

**BILLING CODE: 4810-AM-P**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

**12 CFR Part 1026**

**Docket No. [CFPB-2016-0038]**

**RIN 3170-AA61**

**Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z)**

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Proposed rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is proposing various amendments to Federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act and the Truth in Lending Act that are implemented in Regulation Z. The proposed amendments memorialize the Bureau's informal guidance on various issues and include clarifications and technical amendments. The Bureau is also proposing tolerance provisions for the total of payments, an adjustment to a partial exemption mainly affecting housing finance agencies and nonprofits, extension of coverage of the integrated disclosure requirements to all cooperative units, and guidance on sharing the disclosures with various parties involved in the mortgage origination process.

**DATES:** Comments must be received on or before October 18, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB-2016-0038 or RIN 3170-AA61, by any of the following methods:

- *Email:* [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB-2016-0038 or RIN 3170-AA61 in the subject line of the email.
- *Electronic:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street, NW., Washington, DC 20552.
- *Hand Delivery/Courier:* Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1275 First Street, NE., Washington, DC 20002.

*Instructions:* All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street, NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Haywood, Paralegal Specialist, Dania Ayoubi, Pedro De Oliveira, David Friend, Jaclyn Maier, and Alexandra Reimelt, Counsels, and Nicholas Hluchyj, Senior Counsel, Office of Regulations, Consumer Financial

Protection Bureau, 1700 G Street, NW., Washington, DC 20552, at 202-435-7700.

## **SUPPLEMENTARY INFORMATION:**

### **I. Summary of the Proposed Rule**

For more than 30 years, Federal law required lenders to issue two overlapping sets of disclosures to consumers applying for a mortgage. In October 2015, integrated disclosures issued by the Consumer Financial Protection Bureau, pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, took effect.<sup>1</sup> The Bureau has worked actively to support implementation both before and after the effective date by providing compliance guides, webinars, and other implementation aids.

To further these ongoing efforts, the Bureau is now proposing to memorialize certain past informal guidance, whether issued through webinar, compliance guide, or otherwise, and make additional clarifications and technical amendments. The Bureau is not proposing to reopen major policy decisions with this rulemaking but is proposing a few more substantive changes in a limited number of situations in which the Bureau has identified potential discrete solutions to specific implementation challenges. The Bureau expects that the proposal would generally benefit consumers and industry alike by providing greater clarity for implementation going forward.

Among other changes, the proposal would:

- *Create tolerances for the total of payments.* The Truth in Lending Act establishes certain tolerances for accuracy in calculating the finance charge and disclosures

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<sup>1</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, 2007, 2103-04, 2107-09 (2010); Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 78 FR 79730 (Dec. 31, 2013).

affected by the finance charge. In light of changes to certain underlying regulatory definitions, the Bureau believes it would be helpful to establish express tolerances for the total of payments to parallel the existing provisions regarding the finance charge.

- *Adjust a partial exemption that mainly affects housing finance agencies and nonprofits.* The existing rule provides a partial exemption for certain non-interest bearing subordinate lien transactions that provide down payment and other homeowner assistance (housing assistance loans). The Bureau has learned that the exemption may not be operating as intended. The Bureau is proposing two amendments to expand the reach of the partial exemption.
- *Provide a uniform rule regarding application of the integrated mortgage disclosure requirements to cooperative units.* Under the existing rule, coverage of cooperative units depends on whether cooperatives are classified as real property under State law. Because State law sometimes treats cooperatives differently for different purposes, there may be uncertainty and potential inconsistency among market actors. The Bureau is proposing to require provision of the integrated disclosures in transactions involving cooperative units, whether or not cooperatives are classified under State law as real property.
- *Provide guidance on sharing disclosures with various parties involved in the mortgage origination process.* The Bureau has received a number of requests for guidance concerning the sharing of disclosures with sellers and various other parties, including real estate agents, involved in the origination process in light of privacy concerns. The Bureau is proposing to incorporate and expand upon

previous webinar guidance in the Official Interpretations (commentary) to the regulation to provide greater clarity.

The more minor changes and technical corrections address a variety of topics, including: affiliate charges; the calculating cash to close table; construction loans; decimal places and rounding; escrow account disclosures; escrow cancellation notices; expiration dates for the closing costs disclosed on the Loan Estimate; gift funds; the “In 5 Years” calculation; lender and seller credits; lenders’ and settlement agents’ respective responsibilities; the list of service providers; model forms; non-obligor consumers; partial payment policy disclosures; payment ranges on the projected payments table; the payoffs and payments table; payoffs with a purchase loan; post-consummation fees; principal reduction (principal curtailment); disclosure and good-faith determination of property taxes and property value; rate locks; recording fees; simultaneous second lien loans; the summaries of transactions table; the total interest percentage calculation; trusts; and informational updates to the disclosures required by § 1026.19(e)(1)(i) (Loan Estimate).

## **II. Background**

### *A. The TILA-RESPA Integrated Disclosures Rulemaking*

For more than 30 years, TILA required creditors to give consumers who applied for consumer credit, including mortgage loans, one set of disclosures, while RESPA required settlement agents to give borrowers who obtained federally related mortgage loans a different, overlapping, set of disclosures. This duplication was long recognized as inefficient and unduly complex for both consumers and industry and fueled more than one effort over the years to develop combined disclosure forms. In 1998, the Board of Governors of the Federal Reserve

System (the Board) and the Department of Housing and Urban Development (HUD) prepared a joint report as to how the two sets of disclosures could be streamlined and simplified.<sup>2</sup>

In Dodd-Frank Act sections 1032(f), 1098, and 1100A, Congress directed the Bureau to integrate the mortgage loan disclosures under TILA and RESPA.<sup>3</sup> The Bureau undertook significant stakeholder outreach and consumer testing as it developed the proposal.<sup>4</sup> That work included researching how consumers interact with and understand information, testing of prototype disclosures, developing interactive online tools to gather public feedback (which ultimately garnered more than 27,000 individual comments on the prototype disclosures), and hosting roundtable discussions, teleconferences, and meetings with consumer advocacy groups, industry representatives, and government agencies. In addition to more conventional outreach to industry stakeholders, the Bureau conducted testing with industry participants, as well as consumers.<sup>5</sup> The Bureau also convened a Small Business Review Panel to solicit input from representatives of small entities.

The Bureau's 2012 proposal to integrate the TILA and RESPA disclosures (the 2012 TILA-RESPA Proposal) built from this extensive early outreach and research.<sup>6</sup> That proposal was animated by three primary goals: first, to consolidate the overlapping forms to reduce burden on creditors and facilitate compliance; second, to develop clear disclosures that help

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<sup>2</sup> Bd. of Governors of the Fed. Reserve Sys. & U.S. Dep't. of Housing and Urban Dev., Joint Report to the Congress Concerning Reform to the Truth in Lending Act and the Real Estate Settlement Procedures Act (1998), available at <https://www.federalreserve.gov/boarddocs/rptcongress/tila.pdf>. The report was prepared at Congress's direction in the Economic Growth and Regulatory Paperwork Reduction Act of 1996. Public Law 104-208, § 2101, 110 Stat. 3009.

<sup>3</sup> Public Law 111-203, 124 Stat. 1376, 2007, 2103-04, 2107-09 (2010).

<sup>4</sup> 78 FR 79730, 79742-744 (Dec. 31, 2013).

