some circumstances, a card issuer that complies with §1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may not be able to identify a class of new accounts that are similar to the existing accounts on which a rate increase has been imposed. For example, consumers may have existing credit card accounts under an open-end (not home-secured) consumer credit plan but the card issuer may no longer offer a product to new consumers with similar characteristics, such as the availability of rewards, size of credit line, or other features. Similarly, some consumers' accounts may have been closed and therefore cannot be used for new transactions, while all new accounts can be used for new transactions. In those circumstances, §1026.59 requires that the card issuer nonetheless perform a review of the rate increase on the existing customers' accounts. A card issuer does not comply with §1026.59 by maintaining an increased rate without performing such an evaluation. In such circumstances, §1026.59(d)(1)(ii) requires that the card issuer compare the existing accounts to the most closely comparable new accounts that it offers.

5. *Consideration of consumer's conduct on existing account.* A card issuer that complies with §1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may consider the consumer's payment or other account behavior on the existing account only to the same extent and in the same manner that the issuer considers such information when one of its current cardholders applies for a new account with the card issuer. For example, a card issuer might obtain consumer reports for all of its applicants. The consumer reports contain certain information regarding the applicant's past performance on existing credit card accounts. However, the card issuer may have additional information about an existing cardholder's payment history or account usage that does not appear in the consumer report and that, accordingly, it would not generally have for all new applicants. For example, a consumer may have made a payment that is five days late on his or her account with the card issuer, but this information does not appear on the consumer report. The card issuer may consider this additional information in performing its review under §1026.59(a), but only to the extent and in the manner that it considers such information if a current cardholder applies for a new account with the issuer.

6. *Multiple rate increases between January 1, 2009 and February 21, 2010.* i. *General.* Section 1026.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. In some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. In such circumstances, when conducting the first two reviews required under §1026.59, the card issuer may separately review: (i) Rate increases imposed based on factors not specific

to the consumer, using the factors described in §1026.59(d)(1)(ii) (as required by §1026.59(d)(2)); and (ii) rate increases imposed based on consumer-specific factors, using the factors described in §1026.59(d)(1)(i). If the review of factors described in §1026.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty or other increased rate to the account as a result of the consumer's payment history or other factors specific to the consumer, §1026.59 permits the card issuer to continue to impose the penalty or other increased rate, even if the review of the factors described in §1026.59(d)(1)(ii) would otherwise require a rate decrease.

ii. *Example*. Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under §1026.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in §1026.59(d)(1)(ii) (as required by §1026.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph §1026.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in §1026.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in §1026.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 1026.59 permits the rate on the account to remain at 25%.

59(f) Termination of Obligation to Review Factors

1. *Revocation of temporary rates*. i. *In general*. If an annual percentage rate is increased due to revocation of a temporary rate, §1026.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with §1026.9(c)(2)(v)(B), the review requirements in §1026.59(a) do not apply. If a temporary rate is revoked such that the requirements of §1026.59(a) apply, §1026.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.ii. *Examples*. Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012 and August 1, 2013 and discloses pursuant to §1026.9(c)(2)(v)(B) that on August 1, 2013 the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under §1026.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under §1026.59(a) at least once each six months during the period from September 1, 2012 to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013 even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013 indicates that a reduction to the original temporary rate of 10% is appropriate. Section 1026.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013, to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012 the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with §1026.59 on January 1, 2013 and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

2. *Example—relationship to §1026.59(a).* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under §1026.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with §1026.59 on January 1, 2013 and July 1, 2013, based on the factors described in §1026.59(d)(1)(ii). Based on the January 1, 2013 review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with §1026.59(f), §1026.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.

59(g) Acquired Accounts

59(g)(1) General

1. *Relationship to §1026.59(d)(2) for rate increases imposed between January 1, 2009 and February 21, 2010.* Section 1026.59(d)(2) applies to acquired accounts. Accordingly, if a card issuer acquires accounts on which a rate increase was imposed between January 1, 2009 and February 21, 2010 that was not based solely upon consumer-specific factors, that acquiring card issuer must consider the factors that it currently considers when determining the annual percentage rates applicable to similar new credit card accounts, if it conducts either or both of the first two reviews of such accounts that are required after August 22, 2010 under §1026.59(a).

59(g)(2) Review of Acquired Portfolio

1. *Example—general.* A card issuer acquires a portfolio of accounts that currently are subject to annual percentage rates of 12%, 15%, and 18%. Not later than six months after the acquisition of such accounts, the card issuer reviews all of these accounts in accordance with the factors that it currently uses in determining the rates applicable to similar new credit card accounts. As a result of that review, the card issuer decreases the rate on the accounts that are currently subject to a 12% annual percentage rate to 10%, leaves the rate applicable to the accounts currently subject to a 15% annual percentage rate at 15%, and increases the rate applicable to the accounts currently subject to a rate of 18% to 20%. Section 1026.59(g)(2) requires the card issuer to review, no less frequently than once every six months, the accounts for which the rate has been increased to 20%. The card issuer is not required to review the accounts subject to 10% and 15% rates pursuant to §1026.59(a), unless and until the card issuer makes a subsequent rate increase applicable to those accounts.

2. *Example—penalty rates.* A card issuer acquires a portfolio of accounts that currently are subject to standard annual percentage rates of 12% and 15%. In addition, several acquired accounts are subject to a penalty rate of 24%. Not later than six months after the acquisition of such accounts, the card issuer reviews all of these accounts in accordance with the factors that it currently uses in determining the rates applicable to similar new credit card accounts. As a result of that review, the card issuer leaves the standard rates applicable to the accounts at 12% and 15%, respectively. The card issuer decreases the rate applicable to the accounts currently at 24% to its penalty rate of 23%. Section 1026.59(g)(2) requires the card issuer to review, no less frequently than once every six months, the accounts that are subject to a penalty rate of 23%. The card issuer is not required to review the accounts subject to 12% and 15% rates pursuant to §1026.59(a), unless and until the card issuer makes a subsequent rate increase applicable to those accounts.

Section 1026.60—Credit and Charge Card Applications and Solicitations

1. *General.* Section 1026.60 generally requires that credit disclosures be contained in application forms and solicitations initiated by a card issuer to open a credit or charge card account. (See §1026.60(a)(5) and (e)(2) for exceptions; see §1026.60(a)(1) and accompanying commentary for the definition of solicitation; see also §1026.2(a)(15) and accompanying commentary for the definition of charge card and §1026.61(c) for restrictions on when credit or charge card accounts can be added to previously issued prepaid accounts.)

2. *Substitution of account-opening summary table for the disclosures required by §1026.60.* In complying with §1026.60(c), (e)(1) or (f), a card issuer may provide the account-opening summary table described in §1026.6(b)(1) in lieu of the disclosures required by §1026.60, if the issuer provides the disclosures required by §1026.6 on or with the application or solicitation.

3. *Clear and conspicuous standard.* See comment 5(a)(1)–1 for the clear and conspicuous standard applicable to §1026.60 disclosures.

60(a) General Rules

60(a)(1) Definition of Solicitation

1. *Invitations to apply.* A card issuer may contact a consumer who has not been preapproved for a card account about opening an account (whether by direct mail, telephone, or other means) and invite the consumer to complete an application. Such a

contact does not meet the definition of *solicitation*, nor is it covered by this section, unless the contact itself includes an application form in a direct mailing, electronic communication or ''take-one''; an oral application in a telephone contact initiated by the card issuer; or an application in an in-person contact initiated by the card issuer.

60(a)(2) Form of Disclosures; Tabular Format

1. *Location of table.* i. *General.* Except for disclosures given electronically, disclosures in §1026.60(b) that are required to be provided in a table must be prominently located on or with the application or solicitation. Disclosures are deemed to be prominently located, for example, if the disclosures are on the same page as an application or solicitation reply form. If the disclosures appear elsewhere, they are deemed to be prominently located if the application or solicitation reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that they contain rate, fee, and other cost information, as applicable.

ii. *Electronic disclosures.* If the table is provided electronically, the table must be provided in close proximity to the application or solicitation. Card issuers have flexibility in satisfying this requirement. Methods card issuers could use to satisfy the requirement include, but are not limited to, the following examples (whatever method is used, a card issuer need not confirm that the consumer has read the disclosures):

A. The disclosures could automatically appear on the screen when the application or reply form appears;

B. The disclosures could be located on the same Web page as the application or reply form (whether or not they appear on the initial screen), if the application or reply form contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;

C. Card issuers could provide a link to the electronic disclosures on or with the application (or reply form) as long as consumers cannot bypass the disclosures before submitting the application or reply form. The link would take the consumer to the disclosures, but the consumer need not be required to scroll completely through the disclosures; or

D. The disclosures could be located on the same Web page as the application or reply form without necessarily appearing on the initial screen, immediately preceding the button that the consumer will click to submit the application or reply.

2. *Multiple accounts.* If a tabular format is required to be used, card issuers offering several types of accounts may disclose the various terms for the accounts in a single table or may provide a separate table for each account.

3. *Information permitted in the table. See* the commentary to §1026.60(b), (d), and (e)(1) for guidance on additional information permitted in the table.

4. *Deletion of inapplicable disclosures.* Generally, disclosures need only be given as applicable. Card issuers may, therefore, omit inapplicable headings and their corresponding boxes in the table. For example, if no foreign transaction fee is imposed on the account, the heading *Foreign transaction* and disclosure may be deleted from the table or the disclosure form may contain the heading *Foreign transaction* and a disclosure showing *none.* There is an exception for the grace period disclosure; even if no grace period exists, that fact must be stated.

5. *Highlighting of annual percentage rates and fee amounts.* i. *In general.* See Samples G–10(B) and G–10(C) for guidance on providing the disclosures described in §1026.60(a)(2)(iv) in bold text. Other annual percentage rates or fee amounts disclosed in the table may not be in bold text. Samples G–10(B) and G–10(C) also provide guidance to issuers on how to disclose the rates and fees described in §1026.60(a)(2)(iv) in a clear and conspicuous manner, by including these rates and fees generally as the first text in the applicable rows of the table so that the highlighted rates and fees generally are aligned vertically in the table.

ii. *Maximum limits on fees.* Section 1026.60(a)(2)(iv) provides that any maximum limits on fee amounts must be disclosed in bold text. For example, assume that, consistent with §1026.52(b)(1)(ii), a card issuer's late payment fee will not exceed $35. The maximum limit of $35 for the late payment fee must be highlighted in bold. Similarly, assume an issuer will charge a cash advance fee of $5 or 3 percent of the cash advance transaction amount, whichever is greater, but the fee will not exceed $100. The maximum limit of $100 for the cash advance fee must be highlighted in bold.

iii. *Periodic fees.* Section 1026.60(a)(2)(iv) provides that any periodic fee disclosed pursuant to §1026.60(b)(2) that is not an annualized amount must not be disclosed in bold. For example, if an issuer imposes a $10 monthly maintenance fee for a card account, the issuer must disclose in the table that there is a $10 monthly maintenance fee, and that the fee is $120 on an annual basis. In this example, the $10 fee disclosure would not be disclosed in bold, but the $120 annualized amount must be disclosed in bold. In addition, if an issuer must disclose any annual fee in the table, the amount of the annual fee must be disclosed in bold.

6. *Form of disclosures.* Whether disclosures must be in electronic form depends upon the following:

i. If a consumer accesses a credit card application or solicitation electronically (other than as described under ii. below), such as online at a home computer, the card issuer must provide the disclosures in electronic form (such as with the application or solicitation on its Web site) in order to meet the requirement to provide disclosures in a timely manner on or with the application or solicitation. If the issuer instead mailed paper disclosures to the consumer, this requirement would not be met.

ii. In contrast, if a consumer is physically present in the card issuer's office, and accesses a credit card application or solicitation electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk located on the premises of an affiliate or third party that has arranged with the card issuer to provide applications or solicitations to consumers), the issuer may provide disclosures in either electronic or paper form, provided the issuer complies with the timing and delivery (''on or with'') requirements of the regulation.

7. *Terminology*. Section 1026.60(a)(2)(i) generally requires that the headings, content and format of the tabular disclosures be substantially similar, but need not be identical, to the applicable tables in appendix G–10 to part 1026; but *see* §1026.5(a)(2) for terminology requirements applicable to §1026.60 disclosures.

60(a)(4) Fees That Vary by State

1. *Manner of disclosing range*. If the card issuer discloses a range of fees instead of disclosing the amount of the specific fee applicable to the consumer's account, the range may be stated as the lowest authorized fee (zero, if there are one or more states where no fee applies) to the highest authorized fee.

60(a)(5) Exceptions

1. *Noncoverage of consumer-initiated requests*. Applications provided to a consumer upon request are not covered by §1026.60, even if the request is made in response to the card issuer's invitation to apply for a card account. To illustrate, if a card issuer invites consumers to call a toll-free number or to return a response card to obtain an application, the application sent in response to the consumer's request need not contain the disclosures required under §1026.60. Similarly, if the card issuer invites consumers to call and make an oral application on the telephone, §1026.60 does not apply to the application made by the consumer. If, however, the card issuer calls a consumer or initiates a telephone discussion with a consumer about opening a card account and contemporaneously takes an oral application, such applications are subject to §1026.60, specifically §1026.60(d). Likewise, if the card issuer initiates an in-person discussion with a consumer about opening a card account and contemporaneously takes an application, such applications are subject to §1026.60, specifically §1026.60(f).

60(b) Required Disclosures

1. *Tabular format*. Provisions in §1026.60(b) and its commentary provide that certain information must appear or is permitted to appear in a table. The tabular format is required for §1026.60(b) disclosures given pursuant to §1026.60(c), (d)(2), (e)(1) and (f). The tabular format does not apply to oral disclosures given pursuant to §1026.60(d)(1). (*See* §1026.60(a)(2).)

2. *Accuracy*. Rules concerning accuracy of the disclosures required by §1026.60(b), including variable rate disclosures, are stated in §1026.60(c)(2), (d)(3), and (e)(4), as applicable.

3. *Fees imposed on the asset feature of a prepaid account in connection with a covered separate credit feature accessible by a hybrid prepaid-credit card*. With regard to a covered separate credit feature and an asset feature on a prepaid account that are both accessible by a hybrid prepaid-credit card as defined in §1026.61, a card issuer is required to disclose under §1026.60(b) any fees or charges imposed on the asset feature of the prepaid account that are charges imposed as part of the plan under §1026.6(b)(3) to the extent those fees or charges fall within the categories of fees or charges required to be disclosed under §1026.60(b). For example, assume that a card issuer imposes a $1.25 per transaction fee on the asset feature of a prepaid account for purchases when a hybrid prepaid-credit card accesses a covered separate credit feature in the course of authorizing, settling, or otherwise completing purchase transactions conducted with the card, and the card issuer charges $0.50 per transaction for purchases that access funds in the asset feature of the prepaid account in the same program without such a credit feature. In this case, the $0.75 excess is a charge imposed as part of the plan under §1026.6(b)(3) and must be disclosed under §1026.60(b)(4).

4. *Fees imposed on the asset feature of a prepaid account that are not charges imposed as part of the plan*. A card issuer is not required under §1026.60(b) to disclose any fee or charge imposed on the asset feature of the prepaid account that is not a charge imposed as part of the plan under §1026.6(b)(3). See §1026.6(b)(3)(iii)(D) and (E) and related commentary regarding fees imposed on the asset feature of the prepaid account that are not charges imposed as part of the plan under §1026.6(b)(3) with respect to covered separate credit features accessible by hybrid prepaid-credit cards and non-covered separate credit features as those terms are defined in §1026.61.

60(b)(1) Annual Percentage Rate

1. *Variable-rate accounts—definition.* For purposes of §1026.60(b)(1), a variable-rate account exists when rate changes are part of the plan and are tied to an index or formula. (See the commentary to §1026.6(b)(4)(ii) for examples of variable-rate plans.)

2. *Variable-rate accounts—fact that rate varies and how the rate will be determined.* In describing how the applicable rate will be determined, the card issuer must identify in the table the type of index or formula used, such as the prime rate. In describing the index, the issuer may not include in the table details about the index. For example, if the issuer uses a prime rate, the issuer must disclose the rate as a ''prime rate'' and may not disclose in the table other details about the prime rate, such as the fact that it is the highest prime rate published in the Wall Street Journal two business days before the closing date of the statement for each billing period. The issuer may not disclose in the table the current value of the index (such as that the prime rate is currently 7.5 percent) or the amount of the margin or spread added to the index or formula in setting the applicable rate. A card issuer may not disclose any applicable limitations on rate increases or decreases in the table, such as describing that the rate will not go below a certain rate or higher than a certain rate. (See Samples G–10(B) and G–10(C) for guidance on how to disclose the fact that the applicable rate varies and how it is determined.)

3. *Discounted initial rates.* i. *Immediate proximity.* If the term ''introductory'' is in the same phrase as the introductory rate, as that term is defined in §1026.16(g)(2)(ii), it will be deemed to be in immediate proximity of the listing. For example, an issuer that uses the phrase ''introductory balance transfer APR X percent'' has used the word ''introductory'' within the same phrase as the rate. (See Sample G–10(C) for guidance on how to disclose clearly and conspicuously the expiration date of the introductory rate and the rate that will apply after the introductory rate expires, if an introductory rate is disclosed in the table.)

ii. *Subsequent changes in terms.* The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of §1026.9(c) and the limitations in §1026.55, does not, by itself, make that rate an introductory rate. For example, assume an issuer discloses an annual percentage rate for purchases of 12.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently increases the annual percentage rate for purchases to 15.99%, pursuant to a change-in-terms notice provided under §1026.9(c), the 12.99% is not an introductory rate.

iii. *More than one introductory rate.* If more than one introductory rate may apply to a particular balance in succeeding periods, the term ''introductory'' need only be used to describe the first introductory rate. For example, if an issuer offers a rate of 8.99% on purchases for six months, 10.99% on purchases for the following six months, and 14.99% on purchases after the first year, the term ''introductory'' need only be used to describe the 8.99% rate.

4. *Premium initial rates—subsequent changes in terms.* The fact that an issuer may reserve the right to change a rate subsequent to account opening, pursuant to the notice requirements of §1026.9(c) and the limitations in §1026.55 (as applicable), does not, by itself, make that rate a premium initial rate. For example, assume an issuer discloses an annual percentage rate for purchases of 18.99% but does not specify a time period during which that rate will be in effect. Even if that issuer subsequently reduces the annual percentage rate for purchases to 15.99%, the 18.99% is not a premium initial rate. If the rate decrease is the result of a change from a non-variable rate to a variable rate or from a variable rate to a non-variable rate, see comments 9(c)(2)(v)–3 and 9(c)(2)(v)–4 for guidance on the notice requirements under §1026.9(c).

5. *Increased penalty rates.* i. *In general.* For rates that are not introductory rates or employee preferential rates, if a rate may increase as a penalty for one or more events specified in the account agreement, such as a late payment or an extension of credit that exceeds the credit limit, the card issuer must disclose the increased rate that would apply, a brief description of the event or events that may result in the increased rate, and a brief description of how long the increased rate will remain in effect. The description of the specific event or events that may result in an increased rate should be brief. For example, if an issuer may increase a rate to the penalty rate because the consumer does not make the minimum payment by 5 p.m., Eastern Time, on its payment due date, the issuer should describe this circumstance in the table as ''make a late payment.'' Similarly, if an issuer may increase a rate that applies to a particular balance because the account is more than 60 days late, the issuer should describe this circumstance in the table as ''make a late payment.'' An issuer may not distinguish between the events that may result in an increased rate for existing balances and the events that may result in an increased rate for new transactions. (See Samples G–10(B) and G–10(C) (in the row labeled ''Penalty APR and When it Applies'') for additional guidance on the level of detail in which the specific event or events should be described.) The description of how long the increased rate will remain in effect also should be brief. If a card issuer reserves the

right to apply the increased rate to any balances indefinitely, to the extent permitted by §§1026.55(b)(4) and 1026.59, the issuer should disclose that the penalty rate may apply indefinitely. The card issuer may not disclose in the table any limitations imposed by §§1026.55(b)(4) and 1026.59 on the duration of increased rates. For example, if the issuer generally provides that the increased rate will apply until the consumer makes twelve timely consecutive required minimum periodic payments, except to the extent that §§1026.55(b)(4) and 1026.59 apply, the issuer should disclose that the penalty rate will apply until the consumer makes twelve consecutive timely minimum payments. (See Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") for additional guidance on the level of detail which the issuer should use to describe how long the increased rate will remain in effect.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by §1026.60(b)(1)(iv)(A) if the issuer uses the format shown in Samples G–10(B) and G–10(C) (in the row labeled "Penalty APR and When it Applies") to disclose this information.

ii. *Introductory rates—general.* An issuer is required to disclose directly beneath the table the circumstances under which an introductory rate, as that term is defined in §1026.16(g)(2)(ii), may be revoked, and the rate that will apply after the revocation. This information about revocation of an introductory rate and the rate that will apply after revocation must be provided even if the rate that will apply after the introductory rate is revoked is the rate that would have applied at the end of the promotional period. In a variable-rate account, the rate that would have applied at the end of the promotional period is a rate based on the applicable index or formula in accordance with the accuracy requirements set forth in §1026.60(c)(2) or (e)(4). In describing the rate that will apply after revocation of the introductory rate, if the rate that will apply after revocation of the introductory rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an introductory rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an introductory rate. (See Sample G–10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table.) The description of the circumstances in which an introductory rate could be revoked should be brief. For example, if an issuer may increase an introductory rate because the account is more than 60 days late, the issuer should describe this circumstance directly beneath the table as "make a late payment." In addition, if the circumstances in which an introductory rate could be revoked are already listed elsewhere in the table, the issuer is not required to repeat the circumstances again, but may refer to those circumstances in a clear and conspicuous manner. For example, if the circumstances in which an introductory rate could be revoked are the same as the event or events that may trigger a "penalty rate" as described in §1026.60(b)(1)(iv)(A), the issuer may refer to the actions listed in the Penalty APR row, in describing the circumstances in which the introductory rate could be revoked. (See Sample G–10(C) in the disclosure labeled "Loss of Introductory APR" directly beneath the table for additional guidance on the level of detail in which to describe the circumstances in which an introductory rate could be revoked.) A card issuer will be deemed to meet the standard to clearly and conspicuously disclose the information required by §1026.60(b)(1)(iv)(B) if the issuer uses the format shown in Sample G–10(C) to disclose this information.

iii. *Introductory rates—limitations on revocation.* Issuers that are disclosing an introductory rate are prohibited by §1026.55 from increasing or revoking the introductory rate before it expires unless the consumer fails to make a required minimum periodic payment within 60 days after the due date for the payment. In making the required disclosure pursuant to §1026.60(b)(1)(iv)(B), issuers should describe this circumstance directly beneath the table as "make a late payment."

iv. *Employee preferential rates.* An issuer is required to disclose directly beneath the table the circumstances under which an employee preferential rate may be revoked, and the rate that will apply after the revocation. In describing the rate that will apply after revocation of the employee preferential rate, if the rate that will apply after revocation of the employee preferential rate is already disclosed in the table, the issuer is not required to repeat the rate, but may refer to that rate in a clear and conspicuous manner. For example, if the rate that will apply after revocation of an employee preferential rate is the standard rate that applies to that type of transaction (such as a purchase or balance transfer transaction), and the standard rates are labeled in the table as "standard APRs," the issuer may refer to the "standard APR" when describing the rate that will apply after revocation of an employee preferential rate. The description of the circumstances in which an employee preferential rate could be revoked should be brief. For example, if an issuer may increase an employee preferential rate based upon termination of the employee's employment relationship with the issuer or a third party, issuers may describe this circumstance as ''if your employment with [issuer or third party] ends.''

6. *Rates that depend on consumer's creditworthiness.* i. *In general.* The card issuer, at its option, may disclose the possible rates that may apply as either specific rates, or a range of rates. For example, if there are three possible rates that may apply (9.99, 12.99 or 17.99 percent), an issuer may disclose specific rates (9.99, 12.99 or 17.99 percent) or a range of rates (9.99 to 17.99 percent). The card issuer may not disclose only the lowest, highest or median rate that could apply. (See Samples G–10(B) and G–10(C) for guidance on how to disclose a range of rates.)

ii. *Penalty rates.* If the rate is a penalty rate, as described in §1026.60(b)(1)(iv), the card issuer at its option may disclose the highest rate that could apply, instead of disclosing the specific rates or the range of rates that could apply. For example, if the penalty rate could be up to 28.99 percent, but the issuer may impose a penalty rate that is less than that rate depending on factors at the time the penalty rate is imposed, the issuer may disclose the penalty rate as ''up to'' 28.99 percent. The issuer also must include a statement that the penalty rate for which the consumer may qualify will depend on the consumer's creditworthiness, and other factors if applicable.

iii. *Other factors.* Section 1026.60(b)(1)(v) applies even if other factors are used in combination with a consumer's creditworthiness to determine the rate for which a consumer may qualify at account opening. For example, §1026.60(b)(1)(v) would apply if the issuer considers the type of purchase the consumer is making at the time the consumer opens the account, in combination with the consumer's creditworthiness, to determine the rate for which the consumer may qualify at account opening. If other factors are considered, the issuer should amend the statement about creditworthiness, to indicate that the rate for which the consumer may qualify at account opening will depend on the consumer's creditworthiness and other factors. Nonetheless, §1026.60(b)(1)(v) does not apply if a consumer's creditworthiness is not one of the factors that will determine the rate for which the consumer may qualify at account opening (for example, if the rate is based solely on the type of purchase that the consumer is making at the time the consumer opens the account, or is based solely on whether the consumer has other banking relationships with the card issuer).