<sup>5</sup> 78 FR 79730, 79743 (Dec. 31, 2013).

<sup>6</sup> 77 FR 51116 (Aug, 23, 2012).

consumers understand the credit transaction and closing costs; and, third, to facilitate comparison shopping so that consumers could more readily choose mortgages that are right for them.

The Bureau received over 2,800 comments on its proposal from a wide range of interested parties.<sup>7</sup> In addition to considering all of the comments provided, the Bureau conducted additional qualitative testing of the disclosures, qualitative testing of the Spanish language translations of the disclosures, and a large-scale quantitative study.<sup>8</sup> In the quantitative study, respondents were able to answer questions about a hypothetical loan's features with statistically significant greater accuracy when using the new disclosures as compared to the existing disclosures.<sup>9</sup>

After consideration of the comments, the testing results, and the quantitative study, on November 20, 2013, the Bureau issued a final rule titled "Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)" (TILA-RESPA Final Rule).<sup>10</sup> The rule included a number of model forms, 13

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<sup>7</sup> The TILA-RESPA Final Rule notes that commenters included "consumer advocacy groups; national, State, and regional industry trade associations; banks; community banks; credit unions; financial companies; mortgage brokers; title insurance underwriters; title insurance agents and companies; settlement agents; escrow agents; law firms; document software companies; loan origination software companies; appraisal management companies; appraisers; State housing finance authorities; counseling associations and intermediaries; State attorneys general; associations of State financial services regulators; State bar associations; government sponsored enterprises (GSEs); a member of the U.S. Congress; the Committee on Small Business of the U.S. House of Representatives; Federal agencies, including the staff of the Bureau of Consumer Protection, the Bureau of Economics, and the Office of Policy Planning of the Federal Trade Commission (FTC staff), and the Office of Advocacy of the Small Business Administration (SBA); and individual consumers and academics." 78 FR 79730, 79745 (Dec. 31, 2013).

<sup>8</sup> 78 FR 79730, 79746-750 (Dec. 31, 2013).

<sup>9</sup> Kleimann Comm. Group, *Know Before You Owe: Quantitative Study of the Current and Integrated TILA-RESPA Disclosures* (2013), available at [http://files.consumerfinance.gov/f/201311\\_cfpb\\_study\\_tila-respa\\_disclosure-comparison.pdf](http://files.consumerfinance.gov/f/201311_cfpb_study_tila-respa_disclosure-comparison.pdf).

<sup>10</sup> 77 FR 51116 (Aug. 23, 2012) (2012 TILA-RESPA Proposal); 78 FR 79730 (Dec. 31, 2013) (TILA-RESPA Final Rule); see also Consumer Fin. Prot. Bureau, *CFPB Proposes "Know Before You Owe" Mortgage Forms* (July 9, 2012), <http://www.consumerfinance.gov/pressreleases/consumer-financial-protection-bureau-proposes-know-before-you-owe-mortgage-forms/>; Consumer Fin. Prot. Bureau, *Know Before You Owe: Introducing Our Proposed*

samples illustrating the use of those forms for different types of loans, and extensive Official Interpretations, which provided authoritative guidance explaining the new disclosures. The Bureau used its discretion to establish an initial effective date of August 1, 2015, slightly more than 20 months after the rule itself was issued.<sup>11</sup> The Bureau ultimately extended that effective date another two months, to October 3, 2015, in a subsequent rulemaking.<sup>12</sup> The Bureau has reaffirmed continuously its commitment to support a smooth transition for the mortgage market, including its commitment to be sensitive to the efforts made by institutions to come into compliance.<sup>13</sup>

The Bureau has made technical corrections to the TILA-RESPA Final Rule. On January 20, 2015, the Bureau issued the “Amendments to the 2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and the 2013 Loan Originator Rule Under the Truth in Lending Act (Regulation Z)” final rule (January 2015 Amendments).<sup>14</sup> On July 21, 2015, the Bureau issued the “2013 Integrated Mortgage Disclosures Rule Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) and Amendments; Delay of

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*Mortgage Disclosure Forms*, CFPB Blog (July 9, 2012), <http://www.consumerfinance.gov/blog/know-before-you-owe-introducing-our-proposed-mortgage-disclosure-forms/>.

<sup>11</sup> Most commenters supported an implementation period between 18 and 24 months. 78 FR 79730, 80071 (Dec. 31, 2013).

<sup>12</sup> 80 FR 43911 (July 24, 2015). An administrative error on the Bureau’s part required the Bureau to extend the effective date to August 15, 2015, at the earliest. The Bureau extended the effective date an additional six weeks to minimize costs from the delay to both consumers and industry.

<sup>13</sup> *See, e.g.*, Letter from Director Richard Cordray, CFPB, to Industry Trades (April 28, 2015); Letter from Director Richard Cordray, CFPB, to Representatives Andy Barr and Carolyn B. Maloney, U.S. House of Representatives (June 3, 2015). Both Fannie Mae and Freddie Mac have issued statements indicating that they are not conducting routine post-purchase reviews during the transitional period after the effective date. *See, e.g.*, Fannie Mae, Lender Letter LL-2015-06 (Oct. 6, 2015), available at <https://www.fanniemae.com/content/announcement/ll1506.pdf>; Freddie Mac, Industry Letter (Oct. 6, 2015), available at <http://www.freddie.com/singlefamily/guide/bulletins/pdf/iltr100615.pdf>.

<sup>14</sup> 80 FR 8767 (Feb. 19, 2015). The January 2015 Amendments finalized a proposal the Bureau had issued on October 10, 2014, 79 FR 64336 (Oct. 29, 2014).



Effective Date” final rule (July 2015 Amendments), which made certain technical amendments as well as extending the effective date.<sup>15</sup> The TILA-RESPA Final Rule, January 2015 Amendments, and July 2015 Amendments are collectively referred to as the TILA-RESPA Rule in this proposal.

While implementation has posed challenges to industry, industry reports indicate that implementation is now proceeding more smoothly.<sup>16</sup> Data published by one leading provider of loan origination services and survey research conducted by a major trade association confirm these observations.<sup>17</sup> Moreover, a recent homebuyer survey by another trade association suggests that the new disclosures are, indeed, helping consumers understand their loan terms.<sup>18</sup> The Loan Estimate and the disclosures required by § 1026.19(f)(1)(i) (Closing Disclosure) have been praised by many as improvements to the existing forms.<sup>19</sup>

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<sup>15</sup> 80 FR 43911 (July 24, 2015). The July 2015 Amendments finalized a proposal the Bureau had issued on June 24, 2015, 80 FR 36727 (June 26, 2015).

<sup>16</sup> See, e.g., Brena Swanson, “*Ellie Mae CEO: Initial discomfort of TRID now over, Time to close finally tumbles,*” Housingwire, March 21, 2016, available at <http://www.housingwire.com/articles/36563-ellie-mae-ceo-initial-discomfort-of-trid-now-over>; Ken Frears, “TRID: Back on Track in June.” National Association of Realtors, July 12, 2016 available at <http://economistsoutlook.blogs.realtor.org/2016/07/12/trid-back-on-track-in-june/>.

<sup>17</sup> See Ellie Mae, *Origination Insight Report* (May, 2016), available at [http://www.elliemae.com/origination-insight-reports/Ellie\\_Mae\\_OIR\\_MAY2016.pdf](http://www.elliemae.com/origination-insight-reports/Ellie_Mae_OIR_MAY2016.pdf); National Association of Realtors ©, *Survey of Mortgage Originators, First Quarter 2016: TRID after 6 Months and Changes to FHA’s Cancellation Policy*, available at <http://www.realtor.org/reports/survey-of-mortgage-originators-first-quarter-2016>.

<sup>18</sup> Press Release, American Land Title Association, “American Land Title Association Survey Shows More Homebuyers Reviewing Mortgage Disclosures,” May 16, 2016, <http://www.alta.org/press/release.cfm?r=260>.

<sup>19</sup> Brian Honea, “How Satisfied are Borrowers with the Origination Process?,” *The M Report* (July 13, 2016), available at <http://www.themreport.com/news/origination/07-13-2016/how-satisfied-are-borrowers-with-the-origination-process>; “STRATMOR: TRID Is Boosting Customer Satisfaction,” March 29, 2016, available at <http://www.mortgageorb.com/stratmor-trid-is-boosting-customer-satisfaction>; “New ClosingCorp Survey Gauges Early Consumer Reaction to New Real Estate/Mortgage Rules,” *Businesswire* (March 15, 2016), available at <http://www.businesswire.com/news/home/20160315005228/en/ClosingCorp-Survey-Gauges-Early-Consumer-Reaction-Real>; Trey Garrison, “Here’s how TRID is changing the mortgage industry,” *Housingwire* (October 12, 2015), available at <http://www.housingwire.com/articles/print/35319-heres-how-trid-is-changing-the-mortgage-industry>.

## *B. Implementation Support*

The Bureau has engaged in extensive efforts to support industry implementation of the TILA-RESPA Rule. Information regarding the Bureau's implementation support initiative and available implementation resources can be found on the Bureau's regulatory implementation website at [www.consumerfinance.gov/regulatory-implementation/tila-respa](http://www.consumerfinance.gov/regulatory-implementation/tila-respa). The Bureau's ongoing efforts in this area include: (1) the publication of a small entity compliance guide and a guide to forms to help industry understand the new rules, including updates to the guides, as needed; (2) the publication of a readiness guide for institutions to evaluate their readiness and facilitate compliance with the new rules; (3) the publication of a disclosure timeline that illustrates the process and timing requirements of the new disclosure rules; (4) the publication of the Bureau's own examination procedures, incorporating the Federal Financial Institutions Examination Council's exam procedures; (5) the publication of Loan Estimate and Closing Disclosure forms with fields annotated to show certain TILA disclosure citations; (6) a series of webinars to address common interpretive questions, including an index of questions answered during those webinars; (7) the issuance of the January 2015 and July 2015 Amendments, as well as a February 2016 Federal Register erratum notice; (8) the creation of a web page targeted to real estate professionals and their questions; (9) roundtable meetings with industry, including creditors, settlement service providers, technology vendors, and secondary market participants, to discuss their challenges and support their implementation efforts; (10) participation in numerous conferences and forums throughout the entire implementation period; (11) close collaboration with State and Federal regulators on implementation of the TILA-RESPA Final Rule, including coordination on consistent examination procedures; and (12) extensive informal guidance to support implementation of the TILA-RESPA Rule.

### *C. Purpose and Scope of Proposal*

The intent of this proposal is to integrate some of the Bureau's existing informal guidance, whether provided through webinar, compliance guide, or otherwise, into the regulation text and commentary of Regulation Z where appropriate. In addition, the Bureau is proposing to revise portions of the regulation text and commentary where revisions would be useful for greater certainty and clarity.

The Bureau's focus is thus providing additional clarity to facilitate compliance and doing so on an expedited schedule. While the Bureau has proposed a handful of substantive changes where it has identified a potential discrete solution to a specific implementation challenge, the Bureau does not intend to revisit major policy decisions in this rulemaking. The Bureau is reluctant to entertain major changes that could involve substantial reprogramming of systems so soon after the October 2015 effective date or to otherwise distract from industry's intense and very productive efforts to resolve outstanding implementation issues.

Accordingly, the proposal does not and cannot address every concern that has been raised to the Bureau. The Bureau believes that industry has made substantial implementation progress even in the last few months while drafting of the proposal was underway. The Bureau is prioritizing its resources to further facilitate industry's implementation progress. Therefore, the Bureau is not proposing any revisions that implicate fundamental policy choices, such as the disclosure of simultaneous issuance title insurance premiums, made in the TILA-RESPA Final Rule. The Bureau is also not proposing additional cure provisions.

The Bureau has spent substantial time considering industry requests to define further procedures for curing errors made in Loan Estimates or Closing Disclosures. The Bureau has worked steadily with industry to explain the cure provisions adopted in the TILA-RESPA Final

Rule as well as TILA's existing provisions for cure. The Bureau is concerned that further definition of cure provisions would not be practicable without substantially undermining incentives for compliance with the rule. The Bureau believes that further defining cure provisions would be extraordinarily complex. Accordingly, the Bureau is focusing this rulemaking process on facilitating compliance with the TILA-RESPA Rule in an expeditious manner so that all consumers receive disclosures that conform to the requirements of the rule.

### **III. Legal Authority**

The Bureau is issuing this proposal pursuant to its authority under TILA, RESPA, and the Dodd-Frank Act, including the authorities discussed below. In general, the provisions this proposal would amend were previously adopted by the Bureau in the TILA-RESPA Final Rule. In doing so, the Bureau relied on one or more of the authorities discussed below. Except as otherwise noted in the section-by-section analysis in part V below, the Bureau is issuing this proposal in reliance on the same authority and for the same reasons relied on in adopting the relevant provisions of the TILA-RESPA Rule, which are described in detail in the Legal Authority and Section-by-Section Analysis parts of the TILA-RESPA Final-Rule and January 2015 Amendments, respectively.<sup>20</sup>

#### *A. The Integrated Disclosure Mandate*

Section 1032(f) of the Dodd-Frank Act required the Bureau to propose, for public comment, rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws, unless the Bureau determined that any proposal issued by the Board and

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<sup>20</sup> 78 FR 79730, 79753-56 (Dec. 31, 2013); 80 FR 8767, 8768-70 (Feb. 19, 2015).

HUD carried out the same purpose.<sup>21</sup> In addition, the Dodd-Frank Act amended section 105(b) of TILA and section 4(a) of RESPA to require the integration of the TILA disclosures and the disclosures required by sections 4 and 5 of RESPA.<sup>22</sup> The purpose of the integrated disclosure is to facilitate compliance with the disclosure requirements of TILA and RESPA and to improve borrower understanding of the transaction.

Although Congress imposed the requirement to integrate the disclosures, it did not harmonize the underlying statutes. TILA and RESPA establish different timing requirements for disclosing mortgage credit terms and costs to consumers and require that those disclosures be provided by different parties. TILA section 128(b)(2)(A) generally requires that, within three business days of receiving the consumer's application and at least seven business days before consummation of certain mortgage transactions, creditors must provide consumers a good faith estimate of the costs of credit.<sup>23</sup> If the annual percentage rate that was initially disclosed becomes inaccurate, TILA section 128(b)(2)(D) requires creditors to redisclose the information at least three business days before consummation.<sup>24</sup> Pursuant to TILA section 128(b)(2)(B)(ii), the disclosures must be provided in final form at consummation.<sup>25</sup> RESPA section 5(c) also

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<sup>21</sup> Public Law 111-203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).