7. *Rate based on another rate on the account.* In some cases, one rate may be based on another rate on the account. For example, assume that a penalty rate as described in §1026.60(b)(1)(iv)(A) is determined by adding 5 percentage points to the current purchase rate, which is 10 percent. In this example, the card issuer in disclosing the penalty rate must disclose 15 percent as the current penalty rate. If the purchase rate is a variable rate, then the penalty rate also is a variable rate. In that case, the card issuer also must disclose the fact that the penalty rate may vary and how the rate is determined, such as ''This APR may vary with the market based on the Prime Rate.'' In describing the penalty rate, the issuer shall not disclose in the table the amount of the margin or spread added to the current purchase rate to determine the penalty rate, such as describing that the penalty rate is determined by adding 5 percentage points to the purchase rate. (See §1026.60(b)(1)(i) and comment 60(b)(1)–2 for further guidance on describing a variable rate.)

8. *Rates.* The only rates that shall be disclosed in the table are annual percentage rates determined under §1026.14(b). Periodic rates shall not be disclosed in the table.

9. *Deferred interest or similar transactions.* An issuer offering a deferred interest or similar plan, such as a promotional program that provides that a consumer will not be obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time, may not disclose a 0% rate as the rate applicable to deferred interest or similar transactions if there are any circumstances under which the consumer will be obligated for interest on such transactions for the deferred interest or similar period.

60(b)(2) Fees for Issuance or Availability

1. *Membership fees.* Membership fees for opening an account must be disclosed under this paragraph. A membership fee to join an organization that provides a credit or charge card as a privilege of membership must be disclosed only if the card is issued automatically upon membership. Such a fee shall not be disclosed in the table if membership results merely in eligibility to apply for an account.

2. *Enhancements.* Fees for optional services in addition to basic membership privileges in a credit or charge card account (for example, travel insurance or card-registration services) shall not be disclosed in the table if the basic account may be opened without paying such fees. Issuing a card to each primary cardholder (not authorized users) is considered a basic membership privilege and fees for additional cards, beyond the first card on the account, must be disclosed as a fee for issuance or availability. Thus, a fee to obtain an additional card on the account beyond the first card (so that each cardholder would have his or her own card) must be disclosed in the table as a fee for issuance or availability under §1026.60(b)(2). This fee must be disclosed even if the fee is optional; that is, if the fee is charged only if the cardholder requests one or more additional cards.

(See the available credit disclosure in §1026.60(b)(14).)

3. *One-time fees.* Disclosure of non-periodic fees is limited to fees related to opening the account, such as one-time membership or participation fees, or an application fee that is excludable from the finance charge under §1026.4(c)(1). The following are examples of fees that shall not be disclosed in the table:

i. Fees for reissuing a lost or stolen card.

ii. Statement reproduction fees.

4. *Waived or reduced fees.* If fees required to be disclosed are waived or reduced for a limited time, the introductory fees or the fact of fee waivers may be disclosed in the table in addition to the required fees if the card issuer also discloses how long the reduced fees or waivers will remain in effect in accordance with the requirements of §§1026.9(c)(2)(v)(B) and 1026.55(b)(1).

5. *Periodic fees and one-time fees.* A card issuer disclosing a periodic fee must disclose the amount of the fee, how frequently it will be imposed, and the annualized amount of the fee. A card issuer disclosing a non-periodic fee must disclose that the fee is a one-time fee. (See Sample G–10(C) for guidance on how to meet these requirements.)

60(b)(3) Fixed Finance Charge; Minimum Interest Charge

1. *Example of brief statement.* See Samples G–10(B) and G–10(C) for guidance on how to provide a brief description of a minimum interest charge.

2. *Adjustment of $1.00 threshold amount.* Consistent with §1026.60(b)(3), the Bureau will publish adjustments to the $1.00 threshold amount, as appropriate.

60(b)(4) Transaction Charges

1. *Charges imposed by person other than card issuer.* Charges imposed by a third party, such as a seller of goods, shall not be disclosed in the table under this section; the third party would be responsible for disclosing the charge under §1026.9(d)(1).

2. *Foreign transaction fees.* A transaction charge imposed by the card issuer for the use of the card for purchases includes any fee imposed by the issuer for purchases in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency, or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G–10(B) and G–10(C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G–10(B) and G–10(C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

3. *Prepaid cards.* i. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by §1026.61, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) to make a purchase where this fee is imposed as part of the plan as described in §1026.6(b)(3), that fee is a transaction charge described in §1026.60(b)(4). *See* comments 60(b)–3 and –4. This is so whether the fee is a per transaction fee to make a purchase, or a flat fee for each day (or other period) the consumer has an outstanding balance of purchase transactions.

ii. A fee for a transaction will be treated as a fee to make a purchase under §1026.60(b)(4) in cases where a consumer uses a hybrid prepaid-credit card as defined in §1026.61 to make a purchase to obtain goods or services from a merchant and credit is drawn directly from a covered separate credit feature accessed by the hybrid prepaid-credit card without transferring funds into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume that the consumer has $10 of funds in the asset feature of the prepaid account and initiates a transaction with a merchant to obtain goods or services with the hybrid prepaid-credit card for $25. In this case, $10 is debited from the asset feature and $15 of credit is drawn directly from the covered separate credit feature accessed by the hybrid prepaid-credit card without any transfer of funds into the asset feature of the prepaid account to cover the amount of the purchase. A per transaction fee imposed for the $15 credit transaction must be disclosed under §1026.60(b)(4).

iii. On the other hand, a fee for a transaction will be treated as a cash advance fee under §1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in §1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. For example, assume the same facts as above, except that the $15 will be transferred from the covered separate credit feature to the asset feature, and a transaction of $25 is debited from the asset feature of the prepaid account. In this case, a per transaction fee for the $15 credit transaction must be disclosed under §1026.60(b)(8).

60(b)(5) Grace Period

1. *How grace period disclosure is made.* The card issuer must state any conditions on the applicability of the grace period. An issuer, however, may not disclose under

§ 1026.60(b)(5) the limitations on the imposition of finance charges as a result of a loss of a grace period in § 1026.54, or the impact of payment allocation on whether interest is charged on purchases as a result of a loss of a grace period. Some issuers may offer a grace period on all purchases under which interest will not be charged on purchases if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement for one or more billing cycles. In these circumstances, § 1026.60(b)(5) requires that the issuer disclose the grace period and the conditions for its applicability using the following language, or substantially similar language, as applicable: ''Your due date is [at least] ___ days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month.'' However, other issuers may offer a grace period on all purchases under which interest may be charged on purchases even if the consumer pays the outstanding balance shown on a periodic statement in full by the due date shown on that statement each billing cycle. In these circumstances, § 1026.60(b)(5) requires the issuer to amend the above disclosure language to describe accurately the conditions on the applicability of the grace period.

2. *No grace period.* The issuer may use the following language to describe that no grace period on any purchases is offered, as applicable: ''We will begin charging interest on purchases on the transaction date.''

3. *Grace period on some purchases.* If the issuer provides a grace period on some types of purchases but no grace period on others, the issuer may combine and revise the language in comments 60(b)(5)–1 and –2 as appropriate to describe to which types of purchases a grace period applies and to which types of purchases no grace period is offered.

60(b)(6) Balance Computation Method

1. *Form of disclosure.* In cases where the card issuer uses a balance computation method that is identified by name in § 1026.60(g), the card issuer must disclose below the table only the name of the method. In cases where the card issuer uses a balance computation method that is not identified by name in § 1026.60(g), the disclosure below the table must clearly explain the method in as much detail as set forth in the descriptions of balance methods in § 1026.60(g). The explanation need not be as detailed as that required for the disclosures under § 1026.6(b)(4)(i)(D).

2. *Determining the method.* In determining which balance computation method to disclose for purchases, the card issuer must assume that a purchase balance will exist at the end of any grace period. Thus, for example, if the average daily balance method will include new purchases only if purchase balances are not paid within the grace period, the card issuer would disclose the name of the average daily balance method that includes new purchases. The card issuer must not assume the existence of a purchase balance, however, in making other disclosures under § 1026.60(b).

60(b)(7) Statement on Charge Card Payments

1. *Applicability and content.* The disclosure that charges are payable upon receipt of the periodic statement is applicable only to charge card accounts. In making this disclosure, the card issuer may make such modifications as are necessary to more accurately reflect the circumstances of repayment under the account. For example, the disclosure might read, ''Charges are due and payable upon receipt of the periodic statement and must be paid no later than 15 days after receipt of such statement.''

60(b)(8) Cash Advance Fee

1. *Content.* See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the cash advance fee.

2. *Foreign cash advances.* Cash advance fees required to be disclosed under § 1026.60(b)(8) include any charge imposed by the card issuer for cash advances in a foreign currency or that take place outside the United States or with a foreign merchant. (See comment 4(a)–4 for guidance on when a foreign transaction fee is considered charged by the card issuer.) If an issuer charges the same foreign transaction fee for purchases and cash advances in a foreign currency or that take place outside the United States or with a foreign merchant, the issuer may disclose this foreign transaction fee as shown in Samples G–10(B) and (C). Otherwise, the issuer must revise the foreign transaction fee language shown in Samples G–10(B) and (C) to disclose clearly and conspicuously the amount of the foreign transaction fee that applies to purchases and the amount of the foreign transaction fee that applies to cash advances.

3. *ATM fees.* An issuer is not required to disclose pursuant to § 1026.60(b)(8) any charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system.

4. *Prepaid cards.* i. With respect to a covered separate credit feature accessible by a hybrid prepaid-credit card as defined by § 1026.61, if a card issuer assesses a fee (other than a periodic rate that may be used to compute the finance charge on an outstanding balance) for a cash advance, such as a cash withdrawal at an ATM, where the fee is imposed as part of the plan as described in § 1026.6(b)(3), that fee is a cash advance fee. *See* comments 60(b)–3 and –4. In addition, a fee for a transaction will be treated as a cash

advance fee under §1026.60(b)(8) in cases where a consumer uses a hybrid prepaid-credit card as defined in §1026.61 to make a purchase to obtain goods or services from a merchant and credit is transferred from a covered separate credit feature accessed by the hybrid prepaid-credit card into the asset feature of the prepaid account to cover the amount of the purchase. *See* comment 60(b)(4)–3.iii.

ii. If the cash advance fee is the same dollar amount as the transaction charge for purchases described in §1026.60(b)(4), the card issuer may disclose the fee amount under a heading that indicates the fee applies to both purchase transactions and cash advances. Examples of how fees for purchase transactions described in §1026.60(b)(4) and fees for cash advances described in §1026.60(b)(8) must be disclosed are as follows. Assume that all the fees in the examples below are charged on the covered separate credit feature.

A. A card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account as described in comment 60(b)(4)–3.ii. The card issuer assesses a $25 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card for a cash advance at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer must disclose separately a purchase transaction charge of $15 and a cash advance fee of $25.

B. A card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card to purchase goods or services at the point of sale when the consumer has insufficient or unavailable funds in the prepaid account as discussed in comment 60(b)(4)–3.ii. The card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. In this instance, the card issuer may disclose the $15 fee under a heading that indicates the fee applies to both purchase transactions and ATM cash advances. Alternatively, the card issuer may disclose the $15 fee on two separate rows, one row indicating that a $15 fee applies to purchase transactions, and a second row indicating that a $15 fee applies to ATM cash advances.

C. A card issuer assesses a $15 fee for credit drawn from a covered separate credit feature using a hybrid prepaid-credit card for providing cash at an ATM when the consumer has insufficient or unavailable funds in the prepaid account. The card issuer also assesses a fee of $1.50 for out-of-network ATM cash withdrawals and $1.00 for in-network ATM cash withdrawals. The card issuer must disclose the cash advance fee as $16.50 for out-of-network ATM cash withdrawals, indicating that $1.50 is for the out-of-network ATM withdrawal fee, such as ''$16.50 (including a $1.50 out-of-network ATM withdrawal fee).'' The card issuer also must disclose the cash advance fee as $16.00 for in-network ATM cash withdrawals, indicating that $1.00 is for the in-network ATM withdrawal fee, such as ''$16 (including a $1.00 in-network ATM cash withdrawal fee).''

60(b)(9) Late Payment Fee

1. *Applicability*. The disclosure of the fee for a late payment includes only those fees that will be imposed for actual, unanticipated late payments. (See the commentary to §1026.4(c)(2) for additional guidance on late payment fees. See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the late payment fee.)

60(b)(10) Over-the-Limit Fee

1. *Applicability*. The disclosure of fees for exceeding a credit limit does not include fees for other types of default or for services related to exceeding the limit. For example, no disclosure is required of fees for reinstating credit privileges or fees for the dishonor of checks on an account that, if paid, would cause the credit limit to be exceeded. (See Samples G–10(B) and G–10(C) for guidance on how to disclose clearly and conspicuously the over-the-limit fee.)

60(b)(13) Required Insurance, Debt Cancellation or Debt Suspension Coverage

1. *Content*. See Sample G–10(B) for guidance on how to comply with the requirements in §1026.60(b)(13).

60(b)(14) Available Credit

1. *Calculating available credit*. If the 15 percent threshold test is met, the issuer must disclose the available credit excluding optional fees, and the available credit including optional fees. In calculating the available credit to disclose in the table, the issuer must consider all fees for the issuance or availability of credit described in §1026.60(b)(2), and any security deposit, that will be imposed and charged to the account when the account is opened, such as one-time issuance and set-up fees. For example, in calculating the available credit, issuers must consider the first year's annual fee and the first month's maintenance fee (as applicable) if they are charged to the account on the first billing statement. In calculating the amount of the available credit including optional fees, if optional fees could be charged multiple times, the issuer shall assume that the optional fee is only imposed once. For example, if an issuer charges a fee

for each additional card issued on the account, the issuer in calculating the amount of the available credit including optional fees may assume that the cardholder requests only one additional card. In disclosing the available credit, the issuer shall round down the available credit amount to the nearest whole dollar.

2. *Content.* See Sample G–10(C) for guidance on how to provide the disclosure required by §1026.60(b)(14) clearly and conspicuously.

60(b)(15) Web Site Reference

1. *Content.* See Samples G–10(B) and G–10(C) for guidance on disclosing a reference to the Web site established by the Bureau and a statement that consumers may obtain on the Web site information about shopping for and using credit card accounts.

60(c) Direct Mail and Electronic Applications and Solicitations

1. *Mailed publications.* Applications or solicitations contained in generally available publications mailed to consumers (such as subscription magazines) are subject to the requirements applicable to *take-ones* in §1026.60(e), rather than the direct mail requirements of §1026.60(c). However, if a primary purpose of a card issuer's mailing is to offer credit or charge card accounts—for example, where a card issuer ''prescreens'' a list of potential cardholders using credit criteria, and then mails to the targeted group its catalog containing an application or a solicitation for a card account—the direct mail rules apply. In addition, a card issuer may use a single application form as a *take-one* (in racks in public locations, for example) and for direct mailings, if the card issuer complies with the requirements of §1026.60(c) even when the form is used as a *take-one*—that is, by presenting the required §1026.60 disclosures in a tabular format. When used in a direct mailing, the credit term disclosures must be accurate as of the mailing date whether or not the §1026.60(e)(1)(ii) and (e)(1)(iii) disclosures are included; when used in a *take-one*, the disclosures must be accurate for as long as the *take-one* forms remain available to the public if the §1026.60(e)(1)(ii) and (e)(1)(iii) disclosures are omitted. (If those disclosures are included in the take-one, the credit term disclosures need only be accurate as of the printing date.)

60(d) Telephone Applications and Solicitations

1. *Coverage.* i. This paragraph applies if:

A. A telephone conversation between a card issuer and consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a *prescreened* telephone solicitation).

B. The card issuer initiates the contact and at the same time takes application information over the telephone.

ii. This paragraph does not apply to:

A. Telephone applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides either during the telephone conversation or later not to issue the card.

2. *Right to reject the plan.* The right to reject the plan referenced in this paragraph is the same as the right to reject the plan described in §1026.5(b)(1)(iv). If an issuer substitutes the account-opening summary table described in §1026.6(b)(1) in lieu of the disclosures specified in §1026.60(d)(2)(ii), the disclosure specified in §1026.60(d)(2)(ii)(B) must appear in the table, if the issuer is required to do so pursuant to §1026.6(b)(2)(xiii). Otherwise, the disclosure specified in §1026.60(d)(2)(ii)(B) may appear either in or outside the table containing the required credit disclosures.

3. *Substituting account-opening table for alternative written disclosures.* An issuer may substitute the account-opening summary table described in §1026.6(b)(1) in lieu of the disclosures specified in §1026.60(d)(2)(ii).

60(e) Applications and Solicitations Made Available to General Public

1. *Coverage.* Applications and solicitations made available to the general public include what are commonly referred to as *take-one* applications typically found at counters in banks and retail establishments, as well as applications contained in catalogs, magazines and other generally available publications. In the case of credit unions, this paragraph applies to applications and solicitations to open card accounts made available to those in the general field of membership.

2. *In-person applications and solicitations.* In-person applications and solicitations initiated by a card issuer are subject to §1026.60(f), not §1026.60(e). (*See* §1026.60(f) and accompanying commentary for rules relating to in-person applications and solicitations.)

3. *Toll-free telephone number.* If a card issuer, in complying with any of the disclosure options of §1026.60(e), provides a telephone number for consumers to call to obtain credit information, the number must be toll-free for nonlocal calls made from an area code other than the one used in the card issuer's dialing area. Alternatively, a card issuer may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

60(e)(1) Disclosure of Required Credit Information

1. *Date of printing.* Disclosure of the month and year fulfills the requirement to disclose the date an application was printed.

2. *Form of disclosures.* The disclosures specified in §1026.60(e)(1)(ii) and (e)(1)(iii) may appear either in or outside the table containing the required credit disclosures.

60(e)(2) No Disclosure of Credit Information

1. *When disclosure option available.* A card issuer may use this option only if the issuer does not include on or with the application or solicitation any statement that refers to the credit disclosures required by §1026.60(b). Statements such as *no annual fee, low interest rate, favorable rates,* and *low costs* are deemed to refer to the required credit disclosures and, therefore, may not be included on or with the solicitation or application, if the card issuer chooses to use this option.

60(e)(3) Prompt Response to Requests for Information

1. *Prompt disclosure.* Information is promptly disclosed if it is given within 30 days of a consumer's request for information but in no event later than delivery of the credit or charge card.

2. *Information disclosed.* When a consumer requests credit information, card issuers need not provide all the required credit disclosures in all instances. For example, if disclosures have been provided in accordance with §1026.60(e)(1) and a consumer calls or writes a card issuer to obtain information about changes in the disclosures, the issuer need only provide the items of information that have changed from those previously disclosed on or with the application or solicitation. If a consumer requests information about particular items, the card issuer need only provide the requested information. If, however, the card issuer has made disclosures in accordance with the option in §1026.60(e)(2) and a consumer calls or writes the card issuer requesting information about costs, all the required disclosure information must be given.

3. *Manner of response.* A card issuer's response to a consumer's request for credit information may be provided orally or in writing, regardless of the manner in which the consumer's request is received by the issuer. Furthermore, the card issuer must provide the information listed in §1026.60(e)(1). Information provided in writing need not be in a tabular format.

60(f) In-Person Applications and Solicitations

1. *Coverage.* i. This paragraph applies if:

A. An in-person conversation between a card issuer and a consumer may result in the issuance of a card as a consequence of an issuer-initiated offer to open an account for which the issuer does not require any application (that is, a *preapproved* in-person solicitation).

B. The card issuer initiates the contact and at the same time takes application information in person. For example, the following are covered:

1. A consumer applies in person for a car loan at a financial institution and the loan officer invites the consumer to apply for a credit or charge card account; the consumer accepts the invitation and submits an application.

2. An employee of a retail establishment, in the course of processing a sales transaction using a bank credit card, asks a customer if he or she would like to apply for the retailer's credit or charge card; the customer responds affirmatively and submits an application.

ii. This paragraph does not apply to:

A. In-person applications initiated by the consumer.

B. Situations where no card will be issued—because, for example, the consumer indicates that he or she does not want the card, or the card issuer decides during the in-person conversation not to issue the card.

Section 1026.61 Hybrid Prepaid-Credit Cards

61(a) Hybrid Prepaid-Credit Card

1. *Scope of §1026.61.* Section 1026.61 sets forth the definition of hybrid prepaid-credit card, and several requirements that only apply to covered separate credit features accessible by hybrid prepaid-credit cards as defined in §1026.61(a)(2)(i). Hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards are also subject to other rules in this regulation, and some of those rules and related commentary contain specific guidance related to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards. For example, as discussed in §§1026.2(a)(15)(i) and 1026.61(a), a hybrid prepaid-credit card is a credit card for purposes of this regulation with respect to a covered separate credit feature. A covered separate credit feature accessible by a hybrid prepaid-credit card also will be a credit card account under an open-end (not home-secured) consumer credit plan as defined in §1026.2(a)(15)(ii) if the covered separate credit feature is an open-end credit plan. Thus, the provisions in this regulation that apply to credit cards and credit card accounts under an open-end (not home-secured) consumer credit plan generally will apply to hybrid prepaid-credit cards and covered separate credit features accessible by hybrid prepaid-credit cards as applicable (*see generally* subparts B and G). Some of those rules and related commentary contain specific guidance with respect to hybrid prepaid-credit

cards and covered separate credit features accessible by hybrid prepaid-credit cards. *See, e.g.*, §§1026.2(a)(15)(i) and (ii), 1026.4(b)(11), (c)(3) and (4), 1026.6(b)(3)(iii)(D) and (E), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), 1026.13(i)(2), 1026.60(a)(5)(iv) and (b), and related commentary to these and other rules in the regulation.

61(a)(1) In General

1. *Credit.* Under §1026.61(a)(1), except as provided in §1026.61(a)(4), a prepaid card is a hybrid prepaid-credit card if the prepaid card can access credit from a covered separate credit feature as described in §1026.61(a)(2)(i) or if it can access credit extended through a negative balance on the asset feature of the prepaid account as described in §1026.61(a)(3). When §1026.61 references credit that can be accessed from a separate credit feature or credit that can be extended through a negative balance on the asset feature, it means credit that can be accessed or can be extended even if, for example:

i. The person that can extend the credit does not agree in writing to extend the credit;

ii. The person retains discretion not to extend the credit, or

iii. The person does not extend the credit once the consumer has exceeded a certain amount of credit.

2. *Prepaid card that is solely an account number.* A prepaid card that is solely an account number is a hybrid prepaid-credit card if it meets the conditions set forth in §1026.61(a).

3. *Usable from time to time.* In order for a prepaid card to be a hybrid prepaid-credit card under §1026.61(a), the prepaid card must be capable of being used from time to time to access credit as described in §1026.61(a). Since this involves the possibility of repeated use of a single device, checks and similar instruments that can be used only once to obtain a single credit extension are not hybrid prepaid-credit cards. With respect to a preauthorized check that is issued on a prepaid account for which credit is extended through a negative balance on the asset feature of the prepaid account, or credit is drawn, transferred or authorized to be drawn or transferred from a separate credit feature, the credit is obtained using the prepaid account number and not the check at the time of preauthorization using the prepaid account number. The prepaid account number is a hybrid prepaid-credit card if the account number meets the conditions set forth in §1026.61(a). *See* comment 61(a)(1)–2.

4. *Prepaid account that is a digital wallet.* i. A digital wallet that is capable of being loaded with funds is a prepaid account under Regulation E, 12 CFR 1005.2(b)(3). *See* Regulation E, 12 CFR 1005.2(b)(3) and comment 2(b)(3)(i)–6. A prepaid account number that can access such a digital wallet would be a hybrid prepaid-credit card if it meets the conditions set forth in §1026.61(a). To illustrate:

A. A prepaid account number that can access such a digital wallet is a hybrid prepaid-credit card where it can be used from time to time to access a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers as described in §1026.61(a)(2)(i).

B. A prepaid account number that can access such a digital wallet also is a hybrid prepaid-credit card where it can be used from time to time to access the stored credentials for a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers as described in §1026.61(a)(2)(i).

C. A prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to credentials stored in the prepaid account that can access a non-covered separate credit feature as described in §1026.61(a)(2)(ii) that is not offered by the prepaid account issuer, its affiliate, or its business partner, even if the prepaid account number can access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers.

D. A prepaid account number that can access such a digital wallet is not a hybrid prepaid-credit card with respect to credentials stored in the prepaid account that can access a non-covered separate credit feature as described in §1026.61(a)(2)(ii) where the prepaid account number cannot access those credentials in the course of authorizing, settling, or otherwise completing a transaction conducted with the prepaid account number to obtain goods or services, obtain cash, or conduct person-to-person transfers, even if such credit feature is offered by the prepaid account issuer, its affiliate, or its business partner.

ii. A digital wallet is not a prepaid account under Regulation E, 12 CFR 1005.2(b)(3), if the digital wallet can never be loaded with funds, such as a digital wallet that only stores payment credentials for other accounts. *See* Regulation E, 12 CFR 1005.2(b)(3) and comment 2(b)(3)(i)–6. An account number that can access such a digital wallet would not be a hybrid prepaid-credit card under §1026.61(a), even if it stores a credential for a separate credit feature that is offered by the digital wallet provider, its affiliate, or its business partner and can be used in the course of a transaction involving the digital wallet.

5. *Prepaid account that can be used for bill payment services.* Where a prepaid account can be used for online bill payment services offered by the prepaid account issuer, the prepaid card (including a prepaid account number) that can access that prepaid account is a hybrid prepaid-credit card if it meets the requirements set forth in §1026.61(a). For example, if a prepaid account number can be used from time to time to initiate a transaction using the online bill payment service offered by the prepaid account issuer to pay a bill, and credit can be drawn, transferred, or authorized to be drawn or transferred, to the prepaid account from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing that transaction as described in §1026.61(a)(2)(i), the prepaid account number would be a hybrid prepaid-credit card under §1026.61(a). In this case, the prepaid account number can be used to draw or transfer credit, or authorize the draw or transfer of credit, from a covered separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of completing a transaction to pay for goods or services through the online bill payment service.

61(a)(2) Prepaid Card Can Access Credit From a Covered Separate Credit Feature

1. *Draws or transfers of credit.* i. For a prepaid card to be a hybrid prepaid-credit card under §1026.61(a)(2)(i) with respect to a separate credit feature, the prepaid account must be structured such that the draw or transfer of credit, or authorizations of either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner is capable of occurring in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct person-to-person transfers. See comment 61(a)(2)–2 for guidance on when draws or transfers of credit can occur in the course of authorizing, settling, or otherwise completing a transaction described in §1026.61(a)(2)(i). In this case, the separate credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card under §1026.61(a)(2)(i).

ii. A prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether:

A. The credit is pushed from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers; or

B. The credit is pulled from the covered separate credit feature to the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

iii. A prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature regardless of whether the covered separate credit feature can only be used as an overdraft credit feature, solely accessible by the hybrid prepaid-credit card, or whether it is a general line of credit that can be accessed in other ways.

2. *Credit that can be accessed from a separate credit feature in the course of authorizing, settling, or otherwise completing a transaction.* i. Under §1026.61(a)(2)(i), a prepaid card is a hybrid prepaid-credit card when the card can be used from time to time to access a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner and can be used to access credit in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. A draw, transfer, or authorization of a draw or transfer from a separate credit feature is deemed to be in the "course of authorizing, settling, or otherwise completing" a transaction if it occurs during the authorization phase of the transaction as discussed in comment 61(a)(2)–2.ii or in later periods up to the settlement of the transaction, as discussed in comment 61(a)(2)–2.iii.

ii. The following examples illustrate transactions where credit can be drawn, transferred, or authorized to be drawn or transferred from a separate credit feature in the course of authorizing a transaction.

A. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is transferred from the credit feature to the asset feature at the time the transaction is authorized to complete the transaction.

B. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is directly drawn from the credit feature to complete the transaction, without transferring funds into the prepaid account.

iii. The following examples illustrate transactions where credit can be drawn, transferred, or authorized to be drawn or transferred, in the course of settling a transaction.

A. A transaction initiated using a prepaid card when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction.

B. A transaction that was not authorized in advance where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit automatically is drawn, transferred, or authorized to be drawn or transferred from the credit feature at settlement to pay the transaction.

3. *Accessing credit when the asset feature has sufficient funds.* Section 1026.61(a)(2)(i) applies where the prepaid card can be used from time to time to draw funds from a covered separate credit feature that is offered by a prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers, even if there are sufficient or available funds in the asset feature of the prepaid account to complete the transaction. For example, the following separate credit feature would meet the conditions of §1026.61(a)(2)(i).

i. The prepaid card can be used from time to time both to access the asset feature of a prepaid account and to draw on the covered separate credit feature in the course of a transaction independent of whether there are sufficient or available funds in the asset feature to complete the transaction. For example, assume that a consumer has $50 available funds in her prepaid account. The consumer initiates a $25 transaction with the card to purchase goods and services. If the consumer chooses at the time the transaction is initiated to use the card to access the prepaid account, the card will draw on the funds in the asset feature of the prepaid account to complete the transaction. If the consumer chooses at the time the transaction is initiated to use the card to access the credit feature, the card will draw on credit from the credit feature to complete the transaction, regardless of the fact that there were sufficient or available funds the prepaid account to complete the transaction.

4. *Covered separate credit features.* i. Under §1026.61(a)(2)(i), a separate credit feature that meets the conditions of §1026.61(a)(2)(i) is defined as a covered separate credit feature. In this case, the hybrid prepaid-credit card can access both the covered separate credit feature and the asset feature of the prepaid account. Section 1026.61 and other provisions in the regulation and commentary related to hybrid prepaid-credit cards refer to this credit feature either as a covered separate credit feature or a covered separate credit feature accessible by a hybrid prepaid-credit card. *See, e.g.,* §§1026.4(c)(4), 1026.7(b)(11)(ii)(A), 1026.12(d)(3)(ii), and 1026.60(a)(5)(iv) and (b). In addition, several provisions in the regulation and commentary also describe this arrangement as one where a covered separate credit feature and an asset feature on a prepaid account are both accessible by a hybrid prepaid-credit card as defined in §1026.61. *See, e.g.,* §§1026.4(b)(11), 1026.6(b)(3)(iii)(D), and 1026.13(i)(2).

ii. If a prepaid card is capable of drawing or transferring credit, or authorizing either, from a separate credit feature offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services, obtain cash, or conduct a person-to-person transfer, the credit feature is a covered separate credit feature accessible by a hybrid prepaid-credit card, even with respect to credit that is drawn or transferred, or authorized to be drawn or transferred, from the credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, with respect to a covered separate credit feature, a consumer may use the prepaid card at the prepaid account issuer's Web site to load funds from the covered separate credit feature outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. This credit transaction is considered a credit transaction on a covered separate credit feature accessible by a hybrid prepaid-credit card, even though the load or transfer of funds occurred outside the course of a transaction conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers.

5. *Non-covered separate credit features.* A separate credit feature that does not meet the conditions set forth in §1026.61(a)(2)(i) is defined as a non-covered separate credit feature as described in §1026.61(a)(2)(ii). A prepaid card is not a hybrid prepaid-credit card with respect to a non-covered separate credit feature. To illustrate:

i. A prepaid card is not a hybrid prepaid-credit card under §1026.61(a)(2)(i) with respect to a separate credit feature if the credit feature is not offered by the prepaid account issuer, its affiliate, or its business partner. This is true even if the draw or transfer of credit, or authorization of either, occurs during the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, assume a consumer links her prepaid account to a credit card issued by a card issuer that is not the prepaid account issuer, its affiliate, or its business partner so that credit is drawn automatically into the asset feature of the prepaid account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card for which there are insufficient funds in the asset feature. In this case, the separate credit feature is a non-covered separate credit feature under §1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to the separate credit feature offered by the unrelated third-party card issuer.

ii. Even if a separate credit feature is offered by the prepaid account issuer, its affiliate, or its business partner, a prepaid card is not a hybrid prepaid-credit card under §1026.61(a)(2)(i) with respect to that separate credit feature if the separate credit feature cannot be accessed within the course of authorizing, settling, or otherwise completing transactions to obtain goods or services, obtain cash, or conduct person-to-person transfers. For example, assume that a consumer can only conduct a draw or transfer of credit, or authorization of either, from a separate credit feature to a prepaid account at the prepaid account issuer's Web site, and these draws, transfers, or authorizations of either, cannot occur in the course of authorizing, settling, or otherwise completing transactions at the Web site to obtain goods or services, obtain cash, or conduct person-to-person transfers. In this case, the separate credit feature is a non-covered separate credit feature under §1026.61(a)(2)(ii). In this situation, the prepaid card is not a hybrid prepaid-credit card with respect to this non-covered separate credit feature.

iii. The person offering the non-covered separate credit feature does not become a card issuer under §1026.2(a)(7) and thus does not become a creditor under §1026.2(a)(17)(iii) or (iv) because the prepaid card can be used to access credit from the non-covered separate credit feature. The person offering the non-covered separate credit feature, however, may already have obligations under this regulation with respect to that separate credit feature. For example, if the non-covered separate credit feature is an open-end credit card account offered by an unrelated third-party creditor that is not an affiliate or business partner of the prepaid account issuer, the person already will be a card issuer under §1026.2(a)(7) and a creditor under §1026.2(a)(17)(iii). Nonetheless, in that case, the person does not need to comply with the provisions in the regulation applicable to hybrid prepaid-credit cards even though the prepaid card can access credit from the non-covered separate credit feature. The obligations under this regulation that apply to a non-covered separate credit feature are not affected by the fact that the prepaid card can access credit from the non-covered separate credit feature. *See* §1026.6(b)(3)(iii)(E) and comments 4(b)(11)–1.ii, 6(b)(2)–2, 6(b)(3)(iii)(E)–1, 12(d)(3)–2.iii, 52(a)(2)–3, 52(b)–4, 55(a)–4, and 60(b)–4.

6. *Prepaid card that can access multiple separate credit features.* i. Even if a prepaid card is a hybrid prepaid-credit card with respect to a covered separate credit feature, it is not a hybrid prepaid-credit card with respect to any non-covered separate credit features.

ii. For example, assume that a prepaid card can access ''Separate Credit Feature A'' where the card can be used from time to time to access credit from a separate credit feature that is offered by the prepaid account issuer, its affiliate, or its business partner in the course of authorizing, settling, or otherwise completing transactions conducted with the card to obtain goods or services, obtain cash, or conduct person-to-person transfers. In addition, assume that the prepaid card can also access ''Separate Credit Feature B'' but that credit feature is being offered by an unrelated third-party creditor that is not the prepaid account issuer, its affiliate, or its business partner. The prepaid card is a hybrid prepaid-credit card with respect to Separate Credit Feature A because it is a covered separate credit feature. The prepaid card, however, is not a hybrid prepaid-credit card with respect to Separate Credit Feature B because it is a non-covered separate credit feature.

61(a)(3) Prepaid Card Can Access Credit Extended Through a Negative Balance on the Asset Feature

61(a)(3)(i) In General

1. *Credit accessed on an asset feature of a prepaid account.* i. See comment 2(a)(14)–3 for examples of when transactions authorized or paid on the asset feature of a prepaid account meet the definition of credit under §1026.2(a)(14).

ii. Except as provided in §1026.61(a)(4), a prepaid card would trigger coverage as a hybrid prepaid-credit card if it is a single device that can be used from time to time to access credit that can be extended through a negative balance on the asset feature of the prepaid account. (However, unless the credit extended through a negative balance on the asset feature of the prepaid account meets the requirements of §1026.61(a)(4), such a product structure would violate the rules under §1026.61(b).) A credit extension through a negative balance on the asset feature of a prepaid account can occur during the authorization phase of the transaction as discussed in comment 61(a)(3)(i)–1.iii or in later periods up to the settlement of the transaction, as discussed in comment 61(a)(3)(i)–1.iv.

iii. The following example illustrates transactions where a credit extension occurs during the course of authorizing a transaction.

A. A transaction initiated using a prepaid card when there are insufficient or unavailable funds in the asset feature of the prepaid account at the time the transaction is initiated and credit is extended through a negative balance on the asset feature of the prepaid account when the transaction is authorized.

iv. The following examples illustrate transactions where a credit extension occurs at settlement.

A. Transactions that occur when there are sufficient or available funds in the asset feature of the prepaid account at the time of authorization to cover the amount of the transaction but where the consumer does not have sufficient or available funds in the asset feature to cover the transaction at the time of settlement. Credit is extended through a negative balance on the asset feature at settlement to pay those transactions.

B. Transactions that settle even though they were not authorized in advance where credit is extended through a negative balance on the asset feature at settlement to pay those transactions.

61(a)(3)(ii) Negative Asset Balances

1. *Credit extended on the asset feature of the prepaid account.* Section 1026.61(a)(3)(i) determines whether a prepaid card triggers coverage as a hybrid prepaid-credit card under §1026.61(a), and thus, whether a prepaid account issuer is a card issuer under §1026.2(a)(7) subject to this regulation, including §1026.61(b). However, §1026.61(b) requires that any credit feature accessible by a hybrid prepaid-credit card must be structured as a separate credit feature using either a credit subaccount of the prepaid account or a separate credit account. Unless §1026.61(a)(4) applies, a card issuer would violate §1026.61(b) if it structures a credit feature as a negative balance on the asset feature of the prepaid account. A prepaid account issuer can use a negative asset balance structure to extend credit on a prepaid account if the prepaid card is not a hybrid prepaid-credit card with respect to that credit as described in §1026.61(a)(4).

61(a)(4) Exception for Credit Extended Through a Negative Balance

1. *Prepaid card that is not a hybrid prepaid-credit card.* i. A prepaid card that is not a hybrid prepaid-credit card as described in §1026.61(a)(4) with respect to credit extended through a negative balance on the asset feature of the prepaid account is not a credit card under this regulation with respect to that credit. A prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account if:

A. The card cannot access credit from a covered separate credit feature under §1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate, though it is permissible for it to access credit from a covered separate credit feature offered by a business partner or from a non-covered separate credit feature as described under §1026.61(a)(2)(ii); and

B. The card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in §1026.61(a)(4)(ii)(A) and (B).

ii. If the conditions of §1026.61(a)(4) are met and the prepaid card can access credit from a covered separate credit feature as defined in §1026.61(a)(2)(i) that is offered by a business partner, the prepaid card is a hybrid prepaid-credit card with respect to the covered separate credit feature pursuant to §1026.61(a)(2)(i) but is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of §1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to §1026.61(a)(2)(ii). If the conditions of §1026.61(a)(4) are met and the prepaid card cannot access credit from any covered separate credit feature as defined in §1026.61(a)(2)(i), the prepaid card is not a hybrid prepaid-credit card with respect to credit extended by a prepaid account issuer through a negative balance on the asset feature of the prepaid account that meets the conditions of §1026.61(a)(4) or with respect to any non-covered separate credit feature pursuant to §1026.61(a)(2)(ii).

iii. Below is an example of when a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account because the conditions set forth in §1026.61(a)(4) have been met.

A. The prepaid card can only access credit extended through a negative balance on the asset feature of the prepaid account in accordance with both the conditions set forth in §1026.61(a)(4)(ii)(A) and (B). The card can access credit from a non-covered separate credit feature as defined in §1026.61(a)(2)(ii) and from a covered separate credit feature as defined in §1026.61(a)(2)(i) offered by a business partner, but cannot access credit for a covered separate credit feature that is offered by a prepaid account issuer or its affiliate.

iv. Below is an example of when a prepaid card is a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account because the conditions set forth in §1026.61(a)(4) have not been met.

A. When there are insufficient or unavailable funds in the asset feature of the prepaid account at the time a transaction is initiated, the card can be used to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature offered by the prepaid account issuer or its affiliate during the authorization phase to complete the transaction so that credit is not extended on the asset feature of the prepaid account. The exception in § 1026.61(a)(4) does not apply because the prepaid card can be used to draw, transfer, or authorize the draw or transfer of credit from a covered separate credit feature defined in § 1026.61(a)(2)(i) that is offered by the prepaid account issuer or its affiliate. The card is a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account pursuant to § 1026.61(a)(3) and with respect to the covered separate credit feature pursuant to § 1026.61(a)(2)(i). In that case, a card issuer has violated § 1026.61(b) because it has structured the credit feature as a negative balance on the asset feature of the prepaid account. *See* § 1026.61(a)(3)(ii) and (b).

v. In the case where a prepaid card is not a hybrid prepaid-credit card with respect to credit extended through a negative balance on the asset feature of the prepaid account because the conditions set forth in § 1026.61(a)(4) are met:

A. The prepaid account issuer is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card when it accesses credit extended through the negative balance on the asset feature of the prepaid account. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(iii) or (iv) because it is not a card issuer under § 1026.2(a)(7) with respect to the prepaid card when it accesses credit extended through the negative balance on the asset feature of the prepaid account. The prepaid account issuer also is not a creditor under § 1026.2(a)(17)(i) with respect to credit extended through the negative balance on the asset feature of the prepaid account as a result of imposing fees on the prepaid account because those fees are not finance charges with respect to that credit. *See* comment 4(b)(11)–1.iii.

Paragraph 61(a)(4)(ii)

Paragraph 61(a)(4)(ii)(A)

1. *Authorization not required for every transaction.* The prepaid account issuer is not required to receive an authorization request for each transaction to comply with § 1026.61(a)(4)(ii)(A). Nonetheless, the prepaid account issuer generally must establish an authorization policy as described in § 1026.61(a)(4)(ii)(A) and have reasonable practices in place to comply with its established policy with respect to the authorization requests it receives. In that case, a prepaid account issuer is deemed to satisfy § 1026.61(a)(4)(ii)(A) even if a negative balance results on the prepaid account when a transaction is settled.

2. *Provisional credit.* A prepaid account issuer may still satisfy the requirements set forth in § 1026.61(a)(4)(ii)(A) even if a negative balance results on the asset feature of the prepaid account because the prepaid account issuer debits the amount of any provisional credit that was previously granted on the prepaid account as specified in Regulation E, 12 CFR 1005.11, so long as the prepaid account issuer otherwise complies with the conditions set forth in § 1026.61(a)(4). For example, under § 1026.61(a)(4), a prepaid account issuer may not impose a fee or charge enumerated under § 1026.61(a)(4)(ii)(B) with respect to this negative balance.

3. *Delayed load cushion.* i. *Incoming fund transfers.* For purposes of § 1026.61(a)(4)(ii)(A)(*2*), cases where the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account include a direct deposit of salary from an employer and a direct deposit of government benefits.

ii. *Consumer requests.* For purposes of § 1026.61(a)(4)(ii)(A)(*2*), cases where the prepaid account issuer has received a request from the consumer to load funds to the prepaid account from a separate asset account include where the consumer, in the course of a transaction, requests a load from a deposit account or uses a debit card to cover the amount of the transaction if there are insufficient funds in the asset feature of the prepaid account to pay for the transaction.

4. *Permitted authorization circumstances are not mutually exclusive.* The two circumstances set forth in § 1026.61(a)(4)(ii)(A)(*1*) and (*2*) are not mutually exclusive. For example, assume a prepaid account issuer has adopted the $10 cushion described in § 1026.61(a)(4)(ii)(A)(*1*), and the delayed load cushion described in § 1026.61(a)(4)(ii)(A)(*2*). Also, assume the prepaid account issuer has received an instruction or confirmation for an incoming electronic fund transfer originated from a separate asset account to load funds to the prepaid account but the prepaid account issuer has not received the funds from the separate asset account. In this case, a prepaid account issuer satisfies § 1026.61(a)(4)(ii)(A) if the amount of a transaction at authorization will not cause the prepaid account balance to become negative at the time of the authorization by more than the requested load amount plus the $10 cushion.

Paragraph 61(a)(4)(ii)(B)

1. *Different terms on different prepaid account programs.* Section 1026.61(a)(4)(ii)(B) does not prohibit a prepaid account issuer from charging different terms on different prepaid account programs. For example, the terms may differ between a prepaid account

program where a covered separate credit feature accessible by a hybrid prepaid-credit card is not offered in connection with any prepaid accounts within the prepaid account program, and a prepaid account program where a covered separate credit feature accessible by a hybrid prepaid-credit card may be offered to some consumers in connection with their prepaid accounts.

Paragraph 61(a)(4)(ii)(B)(1)

1. *Fees or charges covered by §1026.61(a)(4)(ii)(B)(1).* To qualify for the exception in §1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges for opening, issuing, or holding a negative balance on the asset feature, or for the availability of credit, whether imposed on a one-time or periodic basis. Section 1026.61(a)(4)(ii)(B)(*1*) does not include fees or charges to open, issue, or hold the prepaid account where the amount of the fee or charge imposed on the asset feature is not higher based on whether credit might be offered or has been accepted, whether or how much credit the consumer has accessed, or the amount of credit available.

i. The types of fees or charges prohibited by §1026.61(a)(4)(ii)(B)(*1*) include:

A. A daily, weekly, monthly, or other periodic fee assessed each period a prepaid account has a negative balance or is in ''overdraft'' status; and

B. A daily, weekly, monthly or other periodic fee to hold the prepaid account where the amount of the fee that applies each period is higher if the consumer is enrolled in a purchase cushion as described in §1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in §1026.61(a)(4)(ii)(A)(*2*) during that period. For example, assume that a consumer will pay a fee to hold the prepaid account of $10 if the consumer is not enrolled in a purchase cushion as described in §1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in §1026.61(a)(4)(ii)(A)(*2*) during that month, and will pay a fee to hold the prepaid account of $15 if the consumer is enrolled in a purchase cushion or delayed load cushion that period. The $15 charge is a charge described in §1026.61(a)(4)(ii)(B)(*1*) because the amount of the fee to hold the prepaid account is higher based on whether the consumer is participating in the payment cushion or delayed load cushion during that period.

ii. Fees or charges described in §1026.61(a)(4)(ii)(B) do not include:

A. A daily, weekly, monthly, or other periodic fee to hold the prepaid account where the amount of the fee is not higher based on whether the consumer is enrolled in a purchase cushion as described in §1026.61(a)(4)(ii)(A)(*1*) or a delayed load cushion as described in §1026.61(a)(4)(ii)(A)(*2*) during that period, whether or how much credit has been extended during that period, or the amount of credit that is available during that period.

Paragraph 61(a)(4)(ii)(B)(2)

1. *Fees or charges covered by §1026.61(a)(4)(ii)(B)(2).* To qualify for the exception in §1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that will be imposed only when credit is extended on the asset feature or when there is a negative balance on the asset feature.

i. These types of fees or charges include:

A. A fee imposed because the balance on the prepaid account becomes negative;

B. Interest charges attributable to a periodic rate that applies to the negative balance;

C. Any fees for delinquency, default, or a similar occurrences that result from the prepaid account having a negative balance or being in ''overdraft'' status, except that the actual costs to collect the credit may be imposed if otherwise permitted by law; and

D. Late payment fees.

ii. Fees or charges described in §1026.61(a)(4)(ii)(B) do not include:

A. Fees for actual collection costs, including attorney's fees, to collect any credit extended on the prepaid account if otherwise permitted by law. Late payment fees are not considered fees imposed for actual collection costs. *See* comment 61(a)(4)(ii)(B)(*2*)–1.i.D.

Paragraph 61(a)(4)(ii)(B)(3)

1. *Fees or charges covered by §1026.61(a)(4)(ii)(B)(3).* i. To qualify for the exception in §1026.61(a)(4)(ii)(B), the prepaid account issuer may not impose any fees or charges on the asset feature of the prepaid account that are higher when credit is extended on the asset feature or when there is a negative balance on the asset feature. These types of fees or charges include:

A. Transaction fees where the amount of the fee is higher based on whether the transaction accesses only asset funds in the asset feature or accesses credit. For example, a $15 transaction charge is imposed on the asset feature each time a transaction is authorized or paid when there are insufficient or unavailable funds in the asset feature at the time of the authorization or settlement. A $1.50 fee is imposed each time a transaction only accesses funds in the asset feature. The $15 charge is a charge described in §1026.61(a)(4)(ii)(B)(*3*) because the amount of the transaction fee is higher when the transaction accesses credit than the amount of the fee that applies when the transaction accesses only asset funds in the asset feature; and

B. A fee for a service on the prepaid account where the amount of the fee is higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges a higher fee for an ATM balance inquiry requested on the prepaid account if the balance inquiry is requested when there is a negative balance on the asset feature than the amount of fee imposed when there is a positive balance on the asset feature, the balance inquiry fee is a fee described in §1026.61(a)(4)(ii)(B)(*3*) because the amount of the fee is higher based on whether it is imposed when there is a negative balance on the asset feature.

ii. Fees or charges described in §1026.61(a)(4)(ii)(B) do not include:

A. Transaction fees on the prepaid account where the amount of the fee imposed when the transaction accesses credit does not exceed the amount of the fee imposed when the transaction only accesses asset funds in the prepaid account. For example, assume a $1.50 transaction charge is imposed on the prepaid account for each paid transaction that is made with the prepaid card, including transactions that only access asset funds, transactions that take the account balance negative, and transactions that occur when the account balance is already negative. The $1.50 transaction charge imposed on the prepaid account is not a fee described in §1026.61(a)(4)(ii)(B); and

B. A fee for a service on the prepaid account where the amount of the fee is not higher based on whether the service is requested when the asset feature has a negative balance. For example, if a prepaid account issuer charges the same amount of fee for an ATM balance inquiry regardless of whether there is a positive or negative balance on the asset feature, the balance inquiry fee is not a fee described in §1026.61(a)(4)(ii)(B).

Paragraph 61(a)(4)(ii)(C)

1. *Fees or charges not covered by §1026.61(a)(4)(ii)(B).* Under §1026.61(a)(4)(ii)(C), a prepaid account issuer may still satisfy the exception in §1026.61(a)(4) even if it debits fees or charges from the prepaid account when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover those fees or charges at the time they are imposed, so long as those fees or charges are not the type of fees or charges enumerated in §1026.61(a)(4)(ii)(B). A fee or charge not otherwise covered by §1026.61(a)(4)(ii)(B) does not become covered by that provision simply because there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee when it is imposed. For example, assume that a prepaid account issuer imposes a fee for an ATM balance inquiry and the amount of the fee is not higher based on whether credit is extended or whether there is a negative balance on the prepaid account. Also assume that when the fee is imposed, there are insufficient or unavailable funds in the asset feature of the prepaid account to pay the fee. The ATM balance inquiry fee does not become a fee covered by §1026.61(a)(4)(ii)(B) because the fee is debited from the prepaid account balance when there are insufficient or unavailable funds in the asset feature of the prepaid account to cover the fee at the time it is imposed.

61(a)(5) Definitions

Paragraph 61(a)(5)(iii)

1. *Card network or payment network agreements.* A draw, transfer, or authorization of the draw or transfer from a credit feature may be effectuated through a card network or a payment network. However, for purposes of §1026.61(a)(5)(iii), agreements to participate in a card network or payment network themselves do not constitute an ''agreement'' or a ''business, marketing, or promotional agreement or other arrangement'' described in §1026.61(a)(5)(iii)(B) or (C), respectively.