<sup>22</sup> Section 1100A of the Dodd-Frank Act amended TILA section 105(b) to provide that the "Bureau shall publish a single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this title in conjunction with the disclosure requirements of the Real Estate Settlement Procedures Act of 1974 that, taken together, may apply to a transaction that is subject to both or either provisions of law." Public Law 111-203, 124 Stat. 1376, 2108 (2010) (codified at 15 U.S.C. 1604(b)). Section 1098 of the Dodd-Frank amended RESPA section 4(a) to require the Bureau to publish a "single, integrated disclosure for mortgage loan transactions (including real estate settlement cost statements) which includes the disclosure requirements of this section and section 5, in conjunction with the disclosure requirements of the Truth in Lending Act that, taken together, may apply to a transaction that is subject to both or either provisions of law." Public Law 111-203, 124 Stat. 1376, 2103 (2010) (codified at 12 U.S.C. 2603(a)).

<sup>23</sup> 15 U.S.C. 1638(b)(2)(A). This requirement applies to extensions of credit that are both secured by a dwelling and subject to RESPA. *Id.*

<sup>24</sup> 15 U.S.C. 1638(b)(2)(D).

<sup>25</sup> 15 U.S.C. 1638(b)(2)(B)(ii).

requires that the lender or broker provide borrowers with a good faith estimate of settlement charges no later than three business days after receiving their applications.<sup>26</sup> However, unlike TILA, RESPA section 4(b) requires that, at or before settlement, the person conducting the settlement (which may not be the creditor) provide the borrower with a statement that records all charges imposed upon the borrower in connection with the settlement.<sup>27</sup>

### *B. Other Rulemaking and Exception Authorities*

#### *Truth in Lending Act*

*TILA section 105(a).* As amended by the Dodd-Frank Act, TILA section 105(a),<sup>28</sup> directs the Bureau to prescribe regulations to carry out the purposes of TILA and provides that such regulations may contain additional requirements, classifications, differentiations, or other provisions and may further provide for such adjustments and exceptions for all or any class of transactions that the Bureau judges are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. A purpose of TILA is to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various available credit terms and avoid the uninformed use of credit.<sup>29</sup> In enacting TILA, Congress found that economic stabilization would be enhanced and the competition among the various financial institutions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit.<sup>30</sup> Strengthened

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<sup>26</sup> 12 U.S.C. 2604(c).

<sup>27</sup> 12 U.S.C. 2603(b).

<sup>28</sup> 15 U.S.C. 1604(a).

<sup>29</sup> 15 U.S.C. 1601(a).

<sup>30</sup> *Id.*

competition among financial institutions is a goal of TILA, achieved through the meaningful disclosure of credit terms.

Historically, TILA section 105(a) has served as a broad source of authority for rules that promote the informed use of credit through required disclosures and substantive regulation of certain practices. Dodd-Frank Act section 1100A amended TILA section 105(a) to provide the Bureau express authority to prescribe regulations that contain additional requirements that the Bureau finds are necessary or proper to effectuate the purposes of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance. This amendment clarified the Bureau's authority under TILA section 105(a) to prescribe requirements beyond those specifically listed in the statute. The Dodd-Frank Act also clarified the Bureau's rulemaking authority over certain high-cost mortgages pursuant to section 105(a). As amended by the Dodd-Frank Act, TILA section 105(a) authority to make adjustments and exceptions to the requirements of TILA applies to all transactions subject to TILA, including the high-cost mortgages referred to in TILA section 103(bb), except with respect to the provisions of TILA section 129 that apply uniquely to such high-cost mortgages.<sup>31</sup>

*TILA section 129B(e)*. Dodd-Frank Act section 1405(a) amended TILA to add new section 129B(e).<sup>32</sup> That section authorizes the Bureau to prohibit or condition terms, acts, or practices relating to residential mortgage loans that the Bureau finds to be abusive, unfair, deceptive, predatory, necessary, or proper to ensure that responsible, affordable mortgage credit remains available to consumers in a manner consistent with the purposes of sections 129B and

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<sup>31</sup> 15 U.S.C. 1639. TILA section 129 contains requirements for certain high-cost mortgages, established by the Home Ownership and Equity Protection Act (HOEPA), which are commonly called HOEPA loans.

<sup>32</sup> Public Law 111-203, 124 Stat. 1376, 2141 (2010) (codified at 15 U.S.C. 1639B(e)).

129C of TILA, to prevent circumvention or evasion thereof, or to facilitate compliance with such sections, or are not in the interest of the borrower. In developing rules under TILA section 129B(e), the Bureau has considered whether the rules are in the interest of the borrower, as required by the statute. The Bureau is proposing portions of this rule pursuant to its authority under TILA section 129B(e).

*Real Estate Settlement Procedures Act*

Section 19(a) of RESPA authorizes the Bureau to prescribe such rules and regulations and to make such interpretations and grant such reasonable exemptions for classes of transactions as may be necessary to achieve the purposes of RESPA.<sup>33</sup> One purpose of RESPA is 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.<sup>34</sup> In addition, in enacting RESPA, Congress found that consumers are entitled to greater and more timely information on the nature and costs of the settlement process and to be protected from unnecessarily high settlement charges caused by certain abusive practices in some areas of the country.<sup>35</sup> In the past, RESPA section 19(a) has served as a broad source of authority to prescribe disclosures and substantive requirements to carry out the purposes of RESPA.

In developing rules under RESPA section 19(a), the Bureau has considered the purposes of RESPA, including to effect certain changes in the settlement process that will result in more effective advance disclosure of settlement costs. The Bureau is proposing portions of this rule pursuant to its authority under RESPA section 19(a).

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<sup>33</sup> 12 U.S.C. 2617(a).

<sup>34</sup> 12 U.S.C. 2601(b).

<sup>35</sup> 12 U.S.C. 2601(a).



*Dodd-Frank Act*

*Dodd-Frank Act section 1022(b)*. Under Dodd-Frank Act section 1022(b)(1), the Bureau has general authority to prescribe rules as may be necessary or appropriate to enable the Bureau to administer and carry out the purposes and objectives of the Federal consumer financial laws and to prevent evasions thereof.<sup>36</sup> TILA and RESPA are Federal consumer financial laws.<sup>37</sup> Accordingly, in proposing this rule, the Bureau is exercising its authority under Dodd-Frank Act section 1022(b) to prescribe rules under TILA, RESPA, and title X of the Dodd-Frank Act that carry out the purposes and objectives and prevent evasion of those laws. Section 1022(b)(2) of the Dodd-Frank Act prescribes certain standards for rulemaking that the Bureau must follow in exercising its authority under section 1022(b)(1).<sup>38</sup>

*Dodd-Frank Act section 1032*. Section 1032(a) of the Dodd-Frank Act provides that the Bureau may prescribe rules to ensure that the features of any consumer financial product or service, both initially and over the term of the product or service, are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.<sup>39</sup> The authority granted to the Bureau in section 1032(a) is broad and empowers the Bureau to prescribe rules regarding the disclosure of the features of consumer financial products and services generally. Accordingly, the Bureau may prescribe rules containing disclosure requirements even if other Federal consumer financial laws do not specifically require disclosure of such features.

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<sup>36</sup> Public Law 111-203, 124 Stat. 1376, 1980 (2010) (codified at 15 U.S.C. 5512(b)(1)).