2. *Relationship to prepaid account issuer.* A person (other than a prepaid account issuer or its affiliates) that can extend credit through a separate credit feature will be deemed to have an arrangement with the prepaid account issuer if the person that can extend credit, its service provider, or the person's affiliate has an arrangement with the prepaid account issuer, its service provider such as a program manager, or the issuer's affiliate. In that case, the person that can extend credit will be a business partner of the prepaid account issuer. For example, if the affiliate of the person that can extend credit has an arrangement with the prepaid account issuer's affiliate, the person that can extend credit will be the business partner of the prepaid account issuer.

61(a)(5)(iii)(D) Exception for Certain Credit Card Account Arrangements

1. *When the exception applies.* If the exception in §1026.61(a)(5)(iii)(D) applies, a person that can extend credit through the credit card account is not a business partner of a prepaid account issuer with which it has an arrangement as defined in §1026.61(a)(5)(iii)(A) through (C). Accordingly, where a consumer has authorized his or her prepaid card in accordance with §1026.61(a)(5)(iii)(D) to be linked to the credit card account in such a way as to allow the prepaid card to access the credit card account as described in §1026.61(a)(5)(iii)(D)(*2*), the linked prepaid card is not a hybrid prepaid-credit card with respect to the linked credit card account. Rather, the linked credit card account is a non-covered separate credit feature as discussed in §1026.61(a)(2)(ii). *See* comment 61(a)(2)–5. In

this case, by definition, the linked credit card account will be subject to the credit card rules in this regulation in its own right because it is a credit card account under an open-end (not home-secured) consumer credit plan, pursuant to the condition set forth in §1026.61(a)(5)(iii)(D)(*1*).

Paragraph 61(a)(5)(iii)(D)(1)

1. *Traditional credit card.* For purposes of §1026.61(a)(5)(iii)(D), "traditional credit card" means a credit card that is not a hybrid prepaid-credit card. Thus, the condition in §1026.61(a)(5)(iii)(D)(*1*) is not satisfied if the only credit card that a consumer can use to access the credit card account under an open-end (not home-secured) consumer credit plan is a hybrid prepaid-credit card.

Paragraph 61(a)(5)(iii)(D)(2)

1. *Written request.* Under §1026.61(a)(5)(iii)(D)(*2*), any accountholder on either the prepaid account or the credit card account may make the written request.

Paragraph 61(a)(5)(iii)(D)(4)

1. *Account terms, conditions, or features.* Account terms, conditions, and features subject to §1026.61(a)(5)(iii)(D)(*4*) include, but are not limited to:

i. Interest paid on funds deposited into the prepaid account, if any;

ii. Fees or charges imposed on the prepaid account (see comment 61(a)(5)(iii)(D)(*4*)–3 for additional guidance on this element with regard to load fees);

iii. The type of access device provided to the consumer;

iv. Minimum balance requirements on the prepaid account; or

v. Account features offered in connection with the prepaid account, such as online bill payment services.

2. *The same terms, conditions, and features apply to the consumer's prepaid account.* For the exception in §1026.61(a)(5)(iii)(D) to apply, under §1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must not vary the terms, conditions, and features on the consumer's prepaid account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in §1026.61(a)(5)(iii)(D)(*2*). For example, a prepaid account issuer would not satisfy this condition of §1026.61(a)(5)(iii)(D)(*4*) if it provides on a consumer's prepaid account rewards points or cash back on purchases with the prepaid card where the consumer has authorized a link to the credit card account as discussed above while not providing such rewards points or cash back on the consumer's account if the consumer has not authorized such a linkage.

3. *Example of impermissible variations in load fees.* For the exception in §1026.61(a)(5)(iii)(D) to apply, under §1026.61(a)(5)(iii)(D)(*4*), the prepaid account issuer must apply the same fees to load funds from the credit card account that is linked to the prepaid account as described in §1026.61(a)(5)(iii)(D)(*2*) as it charges for a comparable load on the consumer's prepaid account to access a credit feature offered by a person that is not the prepaid account issuer, its affiliates, or a person with which the prepaid account issuer has an arrangement as described in §1026.61(a)(5)(iii)(A) through (C). For example, a prepaid account issuer would not satisfy this condition of §1026.61(a)(5)(iii)(D)(*4*) if it charges on the consumer's prepaid account $0.50 to load funds in the course of a transaction from a credit card account offered by a card issuer with which the prepaid account issuer has an arrangement, but $1.00 to load funds in the course of a transaction from a credit card account offered by a card issuer with which it does not have an arrangement.

Paragraph 61(a)(5)(iii)(D)(5)

1. *Specified terms and conditions.* For purposes of §1026.61(a)(5)(iii)(D), "specified terms and conditions" on a credit card account means:

i. The terms and conditions required to be disclosed under §1026.6(b), which include pricing terms, such as periodic rates, annual percentage rates, and fees and charges imposed on the credit card account; any security interests acquired under the credit account; claims and defenses rights under §1026.12(c); and error resolution rights under §1026.13;

ii. Any repayment terms and conditions, including the length of the billing cycle, the payment due date, any grace period on the transactions on the account, the minimum payment formula, and the required or permitted methods for making conforming payments on the credit feature; and

iii. The limits on liability for unauthorized credit transactions.

2. *Same specified terms and conditions regardless of whether the credit card account is linked to the prepaid account.* For the exception in §1026.61(a)(5)(iii)(D) to apply, under §1026.61(a)(5)(iii)(D)(*5*), the card issuer must not vary the specified terms and conditions on the consumer's credit card account depending on whether the consumer has authorized linking the prepaid card to the credit card account as described in §1026.61(a)(5)(iii)(D)(*2*). The following are examples of circumstances in which a card issuer would not meet the condition described above:

i. The card issuer structures the credit card account as a "charge card account" (where no periodic rate is used to compute a finance charge on the credit card account) if the credit feature is linked to the prepaid card as described in §1026.61(a)(5)(iii)(D)(*2*), but applies a periodic rate to compute a finance charge on the consumer's account (and thus does not use a charge card account structure) if there is no such link. See §1026.2(a)(15)(iii) for the definition of ''charge card.''

ii. The card issuer imposes a $50 annual fee on a consumer's credit card account if the credit feature is linked to the prepaid card as described in §1026.61(a)(5)(iii)(D)(*2*), but does not impose an annual fee on the consumer's credit card account if there is no such link.

3. *Same specified terms and conditions regardless of whether credit is accessed by the prepaid card or the traditional credit card.* To satisfy the condition of §1026.61(a)(5)(iii)(D)(*1*), the credit card account must be a credit card account under an open-end (not home-secured) consumer credit plan that a consumer can access through a traditional credit card. As explained in comment 61(a)(5)(iii)(D)(*1*)–1, for purposes of §1026.61(a)(5)(iii)(D), ''traditional credit card'' means a credit card that is not a hybrid prepaid-credit card. For the exception in §1026.61(a)(5)(iii)(D) to apply, under §1026.61(a)(5)(iii)(D)(*5*), a card issuer must not vary the specified terms and conditions on the credit card account when a consumer authorizes linking the account with the prepaid card as described in §1026.61(a)(5)(iii)(D)(*2*) depending on whether a particular credit extension from the credit card account is accessed by the prepaid card or by the traditional credit card.

i. The following examples are circumstances in which a card issuer would not meet the condition of §1026.61(a)(5)(iii)(D)(*5*) described above:

A. The card issuer considers transactions using the traditional credit card to obtain goods or services from an unaffiliated merchant of the card issuer as purchase transactions with certain annual percentage rates (APRs), fees, and a grace period that applies to those purchase transactions, but treats credit extensions as cash advances that are subject to different APRs, fees, grace periods, and other specified terms and conditions where the prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to obtain goods or services from an unaffiliated merchant of the card issuer.

B. The card issuer generally treats one-time transfers of credit using the credit card account number to asset accounts as cash advance transactions with certain APRs and fees, but treats one-time transfers of credit using the prepaid card to the prepaid account as purchase transactions that are subject to different APRs and fees.

ii. To apply the same rights under §1026.12(c) regarding claims and defenses applicable to use of a credit card to purchase property or services, the card issuer must treat an extension of credit as a credit card transaction to purchase property or services where a prepaid card is used to draw, transfer, or authorize the draw or transfer of credit from the linked credit card account in the course of authorizing, settling, or otherwise completing transactions conducted with the prepaid card to purchase property or services and provide the same rights under §1026.12(c) as it applies to property or services purchased with the traditional credit card. This includes situations where a consumer uses a prepaid card to make a purchase to obtain property or services from a merchant and credit is transferred from the linked credit card account in the course of authorizing, settling, or otherwise completing the prepaid transaction to make the purchase. For a transaction where a prepaid card is used to obtain property or services from a merchant and the transaction is partially paid with funds from the asset feature of the prepaid account, and partially paid with credit from the linked credit card account, the amount of the purchase transaction that is funded by credit would be subject to this guidance. A card issuer is not required to provide the rights under §1026.12(c) with respect to the amount of the transaction funded from the prepaid account.

iii. To apply the same limits on liability for unauthorized extensions of credit from the credit card account using the prepaid card as it applies to unauthorized extensions of credit from the credit card account using the traditional credit card, the card issuer must treat an extension of credit accessed by the prepaid card as a credit card transaction for purposes of the limits on liability for unauthorized extensions of credit set forth in §1026.12(b) and impose the same liability under §1026.12(b) to this credit extension as it applies to unauthorized transactions using the traditional credit card.

Paragraph 61(a)(5)(iv)

1. *Applicability of credit feature definition.* The definition of credit feature set forth in §1026.61(a)(5)(iv) only defines that term for purposes of this regulation in relation to credit in connection with a prepaid account or prepaid card. This definition does not impact when an account, subaccount or negative balance is a credit feature under the regulation with respect to credit in relation to a checking account or other transaction account that is not a prepaid account, or a debit card. *See, e.g.,* comments 2(a)(15)–2.ii.A and 4(b)(2)–1 for where the term credit feature is used in relation to a debit card or asset account other than a prepaid account.

2. *Asset account other than a prepaid account.* A credit feature for purposes of §1026.61(a)(5)(iv) does not include an asset account other than a prepaid account that has

an attached overdraft feature. For example, assume that funds are loaded or transferred to a prepaid account from an asset account (other than a prepaid account) on which an overdraft feature is attached. The asset account is not a credit feature under §1026.61(a)(5)(iv) even if the load or transfer of funds to the prepaid account triggers the overdraft feature that is attached to the asset account.

Paragraph 61(a)(5)(vii)

1. *Definition of prepaid card.* The term ''prepaid card'' in §1026.61(a)(5)(vii) includes any card, code, or other device that can be used to access a prepaid account, including a prepaid account number or other code.

61(b) Structure of Credit Features Accessible by Hybrid Prepaid-Credit Cards

1. *Credit subaccount on a prepaid account.* If a credit feature that is accessible by a hybrid prepaid-credit card is structured as a subaccount of the prepaid account, the credit feature must be set up as a separate balance on the prepaid account such that there are at least two balances on the prepaid account—the asset account balance and the credit account balance.

2. *Credit extended on a credit subaccount or a separate credit account.* Under §1026.61(b), with respect to a credit feature that is accessed by a hybrid prepaid-credit card, a card issuer at its option may structure the credit feature as a separate credit feature, either as a subaccount on the prepaid account that is separate from the asset feature or as a separate credit account. The separate credit feature would be a covered separate credit feature accessible by a hybrid prepaid-credit card under §1026.61(a)(2)(i). Regardless of whether the card issuer is structuring its covered separate credit feature as a subaccount of the prepaid account or as a separate credit account:

i. If at the time a prepaid card transaction is initiated there are insufficient or unavailable funds in the asset feature of the prepaid account to complete the transaction, credit must be drawn, transferred or authorized to be drawn or transferred, from the covered separate credit feature at the time the transaction is authorized. The card issuer may not allow the asset feature on the prepaid account to become negative and draw or transfer the credit from the covered separate credit feature at a later time, such as at the end of the day. The card issuer must comply with the applicable provisions of this regulation with respect to the credit extension from the time the prepaid card transaction is authorized.

ii. For transactions where there are insufficient or unavailable funds in the asset feature of the prepaid account to cover that transaction at the time it settles and the prepaid transaction either was not authorized in advance or the transaction was authorized and there were sufficient or available funds in the prepaid account at the time of authorization to cover the transaction, credit must be drawn from the covered separate credit feature to settle these transactions. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions of this regulation from the time the transaction is settled.

iii. If a negative balance would result on the asset feature in circumstances other than those described in comment 61(b)–2.i and ii, credit must be drawn from the covered separate credit feature to avoid the negative balance. The card issuer may not allow the asset feature on the prepaid account to become negative. The card issuer must comply with the applicable provisions in this regulation from the time credit is drawn from the covered separate credit feature. For example, assume that a fee for an ATM balance inquiry is imposed on the prepaid account when there are insufficient or unavailable funds to cover the amount of the fee when it is imposed. Credit must be drawn from the covered separate credit feature to avoid a negative balance.

61(c) Timing Requirement for Solicitation or Application With Respect to Hybrid Prepaid-Credit Cards

1. *Meaning of registration of a prepaid card or prepaid account.* A prepaid card or prepaid account is registered, such that the 30-day timing requirement required by §1026.61(c) begins, when the prepaid account issuer successfully completes its collection of consumer identifying information and identity verification in accordance with the requirements of applicable Federal and state law. The beginning of the required 30-day timing requirement is triggered by successful completion of collection of consumer identifying information and identity verification, not by the consumer's mere purchase or obtaining of the card. With respect to a prepaid account for which customer identification and verification are completed before the account is opened, the 30-day timing requirement begins on the day the prepaid account is opened.

2. *Unsolicited issuance of credit cards and disclosures related to applications or solicitations for credit or charge card accounts.* See §1026.12(a)(1) and comment 12(a)(1)–7.ii for additional rules that apply to the addition of a credit card or charge card account to a previously-issued prepaid account. See also §1026.60 and related commentary for disclosures that generally must be provided on or with applications or solicitations to open a credit or charge card account.

3. *Replacement or substitute cards.* A card issuer is not required to comply with

§1026.61(c) when a hybrid prepaid-credit card is permitted to be replaced, or substituted, for another hybrid prepaid-credit card without a request or application under §1026.12(a)(2) and related commentary. For example, §1026.61(c) does not apply to situations where a prepaid account or credit feature that is accessible by a hybrid prepaid-credit card is replaced because of security concerns and a new hybrid prepaid-credit card is issued to access the new prepaid account or covered separate credit feature without a request or application under §1026.12(a)(2).

APPENDIX A—EFFECT ON STATE LAWS

1. *Who may make requests.* Appendix A sets forth the procedures for preemption determinations. As discussed in §1026.28, which contains the standards for preemption, a request for a determination of whether a state law is inconsistent with the requirements of chapters 1, 2, or 3 may be made by creditors, states, or any interested party. However, only states may request and receive determinations in connection with the fair credit billing provisions of chapter 4.

APPENDIX B—STATE EXEMPTIONS

1. *General.* Appendix B sets forth the procedures for exemption applications. The exemption standards are found in §1026.29 and are discussed in the commentary to that section.

APPENDIX C—ISSUANCE OF OFFICIAL INTERPRETATIONS

1. *General.* This commentary is the vehicle for providing official interpretations. Individual interpretations generally will not be issued separately from the commentary.

APPENDIX D—MULTIPLE-ADVANCE CONSTRUCTION LOANS

1. *General rule.* Appendix D provides a special procedure that creditors may use, at their option, to estimate and disclose the terms of multiple-advance construction loans when the amounts or timing of advances is unknown at consummation of the transaction. This appendix reflects the approach taken in §1026.17(c)(6)(ii), which permits creditors to provide separate or combined disclosures for the construction period and for the permanent financing, if any; *i.e.*, the construction phase and the permanent phase may be treated as one transaction or more than one transaction. appendix D may also be used in multiple-advance transactions other than construction loans, when the amounts or timing of advances is unknown at consummation.

2. *Variable-rate multiple-advance loans.* The hypothetical disclosure required in variable-rate transactions by §1026.18(f)(1)(iv) is not required for multiple-advance loans disclosed pursuant to appendix D, part I.

3. *Calculation of the total of payments.* When disclosures are made pursuant to appendix D, the total of payments may reflect either the sum of the payments or the sum of the amount financed and the finance charge.

4. *Annual percentage rate.* Appendix D does not require the use of Volume I of the Bureau's Annual Percentage Rate Tables for calculation of the annual percentage rate. Creditors utilizing appendix D in making calculations and disclosures may use other computation tools to determine the estimated annual percentage rate, based on the finance charge and payment schedule obtained by use of the appendix.

5. *Interest reserves.* In a multiple-advance construction loan, a creditor may establish an ''interest reserve'' to ensure that interest is paid as it accrues by designating a portion of the loan to be used for paying the interest that accrues on the loan. An interest reserve is not treated as a prepaid finance charge, whether the interest reserve is the same as or different from the estimated interest figure calculated under appendix D.

i. If a creditor permits a consumer to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under appendix D.

ii. If a creditor requires the establishment of an interest reserve and automatically deducts interest payments from the reserve amount rather than allow the consumer to make interest payments as they become due, the fact that interest will accrue on those interest payments as well as the other loan proceeds must be reflected in the calculations and disclosures. To reflect the effects of such compounding, a creditor should first calculate interest on the commitment amount (exclusive of the interest reserve) and then add the figure obtained by assuming that one-half of that interest is outstanding at the contract interest rate for the entire construction period. For example, using the example shown under paragraph A, part I of appendix D, the estimated interest would be $1,117.68 ($1093.75 plus an additional $23.93 calculated by assuming half of $1093.75 is outstanding at the contract interest rate for the entire construction period), and the estimated annual percentage rate would be 21.18%.

6. *Relation to §1026.18(s).* A creditor must disclose an interest rate and payment summary table for certain transactions secured by a dwelling, pursuant to §1026.18(s), instead of the general payment schedule required by §1026.18(g) or the projected payments table required by §§1026.37(c) and 1026.38(c). Accordingly, some home construction loans that are secured by a dwelling are subject to §1026.18(s) and not §1026.18(g). *See* comment app. D–7 for a discussion of transactions that

are subject to §§1026.37 and 1026.38. Under §1026.17(c)(6)(ii), when a multiple-advance construction loan may be permanently financed by the same creditor, the construction phase and the permanent phase may be treated as either one transaction or more than one transaction. Following are illustrations of the application of appendix D to transactions subject to §1026.18(s), under each of these two alternatives:

i. If a creditor uses appendix D and elects pursuant to §1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §1026.18(s). Under §1026.18(s), the creditor must disclose the applicable interest rates and corresponding periodic payments during the construction phase in an interest rate and payment summary table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments "in disclosing the payment schedule under §1026.18(g)" does not apply because the transaction is governed by §1026.18(s) rather than §1026.18(g). Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose a balloon payment, pursuant to §1026.18(s)(5).

ii. On the other hand, if the creditor elects to disclose the construction and permanent phases as a single transaction, where interest is payable on the amount actually advanced for the time it is outstanding, the construction phase must be disclosed pursuant to appendix D, part II.C.1, which provides that the creditor shall disclose the repayment schedule without reflecting the number or amounts of payments of interest only that are made during the construction phase. Appendix D also provides, however, that creditors must disclose (outside of the table) the fact that interest payments must be made and the timing of such payments. The interest rate and payment summary table disclosed under §1026.18(s) in such cases must reflect only the permanent phase of the transaction. Therefore, in determining the rates and payments that must be disclosed in the columns of the table, creditors should apply the requirements of §1026.18(s) to the permanent phase only. For example, under §1026.18(s)(2)(i)(A) or §1026.18(s)(2)(i)(B)*(1)*, as applicable, the creditor should disclose the interest rate corresponding to the first installment due under the permanent phase and not any rate applicable during the construction phase.

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

i. *Loan term.* A. *Disclosure as single transaction.* If the construction and permanent financing are disclosed as a single transaction, the loan term disclosed is the total combined term of the construction period and the permanent period. For example, if the term of the construction financing is 12 months and the term of the permanent financing is 30 years, and the two phases are disclosed as a single transaction, the loan term disclosed is 31 years.

B. *Term of permanent financing.* The loan term of the permanent financing is counted from the date that interest for the permanent financing periodic payments begins to accrue, regardless of when the permanent phase is disclosed.

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

B. *Combined construction-permanent disclosure.* If a single, combined construction-permanent disclosure is provided, the time period of the "Interest Only" feature that is disclosed as part of the product disclosure under §§1026.37(a)(10) and 1026.38(a)(5)(iii) is the full term of the interest-only construction financing plus any interest-only period for the permanent financing. For example, the product disclosure for a single disclosure, fixed rate, construction-permanent loan with a 12 month interest-only construction phase where the interest rate is not subject to modification upon conversion to the permanent phase is "1 Year Interest Only, Fixed Rate." If the first year of the permanent phase in this example also has a 12 month interest-only period, the product disclosure is "2 Year Interest Only, Fixed Rate."

C. *Product when interest rate at consummation not known.* If the interest rate for the permanent phase is not known at consummation for a construction-permanent loan using a single, combined construction-permanent disclosure or using separate disclosures for the permanent phase, the creditor shall disclose the loan product under §§1026.37(a)(10) and 1026.38(a)(5)(iii) as "Adjustable Rate." If the interest rate may increase under the terms of the legal obligation from the disclosures provided at consummation, the loan product description is ''Adjustable Rate'' in such cases, even if the interest rate will be fixed for the term of the permanent phase once it is set.

iii. *Interest rate.* If the permanent financing has an adjustable rate at consummation and separate disclosures are provided, the rate disclosed for the permanent financing is the fully-indexed rate pursuant to §1026.37(b)(2) and its commentary. If the permanent financing has a fixed rate that will not be adjusted when the construction phase converts to the permanent phase, that fixed rate is used for disclosure purposes. If the permanent financing has a rate that may adjust when the construction phase converts to the permanent phase, the permanent financing has an adjustable rate. If the legal obligation for a loan secured by the consumer's principal dwelling provides that the permanent financing interest rate may adjust when the construction financing converts to permanent financing, and such adjustment to the interest rate results in a corresponding adjustment to the payment, the creditor provides the disclosures pursuant to §1026.20(c), but not (d), if the interest rate for the permanent phase will be fixed after the conversion.

iv. *Increase in periodic payment.* If the amounts or timing of advances is unknown at or before consummation and the appendix D assumption that applies if interest is payable only on the amount advanced for the time it is outstanding is used to calculate the periodic payment:

A. A creditor discloses ''YES'' as the answer to ''Can this amount increase after closing?'' pursuant to §1026.37(b)(6)(iii) whether the creditor provides separate construction disclosures or combined construction-permanent disclosures, even though calculation of the construction financing periodic payments using the assumptions in appendix D produces interest-only periodic payments that are equal in amount.

B. A creditor that discloses ''YES'' as the answer to ''Can this amount increase after closing?'' pursuant to §1026.37(b)(6)(iii) may use months or years for the §1026.37(b)(6)(iii) disclosures, consistent with comment 37(b)(6)–1. For example, for a 10-month construction loan, the first §1026.37(b)(6)(iii) disclosure bullet may disclose, ''Adjusts every mo. starting in mo. 1'' and the second §1026.37(b)(6)(iii) disclosure bullet may disclose, ''Can go as high as $[insert maximum possible periodic principal and interest payment] in year 1''. The calculation of the maximum possible periodic principal and interest payment disclosed is based on the maximum principal balance that could be outstanding during the construction phase. As part of the ''First Change/Amount'' disclosure in the ''Adjustable Payment (AP) Table'' pursuant to §1026.37(i)(5)(i), the creditor may omit and leave blank the amount or range corresponding to the first periodic principal and interest payment that may change. In such cases, the creditor must still disclose the timing of the first change, which is the number of the earliest possible payment (*e.g.*, 1st payment) that may change under the terms of the legal obligation.

C. When separate construction disclosures or the combined construction-permanent disclosures are provided for adjustable-rate construction financing, a creditor provides the §1026.37(b)(6)(iii) disclosures reflecting changes that are due to changes in the interest rate and changes that are due to changes in the total amount advanced. Such a creditor discloses ''YES'' as the answer to ''Can this amount increase after closing?'' pursuant to §1026.37(b)(6), because the initial periodic payment may increase based upon an increase in the interest rate in addition to a change based on the total amount advanced. Such a creditor also discloses a reference to the adjustable payment table required by §1026.37(i), disclosed as provided in comment app. D–7.iv.B, because that disclosure reflects both a change due to a change in the total amount advanced, which is a change to the periodic principal and interest payment that is not based on an adjustment to the interest rate, as well as the fact that there are interest-only payments. Such a creditor also includes a reference to the adjustable interest rate table required by §1026.37(j) because that disclosure reflects a change due to a change in the interest rate.

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

A. If a creditor uses appendix D and elects pursuant to §1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §§1026.37(c) and 1026.38(c). Under §§1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments ''in disclosing the payment schedule under §1026.18(g)'' does not apply because the transaction is governed by §§1026.37(c) and 1026.38(c) rather than §1026.18(g). If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumptions in appendix D, part I.A.1. Also, because the construction phase is being disclosed as a separate transaction and its periodic payments do not repay the principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), unless the transaction has negative amortization, interest-only, or step payment features, consistent with the requirement at §1026.37(a)(10)(iii). In addition, the creditor must provide the balloon payment disclosures pursuant to §§1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) and disclose the balloon payment in the projected payments table.

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

C. Consistent with comments 37(c)(2)(ii)–1 and 37(c)(2)(iii)–1, when the loan is disclosed as one transaction and only the terms of the legal obligation for the permanent phase require mortgage insurance or escrow, the way the creditor discloses the escrow and mortgage insurance depends on whether the first column of the projected payments table exclusively discloses the construction phase. If the first column of the projected payments table exclusively discloses the construction phase, the creditor discloses ''0'' in the first column of the projected payments table for mortgage insurance and a hyphen or dash in the first column of the projected payments table for escrow. If the first column discloses both the construction phase and the permanent phase payments, the amount of the mortgage insurance premium or escrow payment (if any) for the permanent phase is disclosed in the first column.

vi. *Disclosure of construction costs.*

A. Construction costs are the costs of improvements to be made to the property that the consumer contracts for in connection with the financing transaction and that will be paid in whole or in part with loan proceeds.

B. On the Loan Estimate, a creditor factors construction costs into the funds for borrower calculation under §1026.37(h)(1)(v). Because these amounts are disclosed under §1026.38(j)(1)(v) on the Closing Disclosure, they are included in existing debt that is factored into the funds for borrower calculation under §1026.37(h)(1)(v). Comment 37(h)(1)(v)–2 explains that the total amount of all existing debt being satisfied in the transaction that is used in the funds for borrower calculation is the sum of the amounts that will be disclosed on the Closing Disclosure in the summaries of transactions table under §1026.38(j)(1)(ii), (iii), and (v), as applicable. For transactions without a seller or for simultaneous subordinate financing, construction costs may instead be disclosed under §1026.37(h)(2)(iii) in the optional alternative calculating cash to close table.

C. A creditor discloses the amount of construction costs on the Closing Disclosure under §1026.38(j)(1)(v) in the summaries of transactions table and factors them into the down payment/funds from borrower and funds for borrower calculation under §1026.38(i)(4) and (6). For transactions without a seller or for simultaneous subordinate financing, construction costs may instead be disclosed under §1026.38(t)(5)(vii)(B) in the optional alternative calculating cash to close table.

D. A creditor in some cases places a portion of a construction loan's proceeds in a reserve or other account at consummation. The amount of such an account, at the creditor's option, may be disclosed separately from other construction costs under §1026.38(j)(1)(v) if space permits, or may be included in the amount disclosed for construction costs under §1026.38(j)(1)(v). If the creditor chooses to disclose separately the amount of loan proceeds placed in a reserve or other account at consummation, the creditor may disclose the amount as a separate itemized cost, along with an itemized cost for the balance of the construction costs, in accordance with the disclosure and calculation options described in comments app. D–7.vi–B and C. The amount may be labeled with any accurate term, so long as any label the creditor uses is in accordance with the ''clear and conspicuous'' standard explained at comment 37(f)(5)–1. If the amount placed in an account is disclosed separately, the balance of construction costs disclosed excludes the amount placed in an account to avoid double counting.

vii. *Construction loan inspection and handling fees.* Comment 4(a)–1.ii.A provides that inspection and handling fees, including draw fees, for the staged disbursement of construction loan proceeds are part of the finance charge. Comment 37(f)–3 states that such inspection and handling fees are loan costs associated with the transaction for purposes of §1026.37(f) and, as such, must be disclosed accurately as part of the Loan Estimate. These fees must also be disclosed accurately as part of the Closing Disclosure. Comment 38(f)–2 refers to explanations under comments 37(f)–3 and 37(f)(6)–3 for making these disclosures. Comment 37(f)–3 explains that, if such fees are collected at or before consummation, they are disclosed in the loan costs table. If such fees will be collected after consummation, they are disclosed in a separate addendum and are not counted for purposes of the calculating cash to close table. Comment 37(f)(6)–3 explains how to disclose inspection and handling fees that will be collected after consummation in an addendum. Under comment 38(f)–2, the same explanation applies to an addendum used for disclosing such fees in the Closing Disclosure. Comment 37(l)(1)–1 explains that the amount disclosed under §1026.37(l)(1)(i) is the sum of principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the 60th month after the due date of the first periodic payment, and that loan costs are those costs disclosed under §1026.37(f). Construction loan inspection and handling fees are loan costs that must be included in the sum of the ''In 5 Years'' disclosure under §1026.37(l)(1) and the ''Total of Payments'' disclosure under §1026.38(o)(1) because they are disclosed under §1026.37(f), even when they are disclosed on an addendum.

APPENDIX F—OPTIONAL ANNUAL PERCENTAGE RATE COMPUTATIONS FOR CREDITORS OFFERING OPEN-END CREDIT PLANS SECURED BY A CONSUMER'S DWELLING

1. *Daily rate with specific transaction charge.* If the finance charge results from a charge relating to a specific transaction and the application of a daily periodic rate, see comment 14(c)(3)–2 for guidance on an appropriate calculation method.

APPENDICES G AND H—OPEN-END AND CLOSED-END MODEL FORMS AND CLAUSES

1. *Permissible changes.* Although use of the model forms and clauses is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to those disclosures. Creditors may make certain changes in the format or content of the forms and clauses and may delete any disclosures that are inapplicable to a transaction or a plan without losing the Act's protection from liability, except formatting changes may not be made to model forms and samples in H–18, H–19, H–20, H–21, H–22, H–23, H–24, H–25, H–26, H–27, H–28, G–2(A), G–3(A), G–4(A), G–10(A)–(E), G–17(A)–(D), G–18(A) (except as permitted pursuant to §1026.7(b)(2)), G–18(B)–(C), G–19, G–20, and G–21, or to the model clauses in H–4(E), H–4(F), H–4(G), and H–4(H). Creditors may modify the heading of the second column shown in Model Clause H–4(H) to read ''first adjustment'' or ''first increase,'' as applicable, pursuant to §1026.18(s)(2)(i)(C). The rearrangement of the model forms and clauses may not be so extensive as to affect the substance, clarity, or meaningful sequence of the forms and clauses. Creditors making revisions with that effect will lose their protection from civil liability. Except as otherwise specifically required, acceptable changes include, for example:

i. Using the first person, instead of the second person, in referring to the borrower.

ii. Using ''borrower'' and ''creditor'' instead of pronouns.

iii. Rearranging the sequences of the disclosures.

iv. Not using bold type for headings.

v. Incorporating certain State ''plain English'' requirements.

vi. Deleting inapplicable disclosures by whiting out, blocking out, filling in ''N/A'' (not applicable) or ''0,'' crossing out, leaving blanks, checking a box for applicable items, or circling applicable items. (This should permit use of multipurpose standard forms.)

vii. Using a vertical, rather than a horizontal, format for the boxes in the closed-end disclosures.

2. *Debt-cancellation coverage.* This part does not authorize creditors to characterize debt-cancellation fees as insurance premiums for purposes of this part. Creditors may provide a disclosure that refers to debt cancellation or debt suspension coverage whether or not the coverage is considered insurance. Creditors may use the model credit insurance disclosures only if the debt cancellation coverage constitutes insurance under state law.

APPENDIX G—OPEN-END MODEL FORMS AND CLAUSES

1. *Models G–1 and G–1(A).* The model disclosures in G–1 and G–1(A) (different balance computation methods) may be used in both the account-opening disclosures under §1026.6 and the periodic disclosures under §1026.7. As is clear from the models given, ''shorthand'' descriptions of the balance computation methods are not sufficient, except where §1026.7(b)(5) applies. For creditors using model G–1, the phrase ''a portion of'' the finance charge should be included if the total finance charge includes other amounts, such as transaction charges, that are not due to the application of a periodic rate. If unpaid interest or finance charges are subtracted in calculating the balance, that fact

must be stated so that the disclosure of the computation method is accurate. Only model G–1(b) contains a final sentence appearing in brackets, which reflects the total dollar amount of payments and credits received during the billing cycle. The other models do not contain this language because they reflect plans in which payments and credits received during the billing cycle are subtracted. If this is not the case, however, the language relating to payments and credits should be changed, and the creditor should add either the disclosure of the dollar amount as in model G–1(b) or an indication of which credits (disclosed elsewhere on the periodic statement) will not be deducted in determining the balance. (Such an indication may also substitute for the bracketed sentence in model G–1(b).) (See the commentary to §1026.7(a)(5) and (b)(5).) For open-end plans subject to the requirements of §1026.40, creditors may, at their option, use the clauses in G–1 or G–1(A).

2. *Models G–2 and G–2(A).* These models contain the notice of liability for unauthorized use of a credit card. For home-equity plans subject to the requirements of §1026.40, at the creditor's option, a creditor either may use G–2 or G–2(A). For open-end plans not subject to the requirements of §1026.40, creditors properly use G–2(A).

3. *Models G–3, G–3(A), G–4 and G–4(A).*

i. These set out models for the long-form billing-error rights statement (for use with the account-opening disclosures and as an annual disclosure or, at the creditor's option, with each periodic statement) and the alternative billing-error rights statement (for use with each periodic statement), respectively. For home-equity plans subject to the requirements of §1026.40, at the creditor's option, a creditor either may use G–3 or G–3(A), and for creditors that use the short form, G–4 or G–4(A). For open-end (not home-secured) plans that are not subject to the requirements of §1026.40, creditors properly use G–3(A) and G–4(A). Creditors must provide the billing-error rights statements in a form substantially similar to the models in order to comply with the regulation. The model billing-rights statements may be modified in any of the ways set forth in the first paragraph to the commentary on Appendices G and H. The models may, furthermore, be modified by deleting inapplicable information, such as:

A. The paragraph concerning stopping a debit in relation to a disputed amount, if the creditor does not have the ability to debit automatically the consumer's savings or checking account for payment.

B. The rights stated in the special rule for credit card purchases and any limitations on those rights.

ii. The model billing rights statements also contain optional language that creditors may use. For example, the creditor may:

A. Include a statement to the effect that notice of a billing error must be submitted on something other than the payment ticket or other material accompanying the periodic disclosures.

B. Insert its address or refer to the address that appears elsewhere on the bill.

C. Include instructions for consumers, at the consumer's option, to communicate with the creditor electronically or in writing.

iii. Additional information may be included on the statements as long as it does not detract from the required disclosures. For instance, information concerning the reporting of errors in connection with a checking account may be included on a combined statement as long as the disclosures required by the regulation remain clear and conspicuous.

4. *Models G–5 through G–9.* These models set out notices of the right to rescind that would be used at different times in an open-end plan. The last paragraph of each of the rescission model forms contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, when the notice or material disclosures are delivered late or when the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional. See the commentary to §1026.2(a)(25) regarding the specificity of the security interest disclosure for model form G–7.

5. *Model G–10(A), samples G–10(B) and G–10(C), model G–10(D), sample G–10(E), model G–17(A), and samples G–17(B), 17(C) and 17(D).* i. Model G–10(A) and Samples G–10(B) and G–10(C) illustrate, in the tabular format, the disclosures required under §1026.60 for applications and solicitations for credit cards other than charge cards. Model G–10(D) and Sample G–10(E) illustrate the tabular format disclosure for charge card applications and solicitations and reflect the disclosures in the table. Model G–17(A) and Samples G–17(B), G–17(C) and G–17(D) illustrate, in the tabular format, the disclosures required under §1026.6(b)(2) for account-opening disclosures.

ii. Except as otherwise permitted, disclosures must be substantially similar in sequence and format to Models G–10(A), G–10(D) and G–17(A). While proper use of the model forms will be deemed in compliance with the regulation, card issuers and other creditors offering open-end (not home-secured) plans are permitted to disclose the annual percentage rates for purchases, cash advances, or balance transfers in the same row in the table for any transaction types for which the issuer or creditor charges the same annual percentage rate. Similarly, card issuer and other creditors offering open-end (not home-secured) plans are permitted to disclose fees of the same amount in the same row if the fees are in the same category. Fees in different categories may not be disclosed in the same row. For example, a transaction fee and a penalty fee that are of the same amount may not be disclosed in the same row. Card issuers and other creditors offering open-end (not home-secured) plans are also permitted to use headings other than those in the forms if they are clear and concise and are substantially similar to the headings contained in model forms, with the following exceptions. The heading ''penalty APR'' must be used when describing rates that may increase due to default or delinquency or as a penalty, and in relation to required insurance, or debt cancellation or suspension coverage, the term ''required'' and the name of the product must be used. (See also §§1026.60(b)(5) and 1026.6(b)(2)(v) for guidance on headings that must be used to describe the grace period, or lack of grace period, in the disclosures required under §1026.60 for applications and solicitations for credit cards other than charge cards, and the disclosures required under §1026.6(b)(2) for account-opening disclosures, respectively.)

iii. Models G–10(A) and G–17(A) contain two alternative headings (''Minimum Interest Charge'' and ''Minimum Charge'') for disclosing a minimum interest or fixed finance charge under §§1026.60(b)(3) and 1026.6(b)(2)(iii). If a creditor imposes a minimum charge in lieu of interest in those months where a consumer would otherwise incur an interest charge but that interest charge is less than the minimum charge, the creditor should disclose this charge under the heading ''Minimum Interest Charge'' or a substantially similar heading. Other minimum or fixed finance charges should be disclosed under the heading ''Minimum Charge'' or a substantially similar heading.

iv. Models G–10(A), G–10(D) and G–17(A) contain two alternative headings (''Annual Fees'' and ''Set-up and Maintenance Fees'') for disclosing fees for issuance or availability of credit under §1026.60(b)(2) or §1026.6(b)(2)(ii). If the only fee for issuance or availability of credit disclosed under §1026.60(b)(2) or §1026.6(b)(2)(ii) is an annual fee, a creditor should use the heading ''Annual Fee'' or a substantially similar heading to disclose this fee. If a creditor imposes fees for issuance or availability of credit disclosed under §1026.60(b)(2) or §1026.6(b)(2)(ii) other than, or in addition to, an annual fee, the creditor should use the heading ''Set-up and Maintenance Fees'' or a substantially similar heading to disclose fees for issuance or availability of credit, including the annual fee.

v. Although creditors are not required to use a certain paper size in disclosing the §§1026.60 or 1026.6(b)(1) and (2) disclosures, samples G–10(B), G–10(C), G–17(B), G–17(C) and G–17(D) are designed to be printed on an $8\frac{1}{2} \times 14$ inch sheet of paper. A creditor may use a smaller sheet of paper, such as $8\frac{1}{2} \times 11$ inch sheet of paper. If the table is not provided on a single side of a sheet of paper, the creditor must include a reference or references, such as ''SEE BACK OF PAGE for more important information about your account.'' at the bottom of each page indicating that the table continues onto an additional page or pages. A creditor that splits the table onto two or more pages must disclose the table on consecutive pages and may not include any intervening information between portions of the table. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Arial font style, except for the purchase annual percentage rate which is shown in 16-point type).

B. Sufficient spacing between lines of the text.

C. Adequate spacing between paragraphs when several pieces of information were included in the same row of the table, as appropriate. For example, in the samples in the row of the tables with the heading ''APR for Balance Transfers,'' the forms disclose two components: The applicable balance transfer rate and a cross reference to the balance transfer fee. The samples show these two components on separate lines with adequate space between each component. On the other hand, in the samples, in the disclosure of the late payment fee, the forms disclose two components: The late payment fee, and the cross reference to the penalty rate. Because the disclosure of both these components is short, these components are disclosed on the same line in the tables.

D. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type.

E. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

F. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

vi. While the Bureau is not requiring issuers to use the above formatting techniques in presenting information in the table (except for the 10-point and 16-point font requirement), the Bureau encourages issuers to consider these techniques when deciding how to disclose information in the table, to ensure that the information is presented in a readable format.

vii. Creditors are allowed to use color, shading and similar graphic techniques with respect to the table, so long as the table remains substantially similar to the model and sample forms in appendix G.

viii. Models G–10(A) and G–17(A) contain rows in the table with the prescribed language, ''For Credit Card Tips from the Consumer Financial Protection Bureau'' and calling for a ''[Reference to the Bureau's Web site]'' next to that language. Until January 1, 2013, creditors may substitute ''For Credit Card Tips from the Federal Reserve Board'' for these two model forms' prescribed language and may provide a reference to the Federal Reserve Board's Web site rather than the Bureau's Web site.

6. *Model G–11.* Model G–11 contains clauses that illustrate the general disclosures required under §1026.60(e) in applications and solicitations made available to the general public.

7. *Models G–13(A) and G–13(B).* These model forms illustrate the disclosures required under §1026.9(f) when the card issuer changes the entity providing insurance on a credit card account. Model G–13(A) contains the items set forth in §1026.9(f)(3) as examples of significant terms of coverage that may be affected by the change in insurance provider. The card issuer may either list all of these potential changes in coverage and place a check mark by the applicable changes, or list only the actual changes in coverage. Under either approach, the card issuer must either explain the changes or refer to an accompanying copy of the policy or group certificate for details of the new terms of coverage. Model G–13(A) also illustrates the permissible combination of the two notices required by §1026.9(f)—the notice required for a planned change in provider and the notice required once a change has occurred. This form may be modified for use in providing only the disclosures required before the change if the card issuer chooses to send two separate notices. Thus, for example, the references to the attached policy or certificate would not be required in a separate notice prior to a change in the insurance provider since the policy or certificate need not be provided at that time. Model G–13(B) illustrates the disclosures required under §1026.9(f)(2) when the insurance provider is changed.

8. *Samples G–18(A)–(D).* For home-equity plans subject to the requirements of §1026.40, if a creditor chooses to comply with the requirements in §1026.7(b), the creditor may use Samples G–18(A) through G–18(D) to comply with these requirements, as applicable.

9. *Samples G–18(D).* Sample G–18(D) illustrates how credit card issuers may comply with proximity requirements for payment information on periodic statements. Creditors that offer card accounts with a charge card feature and a revolving feature may change the disclosure to make clear to which feature the disclosures apply.

10. *Forms G–18(F)–(G).* Forms G–18(F) and G–18(G) are intended as a compliance aid to illustrate front sides of a periodic statement, and how a periodic statement for open-end (not home-secured) plans might be designed to comply with the requirements of §1026.7. The samples contain information that is not required by Regulation Z. The samples also present information in additional formats that are not required by Regulation Z.

i. Creditors are not required to use a certain paper size in disclosing the §1026.7 disclosures. However, Forms G–18(F) and G–18(G) are designed to be printed on an 8×14 inch sheet of paper.

ii. The due date for a payment, if a late payment fee or penalty rate may be imposed, must appear on the front of the first page of the statement. See Sample G–18(D) that illustrates how a creditor may comply with proximity requirements for other disclosures. The payment information disclosures appear in the upper right-hand corner on Samples G–18(F) and G–18(G), but may be located elsewhere, as long as they appear on the front of the first page of the periodic statement. The summary of account activity presented on Samples G–18(F) and G–18(G) is not itself a required disclosure, although the previous balance and the new balance, presented in the summary, must be disclosed in a clear and conspicuous manner on periodic statements.

iii. Additional information not required by Regulation Z may be presented on the statement. The information need not be located in any particular place or be segregated from disclosures required by Regulation Z, although the effect of proximity requirements for required disclosures, such as the due date, may cause the additional information to be segregated from those disclosures required to be disclosed in close proximity to one another. Any additional information must be presented consistent with the creditor's obligation to provide required disclosures in a clear and conspicuous manner.

iv. Model Forms G–18(F) and G–18(G) demonstrate two examples of ways in which transactions could be presented on the periodic statement. Model Form G–18(G) presents transactions grouped by type and Model Form G–18(F) presents transactions in a list in chronological order. Neither of these approaches to presenting transactions is required; a creditor may present transactions differently, such as in a list grouped by authorized user or other means.

11. *Model Form G–19.* See §1026.9(b)(3) regarding the headings required to be disclosed when describing in the tabular disclosure a grace period (or lack of a grace period) offered on check transactions that access a credit card account.

12. *Sample G–24.* Sample G–24 includes two model clauses for use in complying with §1026.16(h)(4). Model clause (a) is for use in

connection with credit card accounts under an open-end (not home-secured) consumer credit plan. Model clause (b) is for use in connection with other open-end credit plans.

APPENDIX H—CLOSED-END FORMS AND CLAUSES

1. *Models H–1 and H–2.* i. Creditors may make several types of changes to closed-end model forms H–1 (credit sale) and H–2 (loan) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. Permissible changes include the addition of the information permitted by §1026.17(a)(1) and ''directly related'' information as set forth in the commentary to §1026.17(a).ii. The creditor may also delete or, on multi-purpose forms, indicate inapplicable disclosures, such as:

A. The itemization of the amount financed option. (See Samples H–12 through H–15.)

B. The credit life and disability insurance disclosures. (See Samples H–11 and H–12.)

C. The property insurance disclosures. (See Samples H–10 through H–12, and H–14.)

D. The ''filing fees'' and ''non-filing insurance'' disclosures. (See Samples H–11 and H–12.)

E. The prepayment penalty or rebate disclosures. (See Samples H–12 and H–14.)

F. The total sale price. (See Samples H–11 through H–15.)

iii. Other permissible changes include:

A. Adding the creditor's address or telephone number. (See the commentary to §1026.18(a).)

B. Combining required terms where several numerical disclosures are the same, for instance, if the ''total of payments'' equals the ''total sale price.'' (See the commentary to §1026.18.)

C. Rearranging the sequence or location of the disclosures—for instance, by placing the descriptive phrases outside the boxes containing the corresponding disclosures, or by grouping the descriptors together as a glossary of terms in a separate section of the segregated disclosures; by placing the payment schedule at the top of the form; or by changing the order of the disclosures in the boxes, including the annual percentage rate and finance charge boxes.

D. Using brackets, instead of checkboxes, to indicate inapplicable disclosures.

E. Using a line for the consumer to initial, rather than a checkbox, to indicate an election to receive an itemization of the amount financed.

F. Deleting captions for disclosures.

G. Using a symbol, such as an asterisk, for estimated disclosures, instead of an ''e.''

H. Adding a signature line to the insurance disclosures to reflect joint policies.

I. Separately itemizing the filing fees.

J. Revising the late charge disclosure in accordance with the commentary to §1026.18(l).

2. *Model H–3.* Creditors have considerable flexibility in filling out Model H–3 (itemization of the amount financed). Appropriate revisions, such as those set out in the commentary to §1026.18(c), may be made to this form without loss of protection from civil liability for proper use of the model forms.

3. *Models H–4 through H–7.* The model clauses are not included in the model forms although they are mandatory for certain transactions. Creditors using the model clauses when applicable to a transaction are deemed to be in compliance with the regulation with regard to that disclosure.

4. *Model H–4(A).* This model contains the variable rate model clauses applicable to transactions subject to §1026.18(f)(1) and is intended to give creditors considerable flexibility in structuring variable rate disclosures to fit individual plans. The information about circumstances, limitations, and effects of an increase may be given in terms of the contract interest rate or the annual percentage rate. Clauses are shown for hypothetical examples based on the specific amount of the transaction and based on a representative amount. Creditors may preprint the variable rate disclosures based on a representative amount for similar types of transactions, instead of constructing an individualized example for each transaction. In both representative examples and transaction-specific examples, creditors may refer either to the incremental change in rate, payment amount, or number of payments, or to the resulting rate, payment amount, or number of payments. For example, creditors may state that the rate will increase by 2%, with a corresponding $150 increase in the payment, or creditors may state that the rate will increase to 16%, with a corresponding payment of $850.

5. *Model H–4(B).* This model clause illustrates the variable-rate disclosure required under §1026.18(f)(2), which would alert consumers to the fact that the transaction contains a variable-rate feature and that disclosures were provided earlier.

6. *Model H–4(C).* This model clause illustrates the early disclosures required generally under §1026.19(b). It includes information on how the consumer's interest rate is determined and how it can change over the term of the loan, and explains changes that may occur in the borrower's monthly payment. It contains an example of how to disclose historical changes in the index or formula values used to compute interest rates for the preceding 15 years. The model clause also illustrates the disclosure of the initial and maximum interest rates and payments based on an 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 and illustrates how to provide consumers with a method for calculating the monthly payment for the loan amount to be borrowed.

7. *Models H–4(D) through H–4(J).* These model clauses and sample and model forms illustrate certain notices, statements, and other disclosures required as follows:

i. Model H–4(D)(1) illustrates the interest rate adjustment notice required under §1026.20(c) and Model H–4(D)(2) provides an example of a notice of interest rate adjustment with corresponding payment change. Model H–4(D)(3) illustrates the interest rate adjustment notice required under §1026.20(d) and Model H–4(D)(4) provides an example of a notice of initial interest rate adjustment.

ii. Model H–4(E) illustrates the interest rate and payment summary table required under §1026.18(s) for a fixed-rate mortgage transaction.

iii. Model H–4(F) illustrates the interest rate and payment summary table required under §1026.18(s) for an adjustable-rate or a step-rate mortgage transaction.

iv. Model H–4(G) illustrates the interest rate and payment summary table required under §1026.18(s) for a mortgage transaction with negative amortization.

v. Model H–4(H) illustrates the interest rate and payment summary table required under §1026.18(s) for a fixed-rate, interest-only mortgage transaction.

vi. Model H–4(I) illustrates the introductory rate disclosure required by §1026.18(s)(2)(iii) for an adjustable-rate mortgage transaction with an introductory rate.

vii. Model H–4(J) illustrates the balloon payment disclosure required by §1026.18(s)(5) for a mortgage transaction with a balloon payment term.

viii. Model H–4(K) illustrates the no-guarantee-to-refinance statement required by §1026.18(t) for a mortgage transaction.

8. *Model H–5.* This contains the demand feature clause.

9. *Model H–6.* This contains the assumption clause.

10. *Model H–7.* This contains the required deposit clause.

11. *Models H–8 and H–9.* These models contain the rescission notices for a typical closed-end transaction and a refinancing, respectively. The last paragraph of each model form contains a blank for the date by which the consumer's notice of cancellation must be sent or delivered. A parenthetical is included to address the situation in which the consumer's right to rescind the transaction exists beyond 3 business days following the date of the transaction, for example, where the notice or material disclosures are delivered late or where the date of the transaction in paragraph 1 of the notice is an estimate. The language of the parenthetical is not optional. See the commentary to §1026.2(a)(25) regarding the specificity of the security interest disclosure for model form H–9. The prior version of model form H–9 is substantially similar to the current version and creditors may continue to use it, as appropriate. Creditors are encouraged, however, to use the current version when reordering or reprinting forms.