<sup>37</sup> 12 U.S.C. 5481(12) and (14).

<sup>38</sup> Public Law 111-203, 124 Stat. 1376, 1980 (2010) (codified at 12 U.S.C. 5512(b)(2)).

<sup>39</sup> Public Law 111-203, 124 Stat. 1376, 2006-07 (2010) (codified at 12 U.S.C. 5532(a)).

Dodd-Frank Act section 1032(c) provides that, in prescribing rules pursuant to section 1032, the Bureau shall consider available evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services.<sup>40</sup> Accordingly, in developing the TILA-RESPA Rule under Dodd-Frank Act section 1032(a), the Bureau considered available studies, reports, and other evidence about consumer awareness, understanding of, and responses to disclosures or communications about the risks, costs, and benefits of consumer financial products or services. Moreover, the Bureau has considered the evidence developed through its consumer testing of the integrated disclosures as well as prior testing done by the Board and HUD regarding TILA and RESPA disclosures. See part III of the TILA-RESPA Final Rule for a discussion of the Bureau's consumer testing.<sup>41</sup> The Bureau is proposing portions of this rule pursuant to its authority under Dodd-Frank Act section 1032(a).

*Dodd-Frank Act section 1405(b).* Section 1405(b) of the Dodd-Frank Act provides that, notwithstanding any other provision of title XIV of the Dodd-Frank Act, in order to improve consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures, the Bureau may exempt from or modify disclosure requirements, in whole or in part, for any class of residential mortgage loans if the Bureau determines that such exemption or modification is in the interest of consumers and in the public interest.<sup>42</sup> Section 1401 of the Dodd-Frank Act, which amends TILA section 103(cc)(5), generally defines a residential mortgage loan as any consumer credit transaction that is secured by a mortgage on a

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<sup>40</sup> Public Law 111-203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(c)).

<sup>41</sup> 78 FR 79730, 79743-50 (Dec. 31, 2013).

<sup>42</sup> Public Law 111-203, 124 Stat. 1376, 2142 (2010) (codified at 15 U.S.C. 1601 note).

dwelling or on residential real property that includes a dwelling, other than an open-end credit plan or an extension of credit secured by a consumer's interest in a timeshare plan.<sup>43</sup> Notably, the authority granted by section 1405(b) applies to disclosure requirements generally and is not limited to a specific statute or statutes. Accordingly, Dodd-Frank Act section 1405(b) is a broad source of authority to exempt from or modify the disclosure requirements of TILA and RESPA.

In developing rules for residential mortgage loans under Dodd-Frank Act section 1405(b), the Bureau has considered the purposes of improving consumer awareness and understanding of transactions involving residential mortgage loans through the use of disclosures and the interests of consumers and the public. The Bureau is proposing portions of this rule pursuant to its authority under Dodd-Frank Act section 1405(b).

#### **IV. Proposed Implementation Period**

The Bureau seeks comment on when the changes proposed herein should be effective. The Bureau believes that these changes should enable industry to implement the TILA-RESPA Rule more cost-effectively and that industry should be able to implement these changes relatively quickly. At the same time, the Bureau recognizes that some of the proposed changes might require changes to systems or procedures. The Bureau specifically requests that technology vendors, creditors, mortgage brokers, settlement agents, and other entities affected by the proposal provide details on any required updates to software and systems and other measures that would be necessary to implement the proposed changes. The Bureau also specifically requests details on the amount of time needed to make specific changes and the time to make all proposed changes in the aggregate.

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<sup>43</sup> Public Law 111-203, 124 Stat. 1376, 2138 (2010) (codified at 15 U.S.C. 1602(cc)(5)).

The Bureau proposes an effective date 120 days after publication in the Federal Register of any final rule based on this proposal and seeks comment on the same. The Bureau also welcomes comment on whether there is a better or worse time of year for any of the changes proposed herein to become effective. The Bureau seeks comment on whether specific changes, as detailed in the section-by-section analysis in part V below, should have a separate effective date and, if so, whether it should be earlier or later than the general effective date and why. Finally, as discussed more fully in the section-by-section analysis of § 1026.1(d)(5), the Bureau is proposing revisions to comment 1(d)(5)-1 that would make mandatory, after a period of six months or more following promulgation of a final rule, certain post-consummation disclosures for transactions with an application date before October 3, 2015.

## **V. Section-by-Section Analysis**

### *Section 1026.1 Authority, Purpose, Coverage, Organization, Enforcement, and Liability*

#### *1(d) Organization*

##### *1(d)(5)*

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to § 1026.1(d)(5) to reflect this proposed change to the coverage of § 1026.19(e) and (f).

Comment 1(d)(5)-1 explains that the Bureau's revisions to Regulation X and Regulation Z in the TILA-RESPA Final Rule apply to covered loans 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), § 1026.28(a)(1), and the commentary to § 1026.29 became effective on October 3, 2015, without respect to whether an application was received. The Bureau is proposing to modify comment 1(d)(5)-1 in three ways. First, the Bureau is proposing to restructure the comment and make other clarifying and technical revisions. Second, the Bureau is proposing revisions to conform with proposed revisions to § 1026.19(e) and (f) as discussed in relation to the edits to § 1026.1(d)(5) above. Third, the Bureau is proposing language to require a creditor, servicer, or covered person, as applicable, to provide the disclosures required by § 1026.20(e) or § 1026.39(d)(5), for transactions in which the conditions in these provisions, as applicable, exist on or after October 1, 2017, regardless of when a corresponding application was received. The proposed amendments to the comment also would set forth an illustrative example.

With regard to the third modification, the Bureau understands that there is uncertainty whether the disclosures in §§ 1026.20(e) and 1026.39(d)(5) (together, the post-consummation disclosures) apply to all covered transactions as of the effective date or only to covered transactions for which the creditor or mortgage broker received an application on or after October 3, 2015. The Bureau considers either approach compliant under existing comment 1(d)(5)-1. The Bureau is proposing to clarify that the post-consummation disclosure requirements apply to all covered transactions. To avoid unfair surprise to creditors that have observed the requirements only for transactions for which an application was received on or after October 3, 2015, however, the Bureau is proposing to provide in comment 1(d)(5)-1 that the post-consummation disclosures apply prospectively to transactions for which an application was received prior to October 3, 2015. Specifically, proposed comment 1(d)(5)-1 would state that the post-consummation disclosures take effect for such transactions on October 1, 2017.

The October 1, 2017, effective date in proposed comment 1(d)(5)-1 reflects the Bureau's working assumption expectation that the final rule under this proposal, at least to the extent of the proposed revisions to comment 1(d)(5)-1, will be promulgated on or before April 1, 2017. The Bureau therefore is tentatively proposing this date in accordance with TILA section 105(d), which provides that any regulation of the Bureau that requires a disclosure that differs from the previously required disclosure generally shall take effect on that October 1 which follows by at least six months the date of promulgation. The Bureau's expectation concerning the date of a final rule is a working assumption at this time. Accordingly, the effective date recited in proposed comment 1(d)(5)-1 for the post-consummation disclosures for transactions for which an application was received prior to October 3, 2015, may differ in the final rule, depending on when it is adopted.

The Bureau believes that consumers with covered mortgage loans would benefit from the receipt of the post-consummation disclosures without regard to when a corresponding application was received. The information contained in the post-consummation disclosures, about escrow account closure and partial payment policies of a new owner of the mortgage loan, is beneficial regardless of when the consumer applied for the loan. Moreover, there is no necessary relationship between the disclosures made under § 1026.19(e) and (f) and the post-consummation disclosures; consumers should be able to understand the latter even if they have not received the former.

The Bureau also believes that requiring the post-consummation disclosures for covered transactions without regard to the application date would simplify compliance. For example, § 1026.20(e) recognizes that servicers may provide the post-consummation escrow disclosure notice, in connection with servicing the mortgage loan account, but servicers may have no other

reason to track the application date. Providing the required notice on all covered accounts regardless of application date may simplify servicers' compliance. Similarly, the post-consummation partial payment disclosure required by § 1026.39(d)(5) is incorporated into the mortgage transfer disclosures that are provided upon transfer of ownership of any covered loan, without regard to application date. If § 1026.39(d)(5) is effective without regard to application date, covered persons under § 1026.39 can provide a standard disclosure to all mortgage loans rather than two distinct disclosures, depending on the loan's application date.

The Bureau is seeking comment on whether making the applicability of the post-consummation disclosures to all covered transactions regardless of when an application was received is appropriate and any information about current industry practice and whether these notices are provided on all transactions that met the conditions set forth in §§ 1026.20(e) and 1026.39(d), respectively, or only transactions for which the application was received on or after October 3, 2015. The Bureau also seeks comment on how often escrow accounts are canceled post-consummation, whether the rate of escrow cancelations is expected to remain static or change, and the burden of tracking the application date for these two post-consummation disclosures.

### *Section 1026.2 Definitions and Rules of Construction*

#### *2(a) Definitions*

##### *2(a)(11) Consumer*

Comments 2(a)(11)-3 and 3(a)-10 discuss when the extension of credit to trusts is covered by TILA. Comment 2(a)(11)-3 clarifies that credit extended to land trusts is considered to be extended to a consumer for purposes of the definition of consumer in § 1026.2(a)(11). Comment 3(a)-10 states that credit extended for consumer purposes to land trusts and trusts that

a consumer has created for tax or estate planning purposes is considered to be credit extended to a natural person rather than credit extended to an organization.

The Bureau proposes to amend comment 2(a)(11)-3 to clarify that, in addition to credit extended to land trusts, credit extended to trusts established for tax or estate planning purposes is also considered to be extended to a natural person for purposes of the definition of consumer in § 1026.2(a)(11), consistent with comment 3(a)-10.

### *Section 1026.3 Exempt Transactions*

#### *3(h) Partial Exemption for Certain Mortgage Loans*

Section 1026.3(h) provides that the TILA-RESPA integrated disclosure requirements do not apply to a transaction if: (1) the transaction is secured by a subordinate lien; (2) the transaction's purpose is to finance down payment, closing costs, or similar homebuyer assistance, such as principal or interest subsidies; property rehabilitation assistance; energy efficiency assistance; or 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 forgiven either incrementally or in whole, at a date certain, and subject only to specified ownership and occupancy conditions, or deferred for a minimum of 20 years after consummation of the transaction, until the sale of the property securing the transaction, or until the property securing the transaction is no longer the principal dwelling of the consumer; (5) the total of costs payable by the consumer at consummation is less than 1 percent of the amount of credit extended and includes no charges other than fees for recordation, application, and housing counseling; and (6) the creditor complies with all other applicable Regulation Z requirements in connection with the transaction, including providing the disclosures required by § 1026.18. If the six criteria in § 1026.3(h) are satisfied, a creditor is not required to provide the Loan



Estimate, Closing Disclosure, or special information booklet in connection with the mortgage loan. The creditor must, however, provide the disclosures required by § 1026.18, ensuring that the consumer receives TILA disclosures of the cost of credit. As discussed in more detail below, the Bureau is proposing to revise § 1026.3(h) to clarify that transfer taxes may be payable by the consumer at consummation without losing eligibility for the partial exemption and to exclude recording fees and transfer taxes from the 1-percent threshold of total costs payable by the consumer at consummation.

Regulation X § 1024.5(d) provides a partial exemption from certain RESPA disclosure requirements for federally related mortgage loans<sup>44</sup> that meet the criteria set forth in § 1026.3(h). Specifically, Regulation X § 1024.5(d) provides that lenders<sup>45</sup> are exempt from the RESPA settlement cost booklet, RESPA Good Faith Estimate, RESPA settlement statement (HUD-1), and application servicing disclosure statement requirements of §§ 1024.6 through 1024.8, 1024.10, and 1024.33(a) (the RESPA disclosures) for a federally related mortgage loan: (1) that is subject to the special disclosure requirements for certain consumer credit transactions secured by real property set forth in Regulation Z, § 1026.19(e), (f), and (g); or (2) that satisfies the criteria in Regulation Z, § 1026.3(h). Thus, a lender on a federally related mortgage loan must provide the RESPA disclosures unless (1) the loan is a covered transaction for purposes of the TILA-RESPA integrated disclosures; or (2) the transaction meets the partial exemption in § 1026.3(h). Where a federally related mortgage loan is not a covered transaction subject to the

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<sup>44</sup> 12 CFR 1024.2(b) (defining federally related mortgage loan for purposes of Regulation X).

<sup>45</sup> Note that RESPA and TILA differ in their terminology. Whereas Regulation X generally refers to “lenders” and “borrowers,” Regulation Z generally refers to “creditors” and “consumers.” This Supplementary Information uses “lenders” and “borrowers” in its discussion of Regulation X and the RESPA disclosures and “creditors” and “consumers” in its discussion of Regulation Z, the TILA-RESPA integrated disclosures, and the partial exemptions generally.

special disclosures at § 1026.19(e), (f), and (g), for example, because it imposes no finance charge and is payable in four or fewer installments and thus does not meet one of Regulation Z's coverage criteria in § 1026.1(c)(1)(iii), and also does not satisfy the criteria in § 1026.3(h), the lender must continue to provide the RESPA disclosures. Even if a lender chooses to provide the TILA-RESPA integrated disclosures voluntarily, because those disclosures are not required for the transaction, the loan is not eligible for the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d)(2).

As discussed in the 2012 TILA-RESPA Proposal, the partial exemption in § 1026.3(h) and the parallel partial exemption in Regulation X § 1024.5(d) are designed to codify a disclosure exemption previously granted by HUD.<sup>46</sup> The purpose of these partial exemptions is to permit creditors to provide streamlined disclosures for certain low-cost, non-interest bearing subordinate lien transactions. The Bureau understands that the disclosures required under § 1026.18 are comparatively less burdensome to complete than either the TILA-RESPA integrated disclosures or the RESPA disclosures. Moreover, for the low-cost, non-interest bearing subordinate loans that satisfy the criteria at § 1026.3(h), the Bureau believes the disclosures required by § 1026.18 would be relatively straightforward to calculate, as loans that would qualify for the partial exemption would likely have minimal finance charges (by the terms of the partial exemption, only a certain limited set of fees may be charged and no interest may be charged). By reducing the procedural burden associated with the disclosures required for these transactions, the Bureau intended to enable creditors to make more housing assistance loans available for low- and moderate-income consumers.

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<sup>46</sup> 77 FR 51115, 51138 (Aug. 23, 2012).