12. *Sample forms.* The sample forms (H–10 through H–15) serve a different purpose than the model forms. The samples illustrate various ways of adapting the model forms to the individual transactions described in the commentary to appendix H. The deletions and rearrangements shown relate only to the specific transactions described. As a result, the samples do not provide the general protection from civil liability provided by the model forms and clauses.

13. *Sample H–10.* This sample illustrates an automobile credit sale. The cash price is $7,500 with a downpayment of $1,500. There is an 8% add-on interest rate and a term of 3 years, with 36 equal monthly payments. The credit life insurance premium and the filing fees are financed by the creditor. There is a $25 credit report fee paid by the consumer before consummation, which is a prepaid finance charge.

14. *Sample H–11.* This sample illustrates an installment loan. The amount of the loan is $5,000. There is a 12% simple interest rate and a term of 2 years. The date of the transaction is expected to be April 15, 1981, with the first payment due on June 1, 1981. The first payment amount is labeled as an estimate since the transaction date is uncertain. The odd days' interest ($26.67) is collected with the first payment. The remaining 23 monthly payments are equal.

15. *Sample H–12.* This sample illustrates a refinancing and consolidation loan. The amount of the loan is $5,000. There is a 15% simple interest rate and a term of 3 years. The date of the transaction is April 1, 1981, with the first payment due on May 1, 1981. The first 35 monthly payments are equal, with an odd final payment. The credit disability insurance premium is financed. In calculating the annual percentage rate, the U.S. Rule has been used. Since an itemization of the amount financed is included with the disclosures, the statement regarding the consumer's option to receive an itemization is deleted.

16. *Samples H–13 through H–15.* These samples illustrate various closed-end transactions. Samples H–13 and H–15 are for transactions subject to §1026.17(a). Samples H–13 and H–15 do not illustrate the requirements of §1026.18(c) or (p) regarding the itemization of the amount financed and a reference to contract documents. See form H–2 for a model for these requirements.

17. *Sample H–13.* This sample illustrates a mortgage with a demand feature. The loan

amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. The 15 days of interim interest ($294.34) is collected as a prepaid finance charge at the time of consummation of the loan (April 15, 1981). In calculating the disclosure amounts, the minor irregularities provision in §1026.17(c)(4) has been used. The property insurance premiums are not included in the payment schedule. This disclosure statement could be used for notes with the 7-year call option required by the Federal National Mortgage Association (FNMA) in states where due-on-sale clauses are prohibited.

18. *Sample H–14*. This sample disclosure form illustrates the disclosures under §1026.19(b) for a variable-rate transaction secured by the consumer's principal dwelling with a term greater than one year. The sample form shows a creditor how to adapt the model clauses in appendix H–4(C) to the creditor's own particular variable-rate program. The sample disclosure form describes the features of a specific variable-rate mortgage program and alerts the consumer to the fact that information on the creditor's other closed-end variable-rate programs is available upon request. It includes information on how the interest rate is determined and how it can change over time. Section 1026.19(b)(2)(viii) permits creditors the option to provide either a historical example or an initial and maximum interest rates and payments disclosure; both are illustrated in the sample disclosure. The historical example explains how the monthly payment can change based on a $10,000 loan amount, payable in 360 monthly installments, based on historical changes in the values for the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one year. Index values are measured for 15 years, as of the first week ending in July. This reflects the requirement that the index history be based on values for the same date or period each year in the example. The sample disclosure also illustrates the alternative disclosure under §1026.19(b)(2)(viii)(B) that the initial and the maximum interest rates and payments be shown for a $10,000 loan originated at an initial interest rate of 12.41 percent (which was in effect July 1996) and to have 2 percentage point annual (and 5 percentage point overall) interest rate limitations or caps. Thus, the maximum amount that the interest rate could rise under this program is 5 percentage points higher than the 12.41 percent initial rate to 17.41 percent, and the monthly payment could rise from $106.03 to a maximum of $145.34. The loan would not reach the maximum interest rate until its fourth year because of the 2 percentage point annual rate limitations, and the maximum payment disclosed reflects the amortization of the loan during that period. The sample form also illustrates how to provide consumers with a method for calculating their actual monthly payment for a loan amount other than $10,000.

19. *Sample H–15*. This sample illustrates a graduated payment transaction subject to §1026.17(a) with a 5-year graduation period and a 7½ percent yearly increase in payments. The loan amount is $44,900, payable in 360 monthly installments at a simple interest rate of 14.75%. Two points ($898), as well as an initial guarantee insurance premium of $225.00, are included in the prepaid finance charge. The guarantee insurance premiums are calculated on the basis of ¼ of 1% of the outstanding principal balance under an annual reduction plan. The abbreviated disclosure permitted under §1026.18(g)(2) is used for the payment schedule for years 6 through 30. The prepayment disclosure refers to both penalties and rebates because information about penalties is required for the simple interest portion of the obligation and information about rebates is required for the guarantee insurance portion of the obligation.

20. *Sample H–16*. This sample illustrates the disclosures required under §1026.32(c). The sample illustrates the amount borrowed and the disclosures about optional insurance that are required for mortgage refinancings under §1026.32(c)(5). Creditors may, at their option, include these disclosures for all loans subject to §1026.32. The sample also includes disclosures required under §1026.32(c)(3) when the legal obligation includes a balloon payment.

21. *HRSA–500–1 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all Health Education Assistance Loans (HEAL) with a variable interest rate that were considered interim student credit extensions as defined in Regulation Z.

22. *HRSA–500–2 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–500–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all HEAL loans with a fixed interest rate that were considered interim student credit extensions as defined in Regulation Z.23. *HRSA–502–1 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–1 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all HEAL loans with a variable interest rate in

which the borrower has reached repayment status and is making payments of both interest and principal.

24. *HRSA–502–2 9–82*. Pursuant to section 113(a) of the Truth in Lending Act, Form HRSA–502–2 9–82 issued by the U.S. Department of Health and Human Services for certain student loans has been approved for use for loans made prior to the mandatory compliance date of the disclosures required under Subpart F. The form was approved for all HEAL loans with a fixed interest rate in which the borrower has reached repayment status and is making payments of both interest and principal.

25. *Models H–18, H–19, H–20*. i. These model forms illustrate disclosures required under §1026.47 on or with an application or solicitation, at approval, and after acceptance of a private education loan. Although use of the model forms is not required, creditors using them properly will be deemed to be in compliance with the regulation with regard to private education loan disclosures. Creditors may make certain types of changes to private education loan model forms H–18 (application and solicitation), H–19 (approval), and H–20 (final) and still be deemed to be in compliance with the regulation, provided that the required disclosures are made clearly and conspicuously. The model forms aggregate disclosures into groups under specific headings. Changes may not include rearranging the sequence of disclosures, for instance, by rearranging which disclosures are provided under each heading or by rearranging the sequence of the headings and grouping of disclosures. Changes to the model forms may not be so extensive as to affect the substance or clarity of the forms. Creditors making revisions with that effect will lose their protection from civil liability.

ii. The creditor may delete inapplicable disclosures, such as:

A. The Federal student financial assistance alternatives disclosures.

B. The self-certification disclosure.

iii. Other permissible changes include, for example:

A. Adding the creditor's address, telephone number, or Web site.

B. Adding loan identification information, such as a loan identification number.

C. Adding the date on which the form was printed or produced.

D. Placing the notice of the right to cancel in the top left or top right of the disclosure to accommodate a window envelope.

E. Combining required terms where several numerical disclosures are the same. For instance, if the itemization of the amount financed is provided, the amount financed need not be separately disclosed.

F. Combining the disclosure of loan term and payment deferral options required in §1026.47(a)(3) with the disclosure of cost estimates required in §1026.47(a)(4) in the same chart or table (*See* comment 47(a)(3)–4.)

G. Using the first person, instead of the second person, in referring to the borrower.

H. Using "borrower" and "creditor" instead of pronouns.

I. Incorporating certain state "plain English" requirements.

J. Deleting inapplicable disclosures by whiting out, blocking out, filling in "N/A" (not applicable) or "0," crossing out, leaving blanks, checking a box for applicable items, or circling applicable items.

iv. Although creditors are not required to use a certain paper size in disclosing the §§1026.47(a), (b) and (c) disclosures, samples H–21, H–22, and H–23 are designed to be printed on two 8½ × 11 inch sheets of paper. A creditor may use a larger sheet of paper, such as 8½ × 14 inch sheets of paper, or may use multiple pages. If the disclosures are provided on two sides of a single sheet of paper, the creditor must include a reference or references, such as "SEE BACK OF PAGE" at the bottom of each page indicating that the disclosures continue onto the back of the page. If the disclosures are on two or more pages, a creditor may not include any intervening information between portions of the disclosure. In addition, the following formatting techniques were used in presenting the information in the sample tables to ensure that the information is readable:

A. A readable font style and font size (10-point Helvetica font style for body text).

B. Sufficient spacing between lines of the text.

C. Standard spacing between words and characters. In other words, the body text was not compressed to appear smaller than the 10-point type size.

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text.

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

v. While the Bureau is not requiring issuers to use the above formatting techniques in presenting information in the disclosure, the Bureau encourages issuers to consider these techniques when deciding how to disclose information in the disclosure to ensure that the information is presented in a readable format.

vi. Creditors are allowed to use color, shading and similar graphic techniques in the disclosures, so long as the disclosures remain substantially similar to the model and sample forms in appendix H.

26. *Sample H–21*. This sample illustrates a disclosure required under §1026.47(a). The sample assumes a range of interest rates between 7.375% and 17.375%. The sample assumes a variable interest rate that will never exceed 25% over the life of the loan.

The term of the sample loan is 20 years for an amount up to $20,000 and 30 years for an amount more than $20,000. The repayment options and sample costs have been combined into a single table, as permitted in the commentary to §1026.47(a)(3). It demonstrates the loan amount, interest rate, and total paid when a consumer makes loan payments while in school, pays only interest while in school, and defers all payments while in school.

27. *Sample H–22.* This sample illustrates a disclosure required under §1026.47(b). The sample assumes the consumer financed $10,000 at an 8.23% annual percentage rate. The sample assumes a variable interest rate that will never exceed 25% over the life of the loan. The payment schedule and terms assumes a 20-year loan term and that the consumer elected to defer payments while enrolled in school. This includes a sample disclosure of a total loan amount of $10,600 and prepaid finance charges totaling $600, for a total amount financed of $10,000.

28. *Sample H–22.* This sample illustrates a disclosure required under §1026.47(c). The sample assumes the consumer financed $10,000 at an 8.23% annual percentage rate. The sample assumes a variable annual percentage rate in an instance where there is no maximum interest rate. The sample demonstrates disclosure of an assumed maximum rate, and the statement that the consumer's actual maximum rate and payment amount could be higher. The payment schedule and terms assumes a 20-year loan term, the assumed maximum interest rate, and that the consumer elected to defer payments while enrolled in school. This includes a sample disclosure of a total loan amount of $10,600 and prepaid finance charges totaling $600, for a total amount financed of $10,000.

29. *Model Form H–29.* Model form H–29 contains the disclosures for the cancellation of an escrow account established in connection with a closed-end transaction secured by a first lien on real property or a dwelling.

i. This model form illustrates the disclosures required by §1026.20(e).

ii. A creditor or servicer satisfies §1026.20(e) if it provides model form H–29 or a substantially similar notice, which is properly completed with the disclosures required by §1026.20(e).

iii. Although creditors and servicers are not required to use a certain paper size in disclosing the information under §1026.20(e), model form H–29 is designed to be printed on an 8½ × 1- inch sheet of paper. In addition, the following formatting techniques were used in presenting the information in the model form to ensure that the information is readable:

A. A readable font style and font size (10-point minimum font size);

B. Sufficient spacing between lines of the text;

C. Standard spacing between words and characters. In other words, the text was not compressed to appear smaller than 10-point type;

D. Sufficient white space around the text of the information in each row, by providing sufficient margins above, below and to the sides of the text;

E. Sufficient contrast between the text and the background. Generally, black text was used on white paper.

iv. While the regulation does not require creditors or servicers to use the above formatting techniques in presenting information in the tabular format (except for the 10-point minimum font size requirement), creditors and servicers are encouraged to consider these techniques when deciding how to disclose information in the notice to ensure that the information is presented in a readable format.

v. Creditors and servicers may use color, shading and similar graphic techniques with respect to the notice, so long as the notice remains substantially similar to model form H–29.

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

Appendix J—Annual Percentage Rate Computations for Closed-End Credit Transactions

1. *Use of appendix J.* Appendix J sets forth the actuarial equations and instructions for calculating the annual percentage rate in closed-end credit transactions. While the formulas contained in this appendix may be directly applied to calculate the annual percentage rate for an individual transaction, they may also be utilized to program calculators and computers to perform the calculations.

2. *Relation to Bureau tables.* The Bureau's Annual Percentage Rate Tables also provide creditors with a calculation tool that applies the technical information in appendix J. An annual percentage rate computed in accordance with the instructions in the tables is deemed to comply with the regulation. Volume I of the tables may be used for credit transactions involving equal payment amounts and periods, as well as for transactions involving any of the following irregularities: odd first period, odd first payment and odd last payment. Volume II of the tables may be used for transactions that involve any type of irregularities. These tables may be obtained from the Bureau, 1700 G

Street, NW., Washington, DC 20006, upon request.

APPENDIX K—TOTAL ANNUAL LOAN COST RATE COMPUTATIONS FOR REVERSE MORTGAGE TRANSACTIONS

1. *General.* The calculation of total annual loan cost rates under appendix K is based on the principles set forth and the estimation or ''iteration'' procedure used to compute annual percentage rates under appendix J. Rather than restate this iteration process in full, the regulation cross-references the procedures found in appendix J. In other aspects the appendix reflects the special nature of reverse mortgage transactions. Special definitions and instructions are included where appropriate.

(b) Instructions and equations for the total annual loan cost rate

(b)(5) Number of unit-periods between two given dates

1. *Assumption as to when transaction begins.* The computation of the total annual loan cost rate is based on the assumption that the reverse mortgage transaction begins on the first day of the month in which consummation is estimated to occur. Therefore, fractional unit-periods (used under appendix J for calculating annual percentage rates) are not used.

(b)(9) Assumption for discretionary cash advances

1. *Amount of credit.* Creditors should compute the total annual loan cost rates for transactions involving discretionary cash advances by assuming that 50 percent of the initial amount of the credit available under the transaction is advanced at closing or, in an open-end transaction, when the consumer becomes obligated under the plan. (For the purposes of this assumption, the initial amount of the credit is the principal loan amount less any costs to the consumer under §1026.33(c)(1).)

(b)(10) Assumption for variable-rate reverse mortgage transactions

1. *Initial discount or premium rate.* Where a variable-rate reverse mortgage transaction includes an initial discount or premium rate, the creditor should apply the same rules for calculating the total annual loan cost rate as are applied when calculating the annual percentage rate for a loan with an initial discount or premium rate (see the commentary to §1026.17(c)).

(d) Reverse mortgage model form and sample form

(d)(2) Sample form

1. *General.* The ''clear and conspicuous'' standard for reverse mortgage disclosures does not require disclosures to be printed in any particular type size. Disclosures may be made on more than one page, and use both the front and the reverse sides, as long as the pages constitute an integrated document and the table disclosing the total annual loan cost rates is on a single page.

APPENDIX L—ASSUMED LOAN PERIODS FOR COMPUTATIONS OF TOTAL ANNUAL LOAN COST RATES

1. *General.* The life expectancy figures used in appendix L are those found in the U.S. Decennial Life Tables for women, as rounded to the nearest whole year and as published by the U.S. Department of Health and Human Services. The figures contained in appendix L must be used by creditors for all consumers (men and women). Appendix L will be revised periodically by the Bureau to incorporate revisions to the figures made in the Decennial Tables.

APPENDIX O—ILLUSTRATIVE WRITTEN SOURCE DOCUMENTS FOR HIGHER-PRICED MORTGAGE LOAN APPRAISAL RULES

1. *Title commitment report.* The ''title commitment report'' is a document from a title insurance company describing the property interest and status of its title, parties with interests in the title and the nature of their claims, issues with the title that must be resolved prior to closing of the transaction between the parties to the transfer, amount and disposition of the premiums, and endorsements on the title policy. This document is issued by the title insurance company prior to the company's issuance of an actual title insurance policy to the property's transferee and/or creditor financing the transaction. In different jurisdictions, this instrument may be referred to by different terms, such as a title commitment, title binder, title opinion, or title report.

[76 FR 79772, Dec. 22, 2011]

EDITORIAL NOTE: For FEDERAL REGISTER citations affecting supplement I to part 1026, see the List of CFR Sections Affected, which appears in the Finding Aids section of the printed volume and at *www.govinfo.gov*.

EFFECTIVE DATE NOTE: At 86 FR 69788, Dec. 8, 2021, supplement I to part 1026 was amended as follows, effective Apr. 1, 2022:

a. Under *Section 1026.9—Subsequent Disclosure Requirements,* revise *9(c)(1) Rules Affecting Home-Equity Plans, 9(c)(1)(ii) Notice not Required, 9(c)(2)(iv) Disclosure Requirements,* and *9(c)(2)(v) Notice not Required.*

b. Under *Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events*, revise *20(a) Refinancings*.

c. Under *Section 1026.37—Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)*, revise *37(j)(1) Index and margin*.

d. Under *Section 1026.40—Requirements for Home-Equity Plans*, revise *Paragraph 40(f)(3)(ii)* and add *Paragraph 40(f)(3)(ii)(A)* and *Paragraph 40(f)(3)(ii)(B)*.

e. Under *Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges*, revise *55(b)(2) Variable rate exception* and add *55(b)(7) Index replacement and margin change exception*.

f. Under *Section 1026.59—Reevaluation of Rate Increases*, revise *59(d) Factors* and *59(f) Termination of Obligation to Review Factors* and add *59(h) Exceptions*.

For the convenience of the user, the added and revised text is set forth as follows:

SUPPLEMENT I TO PART 1026—OFFICIAL INTERPRETATIONS

* * * * *

Section 1026.9—Subsequent Disclosure Requirements

* * * * *

9(c)(1) Rules Affecting Home-Equity Plans

1. *Changes initially disclosed.* No notice of a change in terms need be given if the specific change is set forth initially, such as: Rate increases under a properly disclosed variable-rate plan, a rate increase that occurs when an employee has been under a preferential rate agreement and terminates employment, or an increase that occurs when the consumer has been under an agreement to maintain a certain balance in a savings account in order to keep a particular rate and the account balance falls below the specified minimum. The rules in §1026.40(f) relating to home-equity plans limit the ability of a creditor to change the terms of such plans.

2. *State law issues.* Examples of issues not addressed by §1026.9(c) because they are controlled by state or other applicable law include:

i. The types of changes a creditor may make. (*But see* §1026.40(f).)

ii. How changed terms affect existing balances, such as when a periodic rate is changed and the consumer does not pay off the entire existing balance before the new rate takes effect.

3. *Change in billing cycle.* Whenever the creditor changes the consumer's billing cycle, it must give a change-in-terms notice if the change either affects any of the terms required to be disclosed under §1026.6(a) or increases the minimum payment, unless an exception under §1026.9(c)(1)(ii) applies; for example, the creditor must give advance notice if the creditor initially disclosed a 25-day grace period on purchases and the consumer will have fewer days during the billing cycle change.

4. *Changing index for calculating a variable rate from LIBOR to SOFR in specified circumstances.* If a creditor is replacing a LIBOR index with the index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: {1} Information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and {2} the rate will vary with the market based on a SOFR index.

* * * * *

9(c)(1)(ii) Notice Not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit.

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges. (*But see* §1026.40(f).)

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* If a credit program allows consumers to skip or reduce one or more payments during the year, or involves temporary reductions in finance charges, no notice of the change in terms is required either prior to the reduction or upon resumption of

the higher rates or payments if these features are explained on the initial disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teachers' credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original schedule or rate, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the reduction or skip feature may also be used to notify the consumer of the resumption of the original schedule or rate, either by stating explicitly when the higher payment or charges resume, or by indicating the duration of the skip option. Language such as ''You may skip your October payment,'' or ''We will waive your finance charges for January,'' may serve as the change-in-terms notice.

3. *Replacing LIBOR.* The exception in §1026.9(c)(1)(ii) under which a creditor is not required to provide a change-in-terms notice under §1026.9(c)(1) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2022, to margin reductions when a LIBOR index is replaced, as permitted by §1026.40(f)(3)(ii)(A) or (B). For change-in-terms notices provided under §1026.9(c)(1) on or after October 1, 2022, covering changes permitted by §1026.40(f)(3)(ii)(A) or (B), a creditor must provide a change-in-terms notice under §1026.9(c)(1) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under §1026.40(f)(3)(ii)(A) or (B), even if the margin is reduced. From April 1, 2022, through September 30, 2022, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by §1026.40(f)(3)(ii)(A) or (B).

* * * * *

9(c)(2)(iv) Disclosure Requirements

1. *Changing margin for calculating a variable rate.* If a creditor is changing a margin used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new margin) in the table described in §1026.9(c)(2)(iv), and include a reminder that the rate is a variable rate. For example, if a creditor is changing the margin for a variable rate that uses the prime rate as an index, the creditor must disclose in the table the new rate (as calculated using the new margin) and indicate that the rate varies with the market based on the prime rate.

2. *Changing index for calculating a variable rate.* i. *In general.* If a creditor is changing the index used to calculate a variable rate, the creditor must disclose the amount of the new rate (as calculated using the new index) and indicate that the rate varies and how the rate is determined, as explained in §1026.6(b)(2)(i)(A). For example, if a creditor is changing from using a LIBOR index to using a prime index in calculating a variable rate, the creditor would disclose in the table the new rate (using the new index) and indicate that the rate varies with the market based on a prime index.

ii. *Changing index for calculating a variable rate from LIBOR to SOFR in specified circumstances.* If a creditor is replacing a LIBOR index with an index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index, the creditor is not changing the margin used to calculate the variable rate as a result of the replacement, and a periodic rate or the corresponding annual percentage rate based on the replacement index is unknown to the creditor at the time the change-in-terms notice is provided because the SOFR index has not been published at the time the creditor provides the change-in-terms notice, but will be published by the time the replacement of the index takes effect on the account, the creditor may comply with any requirement to disclose the amount of the new rate (as calculated using the new index), or a change in the periodic rate or the corresponding annual percentage rate (as calculated using the replacement index), based on the best information reasonably available, clearly stating that the disclosure is an estimate. For example, in this situation, the creditor may state that: {1} information about the rate is not yet available but that the creditor estimates that, at the time the index is replaced, the rate will be substantially similar to what it would be if the index did not have to be replaced; and {2} the rate will vary with the market based on a SOFR index.

3. *Changing from a variable rate to a non-variable rate.* If a creditor is changing a rate applicable to a consumer's account from a variable rate to a non-variable rate, the creditor generally must provide a notice as otherwise required under §1026.9(c) even if the variable rate at the time of the change is higher than the non-variable rate. However, a creditor is not required to provide a notice under §1026.9(c) if the creditor provides the disclosures required by §1026.9(c)(2)(v)(B) or (D) in connection with changing a variable rate to a lower non-variable rate. Similarly, a creditor is not required to provide a notice under §1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with 50 U.S.C. app. 527 or a similar

Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under §1026.9(c) when changing a variable rate to a lower non-variable rate in order to comply with §1026.55(b)(4).

4. *Changing from a non-variable rate to a variable rate.* If a creditor is changing a rate applicable to a consumer's account from a non-variable rate to a variable rate, the creditor generally must provide a notice as otherwise required under §1026.9(c) even if the non-variable rate is higher than the variable rate at the time of the change. However, a creditor is not required to provide a notice under §1026.9(c) if the creditor provides the disclosures required by §1026.9(c)(2)(v)(B) or (D) in connection with changing a non-variable rate to a lower variable rate. Similarly, a creditor is not required to provide a notice under §1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with 50 U.S.C. app. 527 or a similar Federal or state statute or regulation. Finally, a creditor is not required to provide a notice under §1026.9(c) when changing a non-variable rate to a lower variable rate in order to comply with §1026.55(b)(4). *See* comment 55(b)(2)–4 regarding the limitations in §1026.55(b)(2) on changing the rate that applies to a protected balance from a non-variable rate to a variable rate.

5. *Changes in the penalty rate, the triggers for the penalty rate, or how long the penalty rate applies.* If a creditor is changing the amount of the penalty rate, the creditor must also redisclose the triggers for the penalty rate and the information about how long the penalty rate applies even if those terms are not changing. Likewise, if a creditor is changing the triggers for the penalty rate, the creditor must redisclose the amount of the penalty rate and information about how long the penalty rate applies. If a creditor is changing how long the penalty rate applies, the creditor must redisclose the amount of the penalty rate and the triggers for the penalty rate, even if they are not changing.

6. *Changes in fees.* If a creditor is changing part of how a fee that is disclosed in a tabular format under §1026.6(b)(1) and (2) is determined, the creditor must redisclose all relevant information related to that fee regardless of whether this other information is changing. For example, if a creditor currently charges a cash advance fee of ''Either $5 or 3% of the transaction amount, whichever is greater (Max: $100),'' and the creditor is only changing the minimum dollar amount from $5 to $10, the issuer must redisclose the other information related to how the fee is determined. For example, the creditor in this example would disclose the following: ''Either $10 or 3% of the transaction amount, whichever is greater (Max: $100).''

7. *Combining a notice described in §1026.9(c)(2)(iv) with a notice described in §1026.9(g)(3).* If a creditor is required to provide a notice described in §1026.9(c)(2)(iv) and a notice described in §1026.9(g)(3) to a consumer, the creditor may combine the two notices. This would occur if penalty pricing has been triggered, and other terms are changing on the consumer's account at the same time.

8. *Content.* Sample G–20 contains an example of how to comply with the requirements in §1026.9(c)(2)(iv) when a variable rate is being changed to a non-variable rate on a credit card account. The sample explains when the new rate will apply to new transactions and to which balances the current rate will continue to apply. Sample G–21 contains an example of how to comply with the requirements in §1026.9(c)(2)(iv) when the late payment fee on a credit card account is being increased, and the returned payment fee is also being increased. The sample discloses the consumer's right to reject the changes in accordance with §1026.9(h).

9. *Clear and conspicuous standard. See* comment 5(a)(1)–1 for the clear and conspicuous standard applicable to disclosures required under §1026.9(c)(2)(iv)(A)(*1*).

10. *Terminology. See* §1026.5(a)(2) for terminology requirements applicable to disclosures required under §1026.9(c)(2)(iv)(A)(*1*).

11. *Reasons for increase.* i. *In general.* Section 1026.9(c)(2)(iv)(A)(*8*) requires card issuers to disclose the principal reason(s) for increasing an annual percentage rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan. The regulation does not mandate a minimum number of reasons that must be disclosed. However, the specific reasons disclosed under §1026.9(c)(2)(iv)(A)(*8*) are required to relate to and accurately describe the principal factors actually considered by the card issuer in increasing the rate. A card issuer may describe the reasons for the increase in general terms. For example, the notice of a rate increase triggered by a decrease of 100 points in a consumer's credit score may state that the increase is due to ''a decline in your creditworthiness'' or ''a decline in your credit score.'' Similarly, a notice of a rate increase triggered by a 10% increase in the card issuer's cost of funds may be disclosed as ''a change in market conditions.'' In some circumstances, it may be appropriate for a card issuer to combine the disclosure of several reasons in one statement. However, §1026.9(c)(2)(iv)(A)(*8*) requires that the notice specifically disclose any violation of the terms of the account on which the rate is being increased, such as a late payment or a returned payment, if such violation of the account terms is one of the four principal reasons for the rate increase.

ii. *Example.* Assume that a consumer made a late payment on the credit card account on which the rate increase is being imposed, made a late payment on a credit card account with another card issuer, and the consumer's credit score decreased, in part due to such late payments. The card issuer may disclose the reasons for the rate increase as a decline in the consumer's credit score and the consumer's late payment on the account subject to the increase. Because the late payment on the credit card account with the other issuer also likely contributed to the decline in the consumer's credit score, it is not required to be separately disclosed. However, the late payment on the credit card account on which the rate increase is being imposed must be specifically disclosed even if that late payment also contributed to the decline in the consumer's credit score.

9(c)(2)(v) Notice not Required

1. *Changes not requiring notice.* The following are examples of changes that do not require a change-in-terms notice:

i. A change in the consumer's credit limit except as otherwise required by §1026.9(c)(2)(vi).

ii. A change in the name of the credit card or credit card plan.

iii. The substitution of one insurer for another.

iv. A termination or suspension of credit privileges.

v. Changes arising merely by operation of law; for example, if the creditor's security interest in a consumer's car automatically extends to the proceeds when the consumer sells the car.

2. *Skip features.* i. *Skipped or reduced payments.* If a credit program allows consumers to skip or reduce one or more payments during the year, no notice of the change in terms is required either prior to the reduction in payments or upon resumption of the higher payments if these features are explained on the account-opening disclosure statement (including an explanation of the terms upon resumption). For example, a merchant may allow consumers to skip the December payment to encourage holiday shopping, or a teacher's credit union may not require payments during summer vacation. Otherwise, the creditor must give notice prior to resuming the original payment schedule, even though no notice is required prior to the reduction. The change-in-terms notice may be combined with the notice offering the reduction. For example, the periodic statement reflecting the skip feature may also be used to notify the consumer of the resumption of the original payment schedule, either by stating explicitly when the higher resumes or by indicating the duration of the skip option. Language such as ''You may skip your October payment'' may serve as the change-in-terms notice.

ii. *Temporary reductions in interest rates or fees.* If a credit program involves temporary reductions in an interest rate or fee, no notice of the change in terms is required either prior to the reduction or upon resumption of the original rate or fee if these features are disclosed in advance in accordance with the requirements of §1026.9(c)(2)(v)(B). Otherwise, the creditor must give notice prior to resuming the original rate or fee, even though no notice is required prior to the reduction. The notice provided prior to resuming the original rate or fee must comply with the timing requirements of §1026.9(c)(2)(i) and the content and format requirements of §1026.9(c)(2)(iv)(A), (B) (if applicable), (C) (if applicable), and (D). *See* comment 55(b)–3 for guidance regarding the application of §1026.55 in these circumstances.

3. *Changing from a variable rate to a non-variable rate. See* comment 9(c)(2)(iv)–3.

4. *Changing from a non-variable rate to a variable rate. See* comment 9(c)(2)(iv)–4.

5. *Temporary rate or fee reductions offered by telephone.* The timing requirements of §1026.9(c)(2)(v)(B) are deemed to have been met, and written disclosures required by §1026.9(c)(2)(v)(B) may be provided as soon as reasonably practicable after the first transaction subject to a rate that will be in effect for a specified period of time (a temporary rate) or the imposition of a fee that will be in effect for a specified period of time (a temporary fee) if:

i. The consumer accepts the offer of the temporary rate or temporary fee by telephone;

ii. The creditor permits the consumer to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's balances reinstated for 45 days after the creditor mails or delivers the written disclosures required by §1026.9(c)(2)(v)(B), except that the creditor need not permit the consumer to reject a temporary rate or temporary fee offer if the rate or rates or fee that will apply following expiration of the temporary rate do not exceed the rate or rates or fee that applied immediately prior to commencement of the temporary rate or temporary fee; and

iii. The disclosures required by §1026.9(c)(2)(v)(B) and the consumer's right to reject the temporary rate or temporary fee offer and have the rate or rates or fee that previously applied to the consumer's account reinstated, if applicable, are disclosed to the consumer as part of the temporary rate or temporary fee offer.

6. *First listing.* The disclosures required by §1026.9(c)(2)(v)(B)(*1*) are only required to be provided in close proximity and in equal prominence to the first listing of the temporary rate or fee in the disclosure provided to the consumer. For purposes of §1026.9(c)(2)(v)(B), the first statement of the temporary rate or fee is the most prominent listing on the front side of the first page of the disclosure. If the temporary rate or fee does not appear on the front side of the first page of the disclosure, then the first listing of the temporary rate or fee is the most

prominent listing of the temporary rate on the subsequent pages of the disclosure. For advertising requirements for promotional rates, see §1026.16(g).

7. *Close proximity—point of sale.* Creditors providing the disclosures required by §1026.9(c)(2)(v)(B) of this section in person in connection with financing the purchase of goods or services may, at the creditor's option, disclose the annual percentage rate or fee that would apply after expiration of the period on a separate page or document from the temporary rate or fee and the length of the period, provided that the disclosure of the annual percentage rate or fee that would apply after the expiration of the period is equally prominent to, and is provided at the same time as, the disclosure of the temporary rate or fee and length of the period.

8. *Disclosure of annual percentage rates.* If a rate disclosed pursuant to §1026.9(c)(2)(v)(B) or (D) is a variable rate, the creditor must disclose the fact that the rate may vary and how the rate is determined. For example, a creditor could state ''After October 1, 2009, your APR will be 14.99%. This APR will vary with the market based on the Prime Rate.''

9. *Deferred interest or similar programs.* If the applicable conditions are met, the exception in §1026.9(c)(2)(v)(B) applies to deferred interest or similar promotional programs under which the consumer is not obligated to pay interest that accrues on a balance if that balance is paid in full prior to the expiration of a specified period of time. For purposes of this comment and §1026.9(c)(2)(v)(B), ''deferred interest'' has the same meaning as in §1026.16(h)(2) and associated commentary. For such programs, a creditor must disclose pursuant to §1026.9(c)(2)(v)(B)(*1*) the length of the deferred interest period and the rate that will apply to the balance subject to the deferred interest program if that balance is not paid in full prior to expiration of the deferred interest period. Examples of language that a creditor may use to make the required disclosures under §1026.9(c)(2)(v)(B)(*1*) include:

i. ''No interest if paid in full in 6 months. If the balance is not paid in full in 6 months, interest will be imposed from the date of purchase at a rate of 15.99%.''

ii. ''No interest if paid in full by December 31, 2010. If the balance is not paid in full by that date, interest will be imposed from the transaction date at a rate of 15%.''

10. *Relationship between §§1026.9(c)(2)(v)(B) and 1026.6(b).* A disclosure of the information described in §1026.9(c)(2)(v)(B)(*1*) provided in the account-opening table in accordance with §1026.6(b) complies with the requirements of §1026.9(c)(2)(v)(B)(*2*), if the listing of the introductory rate in such tabular disclosure also is the first listing as described in comment 9(c)(2)(v)–6.

11. *Disclosure of the terms of a workout or temporary hardship arrangement.* In order for the exception in §1026.9(c)(2)(v)(D) to apply, the disclosure provided to the consumer pursuant to §1026.9(c)(2)(v)(D)(*2*) must set forth:

i. The annual percentage rate that will apply to balances subject to the workout or temporary hardship arrangement;

ii. The annual percentage rate that will apply to such balances if the consumer completes or fails to comply with the terms of, the workout or temporary hardship arrangement;

iii. Any reduced fee or charge of a type required to be disclosed under §1026.6(b)(2)(ii), (iii), (viii), (ix), (xi), or (xii) that will apply to balances subject to the workout or temporary hardship arrangement, as well as the fee or charge that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement;

iv. Any reduced minimum periodic payment that will apply to balances subject to the workout or temporary hardship arrangement, as well as the minimum periodic payment that will apply if the consumer completes or fails to comply with the terms of the workout or temporary hardship arrangement; and

v. If applicable, that the consumer must make timely minimum payments in order to remain eligible for the workout or temporary hardship arrangement.

12. *Index not under creditor's control. See* comment 55(b)(2)–2 for guidance on when an index is deemed to be under a creditor's control.

13. *Temporary rates—relationship to §1026.59.* i. *General.* Section 1026.59 requires a card issuer to review rate increases imposed due to the revocation of a temporary rate. In some circumstances, §1026.59 may require an issuer to reinstate a reduced temporary rate based on that review. If, based on a review required by §1026.59, a creditor reinstates a temporary rate that had been revoked, the card issuer is not required to provide an additional notice to the consumer when the reinstated temporary rate expires, if the card issuer provided the disclosures required by §1026.9(c)(2)(v)(B) prior to the original commencement of the temporary rate. *See* §1026.55 and the associated commentary for guidance on the permissibility and applicability of rate increases.

i. *Example.* A consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan on January 1, 2011. The annual percentage rate applicable to purchases is 18%. The card issuer offers the consumer a 15% rate on purchases made between January 1, 2012 and January 1, 2014. Prior to January 1, 2012, the card issuer discloses, in accordance with §1026.9(c)(2)(v)(B), that the rate on purchases made during that period will increase to the standard 18% rate on January 1, 2014. In March 2012, the consumer makes a payment that is ten days late. The card issuer, upon providing 45 days' advance notice of the change under §1026.9(g), increases the rate on new purchases to 18% effective as of June 1, 2012. On December 1, 2012, the issuer performs a review of the consumer's account in accordance with §1026.59. Based on that review, the card issuer is required to reduce the rate to the original 15% temporary rate as of January 15, 2013. On January 1, 2014, the card issuer may increase the rate on purchases to 18%, as previously disclosed prior to January 1, 2012, without providing an additional notice to the consumer.

14. *Replacing LIBOR.* The exception in §1026.9(c)(2)(v)(A) under which a creditor is not required to provide a change-in-terms notice under §1026.9(c)(2) when the change involves a reduction of any component of a finance or other charge does not apply on or after October 1, 2022, to margin reductions when a LIBOR index is replaced as permitted by §1026.55(b)(7)(i) or (ii). For change-in-terms notices provided under §1026.9(c)(2) on or after October 1, 2022, covering changes permitted by §1026.55(b)(7)(i) or (ii), a creditor must provide a change-in-terms notice under §1026.9(c)(2) disclosing the replacement index for a LIBOR index and any adjusted margin that is permitted under §1026.55(b)(7)(i) or (ii), even if the margin is reduced. From April 1, 2022, through September 30, 2022, a creditor has the option of disclosing a reduced margin in the change-in-terms notice that discloses the replacement index for a LIBOR index as permitted by §1026.55(b)(7)(i) or (ii).

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Section 1026.20—Disclosure Requirements Regarding Post-Consummation Events

20(a) Refinancings

1. *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.

i. 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.

ii. 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.

2. *Exceptions.* A transaction is subject to §1026.20(a) only if it meets the general definition of a refinancing. Section 1026.20(a)(1) through (5) lists 5 events that are not treated as refinancings, even if they are accomplished by cancellation of the old obligation and substitution of a new one.

3. *Variable-rate.* i. 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.

ii. 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:

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

B. 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. For example, a creditor does not add a variable-rate feature by changing the index of a variable-rate transaction from the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index to the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index respectively because the replacement index is a comparable index to the corresponding U.S. Dollar LIBOR index. *See* comment 20(a)–3.iv for factors to be used in determining whether a replacement index is comparable to a particular LIBOR index.

iii. 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.

iv. The relevant factors to be considered in determining whether a replacement index is comparable to a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index could meet the ''comparable'' standard with respect to a particular LIBOR index using historical data or future expectations, include but are not limited to, whether: {1} the movements over time are comparable; {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are comparable if there is sufficient data for this analysis; {3} the index levels are comparable; {4} the replacement index is publicly available; and {5} the replacement index is outside the control of the creditor.

4. *Unearned finance charge.* In a transaction involving precomputed finance charges, the creditor must include in the finance charge on the refinanced obligation any unearned portion of the original finance charge that is not rebated to the consumer or credited against the underlying obligation. For example, in a transaction with an add-on finance charge, a creditor advances new money to a consumer in a fashion that extinguishes the original obligation and replaces it with a new one. The creditor neither refunds the unearned finance charge on the original obligation to the consumer nor credits it to the remaining balance on the old obligation. Under these circumstances, the unearned finance charge must be included in the finance charge on the new obligation and reflected in the annual percentage rate disclosed on refinancing. Accrued but unpaid finance charges are included in the amount financed in the new obligation.

5. *Coverage.* Section 1026.20(a) 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.

Paragraph 20(a)(1)

1. *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:

i. Accrued unpaid interest is added to the principal balance.

ii. Changes are made in the terms of renewal resulting from the factors listed in §1026.17(c)(3).

iii. The principal at renewal is reduced by a curtailment of the obligation.

Paragraph 20(a)(2)

1. 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.

2. *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 in §1026.20(a)(2) 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.

Paragraph 20(a)(3)

1. *Court agreements.* This exception includes, for example, agreements such as reaffirmations of debts discharged in bankruptcy, settlement agreements, and post-judgment agreements. (See the commentary to §1026.2(a)(14) for a discussion of court-approved agreements that are not considered ''credit.'')

Paragraph 20(a)(4)

1. *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.

Paragraph 20(a)(5)

1. *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.

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

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37(j)(1) Index and Margin

1. *Index and margin.* The index disclosed pursuant to §1026.37(j)(1) must be stated such that a consumer reasonably can identify it. A common abbreviation or acronym of the name of the index may be disclosed in place of the proper name of the index, if it is a commonly used public method of identifying the index. For example, ''SOFR'' may be disclosed instead of Secured Overnight Financing Rate. The margin should be disclosed as a percentage. For example, if the contract determines the interest rate by adding 4.25

percentage points to the index, the margin should be disclosed as ''4.25%.''

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Section 1026.40—Requirements for Home-Equity Plans

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Paragraph 40(f)(3)(ii)

1. Replacing LIBOR. A creditor may use either the provision in §1026.40(f)(3)(ii)(A) or (f)(3)(ii)(B) to replace a LIBOR index used under a plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the creditor from noncompliance with contractual provisions. The following examples illustrate when a creditor may use the provisions in §1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index used under a plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor may use §1026.40(f)(3)(ii)(A) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.40(f)(3)(ii)(B) provides that a creditor may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the creditor generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. In this example, however, the creditor would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the creditor would be contractually prohibited from unilaterally replacing a LIBOR index used under the plan until it becomes unavailable. At that time, the creditor has the option of using §1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a creditor may change the terms of the contract (including the index) as permitted by law. In this case, if the creditor replaces a LIBOR index under a plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the creditor may only use §1026.40(f)(3)(ii)(B) to replace the LIBOR index if the conditions of that provision are met. In this case, the creditor may not use §1026.40(f)(3)(ii)(A). If the creditor waits until the LIBOR index used under the plan becomes unavailable to replace the LIBOR index, the creditor has the option of using §1026.40(f)(3)(ii)(A) or (B) to replace the LIBOR index if the conditions of the applicable provision are met.

Paragraph 40(f)(3)(ii)(A)

1. *Substitution of index.* A creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the original and replacement indices were substantially similar, and as long as the replacement index and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the original index became unavailable. If the replacement index is newly established and therefore does not have any rate history, it may be used if it and the replacement margin will produce a rate substantially similar to the rate in effect when the original index became unavailable.

2. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in §1026.40(f)(3)(ii)(A) that the prime rate and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)–3.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in §1026.40(f)(3)(ii)(A) that the SOFR-based spread-adjusted index for consumer products and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. *See also* comment 40(f)(3)(ii)(A)–3.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantially similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: {1} The movements over time are substantially similar; and {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

3. *Substantially similar rate when LIBOR becomes unavailable.* Under §1026.40(f)(3)(ii)(A), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect based on the LIBOR index used under the plan when the LIBOR index became unavailable. For this comparison of the rates, a creditor generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the creditor generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of §1026.40(f)(3)(ii)(A), if a creditor uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in §1026.40(f)(3)(ii)(A) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under a plan becomes unavailable on June 30, 2023, and on that day the LIBOR index value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The creditor would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the creditor provides a change-in-terms notice under §1026.9(c)(1) on July 1, 2023, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on July 17, 2023, the creditor satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index value and 7% margin on July 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 40(f)(3)(ii)(B)

1. *Replacing LIBOR*. For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the creditor makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the creditor also must comply with the condition in §1026.40(f)(3)(ii)(B) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 40(f)(3)(ii)(B)–2 and –3.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the creditor also must comply with the condition in §1026.40(f)(3)(ii)(B) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in §1026.40(f)(3)(ii)(B), the creditor must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 40(f)(3)(ii)(B)–2 and –3.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantial similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: {1} The movements over time are substantially similar; and {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

2. *Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under §1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the creditor provides the change-in-terms notice disclosing the replacement index for the variable rate. The following example illustrates this comment.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume on January 1, 2022, a creditor provides a change-in-terms notice under §1026.9(c)(1) disclosing a new margin of 12% for the variable rate pursuant to a written agreement under §1026.40(f)(3)(iii), and this change in the margin becomes effective on January 1, 2022, pursuant to §1026.9(c)(1). Assume that there are no more changes in the margin that is used in calculating the variable rate prior to April 1, 2022, the date on which the creditor provides a change-in-terms notice under §1026.9(c)(1), disclosing the replacement index and replacement margin for the variable rate that will be effective on April 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 12%. Assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 9% is permissible under §1026.40(f)(3)(ii)(B) because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan (which is 12%).

3. *Substantially similar rates using index values on October 18, 2021.* Under §1026.40(f)(3)(ii)(B), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of §1026.40(f)(3)(ii)(B), if a creditor uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the creditor will be deemed to be in compliance with the condition in §1026.40(f)(3)(ii)(B) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the creditor has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A creditor would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the creditor provides a change-in-terms notice under §1026.9(c)(1) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on April 17, 2022, the creditor satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR index value changes after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on April 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on April 17, 2022.

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Section 1026.55—Limitations on Increasing Annual Percentage Rates, Fees, and Charges

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55(b)(2) Variable Rate Exception

1. *Increases due to increase in index.* Section 1026.55(b)(2) provides that an annual percentage rate that varies according to an index that is not under the card issuer's control and is available to the general public may be increased due to an increase in the index. This section does not permit a card issuer to increase the rate by changing the method used to determine a rate that varies with an index (such as by increasing the margin), even if that change will not result in an immediate increase. However, from time to time, a card issuer may change the day on which index values are measured to determine changes to the rate.

2. *Index not under card issuer's control.* A card issuer may increase a variable annual percentage rate pursuant to §1026.55(b)(2) only if the increase is based on an index or indices outside the card issuer's control. For purposes of §1026.55(b)(2), an index is under the card issuer's control if:

i. The index is the card issuer's own prime rate or cost of funds. A card issuer is permitted, however, to use a published prime rate, such as that in the Wall Street Journal, even if the card issuer's own prime rate is one of several rates used to establish the published rate.

ii. The variable rate is subject to a fixed minimum rate or similar requirement that does not permit the variable rate to decrease consistent with reductions in the index. A card issuer is permitted, however, to establish a fixed maximum rate that does not permit the variable rate to increase consistent with increases in an index. For example, assume that, under the terms of an account, a variable rate will be adjusted monthly by adding a margin of 5 percentage points to a publicly-available index. When the account is opened, the index is 10% and therefore the variable rate is 15%. If the terms of the account provide that the variable rate will not decrease below 15% even if the index decreases below 10%, the card issuer cannot increase that rate pursuant to §1026.55(b)(2). However, §1026.55(b)(2) does not prohibit the card issuer from providing in the terms of the account that the variable rate will not increase above a certain amount (such as 20%).

iii. The variable rate can be calculated based on any index value during a period of time (such as the 90 days preceding the last day of a billing cycle). A card issuer is permitted, however, to provide in the terms of the account that the variable rate will be calculated based on the average index value during a specified period. In the alternative, the card issuer is permitted to provide in the terms of the account that the variable rate will be calculated based on the index value on a specific day (such as the last day of a billing cycle). For example, assume that the terms of an account provide that a variable rate will be adjusted at the beginning of each quarter by adding a margin of 7 percentage points to a publicly-available index. At account opening at the beginning of the first quarter, the variable rate is 17% (based on an index value of 10%). During the first quarter, the index varies between 9.8% and 10.5% with an average value of 10.1%. On the last day of the first quarter, the index value is 10.2%. At the beginning of the second quarter, §1026.55(b)(2) does not permit the card issuer to increase the variable rate to 17.5% based on the first quarter's maximum index value of 10.5%. However, if the terms of the account provide that the variable rate will be calculated based on the average index value during the prior quarter, §1026.55(b)(2) permits the card issuer to increase the variable rate to 17.1% (based on the average index value of 10.1% during the first quarter). In the alternative, if the terms of the account provide that the variable rate will be calculated based on the index value on the last day of the prior quarter, §1026.55(b)(2) permits the card issuer to increase the variable rate to 17.2% (based on the index value of 10.2% on the last day of the first quarter).

3. *Publicly available.* The index or indices must be available to the public. A publicly-available index need not be published in a newspaper, but it must be one the consumer can independently obtain (by telephone, for example) and use to verify the annual percentage rate applied to the account.

4. *Changing a non-variable rate to a variable rate.* Section 1026.55 generally prohibits a

card issuer from changing a non-variable annual percentage rate to a variable annual percentage rate because such a change can result in an increase. However, a card issuer may change a non-variable rate to a variable rate to the extent permitted by one of the exceptions in §1026.55(b). For example, §1026.55(b)(1) permits a card issuer to change a non-variable rate to a variable rate upon expiration of a specified period of time. Similarly, following the first year after the account is opened, §1026.55(b)(3) permits a card issuer to change a non-variable rate to a variable rate with respect to new transactions (after complying with the notice requirements in §1026.9(b), (c), or (g)).

5. *Changing a variable rate to a non-variable rate.* Nothing in §1026.55 prohibits a card issuer from changing a variable annual percentage rate to an equal or lower non-variable rate. Whether the non-variable rate is equal to or lower than the variable rate is determined at the time the card issuer provides the notice required by §1026.9(c). For example, assume that on March 1 a variable annual percentage rate that is currently 15% applies to a balance of $2,000 and the card issuer sends a notice pursuant to §1026.9(c) informing the consumer that the variable rate will be converted to a non-variable rate of 14% effective April 15. On April 15, the card issuer may apply the 14% non-variable rate to the $2,000 balance and to new transactions even if the variable rate on March 2 or a later date was less than 14%.

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55(b)(7) Index Replacement and Margin Change Exception

1. Replacing LIBOR. A card issuer may use either the provision in §1026.55(b)(7)(i) or (ii) to replace a LIBOR index used under the plan so long as the applicable conditions are met for the provision used. Neither provision, however, excuses the card issuer from noncompliance with contractual provisions. The following examples illustrate when a card issuer may use the provisions in §1026.55(b)(7)(i) or (ii) to replace a LIBOR index on the plan.

i. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable and provides that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. The card issuer may use §1026.55(b)(7)(i) to replace the LIBOR index used under the plan so long as the conditions of that provision are met. Section 1026.55(b)(7)(ii) provides that a card issuer may replace the LIBOR index if, among other conditions, the replacement index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. If the replacement index is not published on October 18, 2021, the card issuer generally must use the next calendar day for which both the LIBOR index and the replacement index are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that if the replacement index is the spread-adjusted index based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. In this example, however, the card issuer would be contractually prohibited from replacing the LIBOR index used under the plan unless the replacement index and replacement margin also will produce an annual percentage rate substantially similar to a rate that is in effect when the LIBOR index becomes unavailable.

ii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may not replace an index unilaterally under a plan unless the original index becomes unavailable but does not require that the replacement index and replacement margin will result in an annual percentage rate substantially similar to a rate that is in effect when the original index becomes unavailable. In this case, the card issuer would be contractually prohibited from unilaterally replacing the LIBOR index used under the plan until it becomes unavailable. At that time, the card issuer has the option of using §1026.55(b)(7)(i) or (ii) to replace the LIBOR index used under the plan if the conditions of the applicable provision are met.

iii. Assume that LIBOR becomes unavailable after June 30, 2023, and assume a contract provides that a card issuer may change the terms of the contract (including the index) as permitted by law. In this case, if the card issuer replaces the LIBOR index used under the plan on or after April 1, 2022, but does not wait until the LIBOR index becomes unavailable to do so, the card issuer may only use §1026.55(b)(7)(ii) to replace the LIBOR index if the conditions of that provision are met. In that case, the card issuer may not use §1026.55(b)(7)(i). If the card issuer waits until the LIBOR index used under the plan becomes unavailable to replace LIBOR, the card issuer has the option of using §1026.55(b)(7)(i) or (ii) to replace the LIBOR index if the conditions of the applicable provisions are met.