The Bureau believes that transactions that satisfy the criteria at § 1026.3(h) generally provide a benefit to consumers and pose very little risk of consumer harm. These loans often provide consumers funds that could be directly applied against the first lien, in the case of down payment assistance, or towards closing costs associated with the first lien (these loans may also be made for other purposes, such as energy efficiency improvements). They are not interest bearing, repayment is deferred or contingent, and only a certain limited set of fees may be charged the consumer. The Bureau understands additionally that the amount of these loans is relatively small, typically between \$2,500 and \$10,000.

Moreover, the Bureau understands that loans that satisfy the criteria at § 1026.3(h) are predominantly made by housing finance agencies (HFAs) or by private creditors who partner with HFAs and extend credit pursuant to HFA guidelines. The Bureau has previously explained that HFAs are quasi-governmental entities, chartered by either a State or a municipality, that engage in diverse housing financing activities for the promotion of affordable housing and that HFAs promote affordable homeownership through activities such as subordinate-loan financing and down payment assistance programs (*e.g.*, a loan to the consumer to assist with the consumer's down payment, or to pay for some of the closing costs).<sup>47</sup> The Bureau has further explained its understanding that HFA lending is characterized by low-cost financing, evaluation of a consumer's repayment ability, and homeownership counseling.<sup>48</sup>

Many of the low-cost housing assistance loans made by HFAs or pursuant to HFA guidelines are not covered transactions subject to the special disclosures at § 1026.19(e), (f), and

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<sup>47</sup> 78 FR 6855, 6886 (January 10, 2014) (High-Cost Mortgage and Homeownership Counseling Amendments to the Truth in Lending Act (Regulation Z) and Homeownership Counseling Amendments to the Real Estate Settlement Procedures Act (Regulation X)).

<sup>48</sup> *Id.*

(g) because they are neither subject to a finance charge nor payable in more than four installments, as required by the coverage test in § 1026.1(c)(1).<sup>49</sup> These loans generally are, however, federally related mortgage loans. Thus, unless they qualify for the partial exemption in § 1026.3(h), cross-referenced in Regulation X § 1024.5(d)(2), creditors making these housing assistance loans may be required to provide the RESPA disclosures.

The Bureau has received information that many HFAs are having difficulty finding lenders to partner with in making these loans. Following the introduction of the TILA-RESPA integrated disclosures, some vendors and loan originator systems no longer support the RESPA disclosures. Although the RESPA disclosures are still required for other loan types, such as reverse mortgages, many lenders do not offer such products, and those lenders that do offer such products often do so through separate divisions that do not engage with, or operate on separate systems that do not support, housing assistance loan programs. As a result, many lenders, or at least the relevant divisions of many lenders, may no longer have the capacity to issue the RESPA disclosures. Several HFAs have reported to the Bureau that they have begun completing the RESPA disclosures manually, which is cumbersome and may increase errors. The Bureau is concerned that the limited support for the RESPA disclosures may make it difficult for HFAs, other nonprofits, and private lenders to make housing assistance loans available to low- and moderate-income borrowers if they are not able to take advantage of the partial exemption in

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<sup>49</sup> Section 1026.1(c)(1) provides that, in general, Regulation Z applies to each individual or business that offers or extends credit, other than a person excluded from coverage 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.

§ 1026.3(h).

Since the publication of the TILA-RESPA Rule, the Bureau has received information from one trade association representing HFAs, numerous State and local HFAs, and other nonprofit organizations indicating that many creditors are having difficulty satisfying the criteria for the partial exemption set forth in § 1026.3(h) when making housing assistance loans. In particular, the Bureau has received information that housing assistance loans most often fail to meet the partial exemption because the total costs payable by the consumer at consummation exceed the 1-percent threshold in current § 1026.3(h)(5). The Bureau understands that, due in part to the relatively small size of these loans, the fees for recordation charged by State and local governments often exceed the 1-percent threshold on costs payable by the consumer at consummation.

The Bureau is concerned that the current 1-percent limit on the total of costs payable by the consumer at consummation in § 1026.3(h)(5) may be overly restrictive, given the comparatively small size of these loans and information that transfer tax and recording fees have increased in recent years. For example, one HFA has reported that its average down payment assistance loan amount is \$2,500. In the State in which this HFA operates, there is a base fee of \$14 and a housing trust fund fee of \$14 for recording the first two pages of the mortgage, with an additional \$4 base fee and \$4 housing trust fund fee charged for each subsequent page. This HFA has informed the Bureau that the mortgage is usually at least three pages. As a result, fees for recording the mortgage routinely come to at least \$36, which is more than the 1-percent of costs payable at consummation for this HFA's average housing assistance loan size of \$2,500. Another HFA has explained to the Bureau that it offers an interest-free deferred payment loan program with a maximum loan amount of \$5,500. The State in which this HFA operates charges

a tax for recording a mortgage in the amount of 0.23 percent of the debt that is secured by the mortgage loan, which amounts to a \$12.65 tax on a \$5,500 loan. This State also permits county recorders to charge a \$46 fee for indexing and recording deeds or other instruments, including mortgages. Ten counties in this State impose an additional \$5 fee per transaction on the recording or registration of a mortgage loan or deed. Thus, a \$5,500 loan could be subject to \$63.65 in government taxes and fees for recording the mortgage, which again is more than 1-percent of the total costs payable by the consumer at consummation.

Accordingly, the Bureau believes that clarifying that transfer taxes may be payable in connection with such transactions without losing eligibility for the partial exemption and excluding recording fees and transfer taxes, which are costs inherent to the transaction and not imposed by the creditor, from the 1-percent threshold would enable more loans to satisfy the criteria in § 1026.3(h). This would facilitate access to the partial exemption from the RESPA disclosures in Regulation X § 1024.5(d), and would support extensions of beneficial low-cost credit to borrowers.

Current § 1026.3(h)(5)(i) lists fees for recordation of security instruments, deeds, and similar documents as among the permissible fees for loans qualifying for the § 1026.3(h) partial exemption. The Bureau proposes to clarify that, for the purposes of this partial exemption, fees for recordation of security instruments, deeds, and similar documents include transfer taxes. Comments 37(g)(1)-1 and 37(g)(1)-3 explain what recording fees and transfer taxes are, respectively. As comment 37(g)(1)-3 explains, transfer taxes are generally based on the loan amount or sales price, but 37(g)(1)-1 notes that recording fees are typically assessed based on the type of document to be recorded or its physical characteristics, such as number of pages.

The Bureau believes that all government fees associated with recording the mortgage

loan, deed, and similar documents should be permissible fees for purposes of the § 1026.3(h) partial exemption, whether assessed with regard to the loan amount or sales price or the document recorded. These fees and taxes are not determined or imposed by the creditor in the transaction. Additionally, the impact of these fees on the cost of the transaction may be further reduced as the Bureau understands that, in some instances, housing assistance loans may be exempted from transfer taxes. The Bureau proposes to revise § 1026.3(h)(5) to permit expressly both recording fees and transfer taxes, which are defined terms under Regulation Z. The Bureau believes this proposed revision may increase use of the § 1026.3(h) partial exemption, which could relieve concerns associated with the required provision of the RESPA disclosures for certain transactions that currently do not satisfy § 1026.3(h) and could benefit borrowers through expanded access to low-cost housing assistance loans. The Bureau seeks comment on any risks associated with expressly permitting recording fees and transfer taxes to be charged in connection with loans that satisfy § 1026.3(h) and whether any additional fees should be permitted for such loans.