Paragraph 55(b)(7)(i)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through when the LIBOR index becomes unavailable or up through the date indicated in a Bureau determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, whichever is earlier.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in §1026.55(b)(7)(i) that the prime rate and replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)–2.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in §1026.55(b)(7)(i) that the SOFR-based spread-adjusted index for consumer products replacement margin will produce a rate substantially similar to the rate that was in effect at the time the LIBOR index became unavailable. *See also* comment 55(b)(7)(i)–2.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantial similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the ''historical fluctuations are substantially similar'' standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: {1} The movements over time are substantially similar; and {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

2. *Substantially similar rate when LIBOR becomes unavailable.* Under §1026.55(b)(7)(i), the replacement index and replacement margin must produce an annual percentage rate substantially similar to the rate that was in effect at the time the LIBOR index used under the plan became unavailable. For this comparison of the rates, a card issuer generally must use the value of the replacement index and the LIBOR index on the day that LIBOR becomes unavailable. If the replacement index is not published on the day that the LIBOR index becomes unavailable, the card issuer generally must use the previous calendar day that both indices are published as the date for selecting indices values in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The one exception is that, if the replacement index is the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, 6-month, or 1-year U.S. Dollar LIBOR index, the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. The replacement index and replacement margin are not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of §1026.55(b)(7)(i), if a card issuer uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable

rate immediately prior to the replacement of the LIBOR index used under the plan the card issuer will be deemed to be in compliance with the condition in §1026.55(b)(7)(i) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the LIBOR index became unavailable. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan becomes unavailable on June 30, 2023, and on that day the LIBOR value is 2%, the margin is 10%, and the annual percentage rate is 12%. Also, assume that a card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on June 30, 2023. The card issuer would satisfy the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12% on June 30, 2023.) Thus, if the card issuer provides a change-in-terms notice under §1026.9(c)(2) on July 1, 2023, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on August 16, 2023, the card issuer satisfies the requirement to use a replacement index and replacement margin that will produce an annual percentage rate substantially similar to the rate that was in effect when the LIBOR index used under the plan became unavailable. This is true even if the prime index value changes after June 30, 2023, and the annual percentage rate calculated using the prime index value and 7% margin on August 16, 2023, is not substantially similar to the rate calculated using the LIBOR index value on June 30, 2023.

Paragraph 55(b)(7)(ii)

1. *Replacing LIBOR.* For purposes of replacing a LIBOR index used under a plan, a replacement index that is not newly established must have historical fluctuations that are substantially similar to those of the LIBOR index used under the plan, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar.

i. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. In order to use this prime rate as the replacement index for the 1-month or 3-month U.S. Dollar LIBOR index, the card issuer also must comply with the condition in §1026.55(b)(7)(ii) that the prime rate index value in effect on October 18, 2021, and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. *See also* comments 55(b)(7)(ii)–2 and –3.

ii. The Bureau has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. In order to use this SOFR-based spread-adjusted index for consumer products as the replacement index for the applicable LIBOR index, the card issuer also must comply with the condition in §1026.55(b)(7)(ii) that the SOFR-based spread-adjusted index for consumer products and replacement margin will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. Because of the exception in §1026.55(b)(7)(ii), the card issuer must use the index value on June 30, 2023, for the LIBOR index and, for the SOFR-based spread-adjusted index for consumer products, must use the index value on the first date that index is published, in determining whether the annual percentage rate based on the replacement index is substantially similar to the rate based on the LIBOR index. *See also* comments 55(b)(7)(ii)–2 and –3.

iii. The relevant factors to be considered in determining whether a replacement index has historical fluctuations substantial similar to those of a particular LIBOR index depend on the replacement index being considered and the LIBOR index being replaced. For example, these determinations may need to consider certain aspects of the historical data itself for a particular replacement index, such as whether the replacement index is a backward-looking rate (*e.g.*, historical average of rates) such that timing aspects of the data may need to be adjusted to match up with the particular forward-looking LIBOR term-rate being replaced. The types of relevant factors to establish if a replacement index would meet the "historical fluctuations are substantially similar" standard with respect to a particular LIBOR index using historical data, include but are not limited to, whether: {1} The movements over time are substantially similar; and {2} the consumers' payments using the replacement index compared to payments using the LIBOR index are substantially similar if there is sufficient historical data for this analysis.

2. *Using index values on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.* Under §1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is the margin that applied to the variable rate immediately prior to when the card issuer provides the change-in-terms notice disclosing the replacement index for the variable rate. The following examples illustrate how to determine the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan.

i. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021, pursuant to §1026.55(b)(3), a card issuer provides a change-in-terms notice under §1026.9(c)(2) disclosing a new margin of 12% for the variable rate that will apply to new transactions after November 30, 2021, and this change in the margin becomes effective on January 1, 2022. The margin for the variable rate applicable to the transactions that occurred on or prior to November 30, 2021, remains at 10%. Assume that there are no more changes in the margin used on the variable rate that applied to transactions that occurred after November 30, 2021, or to the margin used on the variable rate that applied to transactions that occurred on or prior to November 30, 2021, prior to when the card issuer provides a change-in-terms notice on April 1, 2022, disclosing the replacement index and replacement margins for both variable rates that will be effective on May 17, 2022. In this case, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred on or prior to November 30, 2021, is 10%. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 7% is permissible under §1026.55(b)(7)(ii) for transactions that occurred on or prior to November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 12%, which is substantially similar to the 12% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for that balance (which is 10%). A replacement margin of 9% is permissible under §1026.55(b)(7)(ii) for transactions that occurred after November 30, 2021, because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 14%, which is substantially similar to the 14% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for transactions that occurred after November 30, 2021, (which is 12%).

ii. Assume a variable rate used under the plan that is based on the 1-month U.S. Dollar LIBOR index, and assume that LIBOR becomes unavailable after June 30, 2023. On October 18, 2021, the LIBOR index value is 2%, the margin on that day is 10% and the annual percentage rate using that index value and margin is 12%. Assume that on November 16, 2021, pursuant to §1026.55(b)(4), a card issuer provides a penalty rate notice under §1026.9(g) increasing the margin for the variable rate to 20% that will apply to both outstanding balances and new transactions effective January 1, 2022, because the consumer was more than 60 days late in making a minimum payment. Assume that there are no more changes in the margin used on the variable rate for either the outstanding balance or new transactions prior to April 1, 2022, the date on which the card issuer provides a change-in-terms notice under

§1026.9(c)(2) disclosing the replacement index and replacement margin for the variable rate that will be effective on May 17, 2022. The margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions is 12%. Assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A replacement margin of 17% is permissible under §1026.55(b)(7)(ii) for the outstanding balance and new transactions because that replacement margin combined with the prime index value of 5% on October 18, 2021, will produce an annual percentage rate of 22%, which is substantially similar to the 22% annual percentage rate calculated using the LIBOR index value in effect on October 18, 2021, (which is 2%) and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan for the outstanding balance and new transactions (which is 20%).

3. *Substantially similar rate using index values on October 18, 2021.* Under §1026.55(b)(7)(ii), if the replacement index was published on October 18, 2021, the replacement index value in effect on October 18, 2021, and replacement margin must produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. A card issuer is not required to produce an annual percentage rate that is substantially similar on the day that the replacement index and replacement margin become effective on the plan. For purposes of §1026.55(b)(7)(ii), if a card issuer uses the SOFR-based spread-adjusted index recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR index as the replacement index and uses as the replacement margin the same margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, the card issuer will be deemed to be in compliance with the condition in §1026.55(b)(7)(ii) that the replacement index and replacement margin would have resulted in an annual percentage rate substantially similar to the rate calculated using the LIBOR index. The following example illustrates this comment.

i. Assume that the 1-month U.S. Dollar LIBOR index used under the plan has a value of 2% on October 18, 2021, the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan is 10%, and the annual percentage rate based on that LIBOR index value and that margin is 12%. Also, assume that the card issuer has selected the prime index published in the Wall Street Journal as the replacement index, and the value of the prime index is 5% on October 18, 2021. A card issuer would satisfy the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR index value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan, by selecting a 7% replacement margin. (The prime index value of 5% and the replacement margin of 7% would produce a rate of 12%.) Thus, if the card issuer provides a change-in-terms notice under §1026.9(c)(2) on April 1, 2022, disclosing the prime index as the replacement index and a replacement margin of 7%, where these changes will become effective on May 17, 2022, the card issuer satisfies the requirement to use a replacement index value in effect on October 18, 2021, and replacement margin that will produce an annual percentage rate substantially similar to the rate calculated using the LIBOR value in effect on October 18, 2021, and the margin that applied to the variable rate immediately prior to the replacement of the LIBOR index used under the plan. This is true even if the prime index value or the LIBOR value change after October 18, 2021, and the annual percentage rate calculated using the prime index value and 7% margin on May 17, 2022, is not substantially similar to the rate calculated using the LIBOR index value on October 18, 2021, or substantially similar to the rate calculated using the LIBOR index value on May 17, 2022.

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Section 1026.59—Reevaluation of Rate Increases

* * * * *

59(d) Factors

1. *Change in factors.* A creditor that complies with §1026.59(a) by reviewing the factors it currently considers in determining the annual percentage rates applicable to similar new credit card accounts may change those factors from time to time. When a creditor changes the factors it considers in determining the annual percentage rates applicable to similar new credit card accounts from time to time, it may comply with §1026.59(a) by reviewing the set of factors it considered immediately prior to the change in factors for a brief transition period, or may consider the new factors. For example, a creditor changes the factors it uses to determine the rates applicable to similar new credit card accounts on January 1, 2012. The

creditor reviews the rates applicable to its existing accounts that have been subject to a rate increase pursuant to §1026.59(a) on January 25, 2012. The creditor complies with §1026.59(a) by reviewing, at its option, either the factors that it considered on December 31, 2011 when determining the rates applicable to similar new credit card accounts or the factors that it considers as of January 25, 2012. For purposes of compliance with §1026.59(d), a transition period of 60 days from the change of factors constitutes a brief transition period.

2. *Comparison of existing account to factors used for similar new accounts.* Under §1026.59(a), if a card issuer evaluates an existing account using the same factors that it considers in determining the rates applicable to similar new accounts, the review of factors need not result in existing accounts being subject to exactly the same rates and rate structure as a card issuer imposes on similar new accounts. For example, a card issuer may offer variable rates on similar new accounts that are computed by adding a margin that depends on various factors to the value of a SOFR index. The account that the card issuer is required to review pursuant to §1026.59(a) may have variable rates that were determined by adding a different margin, depending on different factors, to a published prime index. In performing the review required by §1026.59(a), the card issuer may review the factors it uses to determine the rates applicable to similar new accounts. If a rate reduction is required, however, the card issuer need not base the variable rate for the existing account on the SOFR index but may continue to use the published prime index. Section 1026.59(a) requires, however, that the rate on the existing account after the reduction, as determined by adding the published prime index and margin, be comparable to the rate, as determined by adding the margin and the SOFR index, charged on a new account for which the factors are comparable.

3. *Similar new credit card accounts.* A card issuer complying with §1026.59(d)(1)(ii) is required to consider the factors that the card issuer currently considers when determining the annual percentage rates applicable to similar new credit card accounts under an open-end (not home-secured) consumer credit plan. For example, a card issuer may review different factors in determining the annual percentage rate that applies to credit card plans for which the consumer pays an annual fee and receives rewards points than it reviews in determining the rates for credit card plans with no annual fee and no rewards points. Similarly, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards than it reviews in determining the rates applicable to credit cards that can be used at a wider variety of merchants. In addition, a card issuer may review different factors in determining the annual percentage rate that applies to private label credit cards usable only at Merchant A than it may review for private label credit cards usable only at Merchant B. However, §1026.59(d)(1)(ii) requires a card issuer to review the factors it considers when determining the rates for new credit card accounts with similar features that are offered for similar purposes.

4. *No similar new credit card accounts.* In some circumstances, a card issuer that complies with §1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may not be able to identify a class of new accounts that are similar to the existing accounts on which a rate increase has been imposed. For example, consumers may have existing credit card accounts under an open-end (not home-secured) consumer credit plan but the card issuer may no longer offer a product to new consumers with similar characteristics, such as the availability of rewards, size of credit line, or other features. Similarly, some consumers' accounts may have been closed and therefore cannot be used for new transactions, while all new accounts can be used for new transactions. In those circumstances, §1026.59 requires that the card issuer nonetheless perform a review of the rate increase on the existing customers' accounts. A card issuer does not comply with §1026.59 by maintaining an increased rate without performing such an evaluation. In such circumstances, §1026.59(d)(1)(ii) requires that the card issuer compare the existing accounts to the most closely comparable new accounts that it offers.

5. *Consideration of consumer's conduct on existing account.* A card issuer that complies with §1026.59(a) by reviewing the factors that it currently considers in determining the annual percentage rates applicable to similar new accounts may consider the consumer's payment or other account behavior on the existing account only to the same extent and in the same manner that the issuer considers such information when one of its current cardholders applies for a new account with the card issuer. For example, a card issuer might obtain consumer reports for all of its applicants. The consumer reports contain certain information regarding the applicant's past performance on existing credit card accounts. However, the card issuer may have additional information about an existing cardholder's payment history or account usage that does not appear in the consumer report and that, accordingly, it would not generally have for all new applicants. For example, a consumer may have made a payment that is five days late on his or her account with the card issuer, but this information does not appear on the consumer report.

The card issuer may consider this additional information in performing its review under §1026.59(a), but only to the extent and in the manner that it considers such information if a current cardholder applies for a new account with the issuer.

6. *Multiple rate increases between January 1, 2009 and February 21, 2010.* i. *General.* Section 1026.59(d)(2) applies if an issuer increased the rate applicable to a credit card account under an open-end (not home-secured) consumer credit plan between January 1, 2009 and February 21, 2010, and the increase was not based solely upon factors specific to the consumer. In some cases, a credit card account may have been subject to multiple rate increases during the period from January 1, 2009 to February 21, 2010. Some such rate increases may have been based solely upon factors specific to the consumer, while others may have been based on factors not specific to the consumer, such as the issuer's cost of funds or market conditions. In such circumstances, when conducting the first two reviews required under §1026.59, the card issuer may separately review: {i} Rate increases imposed based on factors not specific to the consumer, using the factors described in §1026.59(d)(1)(ii) (as required by §1026.59(d)(2)); and {ii} rate increases imposed based on consumer-specific factors, using the factors described in §1026.59(d)(1)(i). If the review of factors described in §1026.59(d)(1)(i) indicates that it is appropriate to continue to apply a penalty or other increased rate to the account as a result of the consumer's payment history or other factors specific to the consumer, §1026.59 permits the card issuer to continue to impose the penalty or other increased rate, even if the review of the factors described in §1026.59(d)(1)(ii) would otherwise require a rate decrease.

i. Example. Assume a credit card account was subject to a rate of 15% on all transactions as of January 1, 2009. On May 1, 2009, the issuer increased the rate on existing balances and new transactions to 18%, based upon market conditions or other factors not specific to the consumer or the consumer's account. Subsequently, on September 1, 2009, based on a payment that was received five days after the due date, the issuer increased the applicable rate on existing balances and new transactions from 18% to a penalty rate of 25%. When conducting the first review required under §1026.59, the card issuer reviews the rate increase from 15% to 18% using the factors described in §1026.59(d)(1)(ii) (as required by §1026.59(d)(2)), and separately but concurrently reviews the rate increase from 18% to 25% using the factors described in paragraph §1026.59(d)(1)(i). The review of the rate increase from 15% to 18% based upon the factors described in §1026.59(d)(1)(ii) indicates that a similarly situated new consumer would receive a rate of 17%. The review of the rate increase from 18% to 25% based upon the factors described in §1026.59(d)(1)(i) indicates that it is appropriate to continue to apply the 25% penalty rate based upon the consumer's late payment. Section 1026.59 permits the rate on the account to remain at 25%.

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59(f) Termination of Obligation To Review Factors

1. *Revocation of temporary rates.* i. *In general.* If an annual percentage rate is increased due to revocation of a temporary rate, §1026.59(a) requires that the card issuer periodically review the increased rate. In contrast, if the rate increase results from the expiration of a temporary rate previously disclosed in accordance with §1026.9(c)(2)(v)(B), the review requirements in §1026.59(a) do not apply. If a temporary rate is revoked such that the requirements of §1026.59(a) apply, §1026.59(f) permits an issuer to terminate the review of the rate increase if and when the applicable rate is the same as the rate that would have applied if the increase had not occurred.

ii. *Examples.* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. The card issuer offers the consumer a 10% rate on purchases made between February 1, 2012, and August 1, 2013, and discloses pursuant to §1026.9(c)(2)(v)(B) that on August 1, 2013, the rate on purchases will revert to the original 15% rate. The consumer makes a payment that is five days late in July 2012.

A. Upon providing 45 days' advance notice and to the extent permitted under §1026.55, the card issuer increases the rate applicable to new purchases to 15%, effective on September 1, 2012. The card issuer must review that rate increase under §1026.59(a) at least once each six months during the period from September 1, 2012, to August 1, 2013, unless and until the card issuer reduces the rate to 10%. The card issuer performs reviews of the rate increase on January 1, 2013, and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 15%. Beginning on August 1, 2013, the card issuer is not required to continue periodically reviewing the rate increase, because if the temporary rate had expired in accordance with its previously disclosed terms, the 15% rate would have applied to purchase balances as of August 1, 2013, even if the rate increase had not occurred on September 1, 2012.

B. Same facts as above except that the review conducted on July 1, 2013, indicates that a reduction to the original temporary rate of 10% is appropriate. Section

1026.59(a)(2)(i) requires that the rate be reduced no later than 45 days after completion of the review, or no later than August 15, 2013. Because the temporary rate would have expired prior to the date on which the rate decrease is required to take effect, the card issuer may, at its option, reduce the rate to 10% for any portion of the period from July 1, 2013, to August 1, 2013, or may continue to impose the 15% rate for that entire period. The card issuer is not required to conduct further reviews of the 15% rate on purchases.

C. Same facts as above except that on September 1, 2012, the card issuer increases the rate applicable to new purchases to the penalty rate on the consumer's account, which is 25%. The card issuer conducts reviews of the increased rate in accordance with §1026.59 on January 1, 2013, and July 1, 2013. Based on those reviews, the rate applicable to purchases remains at 25%. The card issuer's obligation to review the rate increase continues to apply after August 1, 2013, because the 25% penalty rate exceeds the 15% rate that would have applied if the temporary rate expired in accordance with its previously disclosed terms. The card issuer's obligation to review the rate terminates if and when the annual percentage rate applicable to purchases is reduced to the 15% rate.

2. *Example—relationship to §1026.59(a).* Assume that on January 1, 2011, a consumer opens a new credit card account under an open-end (not home-secured) consumer credit plan. The annual percentage rate applicable to purchases is 15%. Upon providing 45 days' advance notice and to the extent permitted under §1026.55, the card issuer increases the rate applicable to new purchases to 18%, effective on September 1, 2012. The card issuer conducts reviews of the increased rate in accordance with §1026.59 on January 1, 2013, and July 1, 2013, based on the factors described in §1026.59(d)(1)(ii). Based on the January 1, 2013, review, the rate applicable to purchases remains at 18%. In the review conducted on July 1, 2013, the card issuer determines that, based on the relevant factors, the rate it would offer on a comparable new account would be 14%. Consistent with §1026.59(f), §1026.59(a) requires that the card issuer reduce the rate on the existing account to the 15% rate that was in effect prior to the September 1, 2012 rate increase.

3. *Transition from LIBOR.* i. *General.* Effective April 1, 2022, in the case where the rate applicable immediately prior to the increase was a variable rate with a formula based on a LIBOR index, a card issuer may terminate the obligation to review if the card issuer reduces the annual percentage rate to a rate determined by a replacement formula that is derived from a replacement index value on October 18, 2021, plus replacement margin that is equal to the annual percentage rate of the LIBOR index value on October 18, 2021, plus the margin used to calculate the rate immediately prior to the increase (previous formula).

ii. *Examples.* A. Assume that on April 1, 2022, the previous formula is the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to a 12% annual percentage rate. In this case, the LIBOR index value is 2%. The card issuer selects the prime index published in the Wall Street Journal as the replacement index. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at a replacement index plus replacement margin that equals 12%. If the prime index is 4% on October 18, 2021, the replacement margin must be 8% in the replacement formula. The replacement formula for purposes of determining when the card issuer can terminate the obligation to review factors is the prime index plus 8%.

B. Assume that on April 1, 2022, the account was not subject to §1026.59 and the annual percentage rate was the 1-month U.S. Dollar LIBOR index plus a margin of 10% equal to 12%. On May 1, 2022, the card issuer raises the annual percentage rate to the 1-month U.S. Dollar LIBOR index plus a margin of 12% equal to 14%. On June 1, 2022, the card issuer transitions the account from the LIBOR index in accordance with §1026.55(b)(7)(ii). The card issuer selects the prime index published in the Wall Street Journal as the replacement index with a value on October 18, 2021, of 4%. The replacement formula used to derive the rate at which the card issuer may terminate its obligation to review factors must be set at the value of a replacement index on October 18, 2021, plus replacement margin that equals 12%. In this example, the replacement formula is the prime index plus 8%.

4. *Selecting a replacement index.* In selecting a replacement index for purposes of §1026.59(f)(3), the card issuer must meet the conditions for selecting a replacement index that are described in §1026.55(b)(7)(ii) and comment 55(b)(7)(ii)-1. For example, a card issuer may select a replacement index that is not newly established for purposes of §1026.59(f)(3), so long as the replacement index has historical fluctuations that are substantially similar to those of the LIBOR index used in the previous formula, considering the historical fluctuations up through the relevant date. If the Bureau has made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the date indicated in that determination. If the Bureau has not made a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar, the relevant date is the later of April 1, 2022, or the date no more than 30 days before the card

issuer makes a determination that the replacement index and the LIBOR index have historical fluctuations that are substantially similar. The Bureau has determined that effective April 1, 2022, the prime rate published in the Wall Street Journal has historical fluctuations that are substantially similar to those of the 1-month and 3-month U.S. Dollar LIBOR indices. The Bureau also has determined that effective April 1, 2022, the spread-adjusted indices based on SOFR recommended by the Alternative Reference Rates Committee for consumer products to replace the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices have historical fluctuations that are substantially similar to those of the 1-month, 3-month, or 6-month U.S. Dollar LIBOR indices respectively. *See* comment 55(b)(7)(ii)-1. Also, for purposes of §1026.59(f)(3), a card issuer may select a replacement index that is newly established as described in §1026.55(b)(7)(ii).

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59(h) Exceptions

1. *Transition from LIBOR*. The exception to the requirements of this section does not apply to rate increases already subject to §1026.59 prior to the transition from the use of a LIBOR index as the index in setting a variable rate to the use of a different index in setting a variable rate where the change from the use of a LIBOR index to a different index occurred in accordance with §1026.55(b)(7)(i) or (ii).

PART 1030—TRUTH IN SAVINGS (REGULATION DD)

Sec.

AUTHORITY: 12 U.S.C. 4302–4304, 4308, 5512, 5581.

SOURCE: 76 FR 79278, Dec. 21, 2011, unless otherwise noted.

§1030.1 Authority, purpose, coverage, and effect on state laws.

(a) *Authority*. This part, known as Regulation DD, is issued by the Bureau of Consumer Financial Protection to implement the Truth in Savings Act of 1991 (the act), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 3201 *et seq.*, Public Law 102–242, 105 Stat. 2236), as amended by title X, section 1100B of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111–203, 124 Stat. 1376). Information-collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 3170–0004.

(b) *Purpose*. The purpose of this part is to enable consumers to make informed decisions about accounts at depository institutions. This part requires depository institutions to provide disclosures so that consumers can make meaningful comparisons among depository institutions.

(c) *Coverage*. This part applies to depository institutions except for credit unions. In addition, the advertising rules in §1030.8 of this part apply to any person who advertises an account offered by a depository institution, including deposit brokers.

(d) *Effect on state laws*. State law requirements that are inconsistent with the requirements of the act and this part are preempted to the extent of the inconsistency. Additional information on inconsistent state laws and the procedures for requesting a preemption determination from the Bureau are set forth in appendix C of this part.

(e) *Relationship to Regulation CC*. The Director of the Bureau and the Board of Governors of the Federal Reserve System jointly issue regulations under sections 603(d)(1), 604, 605, and 609(a) of the Expedited Funds Availability Act (12 U.S.C. 4002(d)(1), 4003, 4004, 4008(a)) that are codified within Regulation CC (12 CFR part 229).

[76 FR 79278, Dec. 21, 2011, as amended at 84 FR 31698, July 3, 2019]