The Bureau proposes to redesignate and revise § 1026.3(h)(5) as § 1026.3(h)(5)(i) to provide that 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. The Bureau proposes to revise § 1026.3(h)(5)(ii) to require that the total of costs payable by the consumer under § 1026.3(h)(5)(i)(C) and (D) be less than 1 percent of the amount of credit extended. Under proposed § 1026.3(h)(5)(ii), the application and housing counseling fees would count towards the 1-percent threshold, but recording fees and transfer taxes would not. The Bureau solicits comment on these revisions to § 1026.3(h)(5) and seeks information

related to the average amount of housing assistance loans, the fees generally charged in connection with these loans, and the average amounts of these fees.

The Bureau recognizes that the proposal to exclude recording fees and transfer taxes from the 1-percent threshold may allow for an increase in the costs associated with loans that satisfy the criteria at § 1026.3(h). The Bureau believes that the risk of consumer abuse through overcharging of recording fees and transfer taxes is slight. These fees are required by State and local laws and not imposed by the creditor in the transaction. To the extent these fees vary by transaction and are not uniformly levied, they may be reduced for loans that provide down payment or other homeowner assistance. The Bureau believes it unlikely that State and local jurisdictions would target the low-cost housing assistance loans that qualify for the § 1026.3(h) partial exemption for increases in recording fees and transfer taxes. Nonetheless, the Bureau seeks comment on whether broadening the scope of the partial exemption through the proposed exclusion of recording fees and transfer taxes from the 1-percent threshold would increase the potential for abuse or risk of other consumer harm. The Bureau also seeks comment on whether, in light of the proposed changes, 1-percent would continue to be the appropriate threshold on costs.

The Bureau also recognizes that removing recording fees and transfer taxes from the 1-percent limit could reduce downward pressure on application and housing counseling fees and potentially result in these fees becoming an increased source of revenue for creditors making these loans. The Bureau seeks comment, therefore, on potential areas for abuse regarding housing assistance programs and additional restrictions to ensure that loans eligible for the § 1026.3(h) partial exemption pose minimal risks to consumers. The Bureau similarly seeks comment on whether requiring that the credit contract not require the payment of a finance



charge as defined in § 1026.4, except as expressly permitted under § 1026.3(h)(5), would reduce the potential for abuse or evasion in housing assistance programs and improve clarity. The Bureau solicits comment generally on whether there are alternative approaches to address concerns over the ability of housing assistance loans to satisfy § 1026.3(h)(5) and the required provision of the RESPA disclosures for certain federally related mortgage loans that do not meet the criteria for the § 1026.3(h) partial exemption.

Although the Bureau understands that loans eligible for the § 1026.3(h) partial exemption are primarily made by HFAs or by private creditors who partner with HFAs and extend credit pursuant to HFA guidelines, nothing in § 1026.3(h) limits the availability of the partial exemption to loans made by HFAs or creditors working with those entities. The Bureau seeks comment on whether it should make such a limitation explicit in § 1026.3(h). The Bureau notes that § 1026.32, which sets forth requirements for high-cost mortgages, exempts transactions from coverage where the HFA is a creditor for the transaction. The Bureau seeks comment on whether § 1026.3(h) should be similarly revised to exempt transactions originated by an HFA from the disclosure requirements in § 1026.19(e), (f), and (g), or to completely exempt such transactions from Regulation Z requirements altogether, without regard to the criteria set forth in § 1026.3(h). If such an exemption for HFAs were appropriate, the Bureau solicits information on the defining characteristics of an HFA for purposes of these exemptions and whether such exemption should be in whole or in part. The Bureau seeks comment on how such an exemption from the requirements of Regulation Z for a loan originated by an HFA should intersect with the RESPA disclosures under Regulation X.

In light of the proposed amendments to § 1026.3(h)(5), the Bureau proposes revisions to comment 3(h)-2. Current comment 3(h)-2 explains, in relevant part, that 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 § 1026.3(h)(5). The Bureau proposes conforming changes to comment 3(h)-2 to reflect the proposed revisions to § 1026.3(h)(5).

The Bureau also proposes to add new comments 3(h)-3 and -4 in light of the proposed references to recording fees in § 1026.3(h)(5)(i)(A) and transfer taxes in § 1026.3(h)(5)(i)(B). Proposed comment 3(h)-3 would include a cross reference to comment 37(g)(1)-1, which explains what constitutes recording fees for purposes of Regulation Z. Proposed comment 3(h)-4 would include a cross reference to comment 37(g)(1)-3, which explains what constitutes transfer taxes for purposes of Regulation Z. Adding these cross references in commentary would increase clarity as to whether certain fees are permissible charges under proposed § 1026.3(h)(5)(i)(A) and (B).

#### *Legal Authority*

The Bureau believes that the proposed modifications to the § 1026.3(h) partial exemption would further facilitate compliance with TILA and RESPA, consistent with the Bureau's authority under TILA section 105(a) and RESPA section 19(a). TILA section 105(a) authorizes the Bureau to adjust or except from the disclosure requirements of TILA all or any class of transactions to facilitate compliance with TILA. As set forth above, revising the criteria for the § 1026.3(h) partial exemption would facilitate compliance by enabling more housing assistance loans to qualify for the partial exemption at § 1026.3(h) and reducing regulatory burden for a class of transactions that the Bureau believes generally benefit consumers and pose little risk of consumer harm. RESPA section 19(a) authorizes the Bureau to grant reasonable exemptions for

classes of transactions, as may be necessary to achieve the purposes of RESPA. This amendment would enable more federally related mortgage loans to qualify for the partial exemption at § 1024.5(d)(2) and permit lenders to provide the streamlined disclosures under § 1026.18 for these low-cost, non-interest bearing, subordinate-lien transactions.

In addition, the Bureau believes that the special disclosure requirements that covered persons must meet to qualify for the § 1026.3(h) partial exemption would help ensure that the features of these mortgage transactions are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with these mortgage transactions, consistent with Dodd-Frank Act section 1032(a).

#### *Section 1026.17 General Disclosure Requirements*

##### *17(c) Basis of Disclosures and Use of Estimates*

##### *17(c)(6)*

##### *Allocation of Costs*

Comment 17(c)(6)-5 permits a creditor, when using the special rule under § 1026.17(c)(6), to disclose certain construction-permanent transactions as multiple transactions, to allocate buyer's points or similar amounts imposed on the consumer between the construction and permanent phases of the transaction in any manner the creditor chooses. The Bureau is proposing to amend comment 17(c)(6)-5 to provide greater clarity by adding a "but for" test to allocate amounts to the construction phase.

Creditors have expressed uncertainty as to the scope of the allocations currently permitted under comment 17(c)(6)-5. Statutory and regulatory changes since the comment was adopted further complicate reasonable interpretations of comment 17(c)(6)-5. For example, the construction phase of a construction-permanent loan is excluded from coverage of § 1026.32 for

high-cost mortgages and § 1026.35 for higher-priced mortgage loans, but the permanent phase may be a covered loan under both §§ 1026.32 and 1026.35. Comment 17(c)(6)-5 does not provide guidance on how to allocate amounts so as to avoid violating TILA section 129(r), which prohibits structuring a loan transaction or dividing any loan transaction into separate parts for the purpose of evading the high-cost mortgage provisions.

To help ensure consumer protections are not evaded and to assist creditors in properly disclosing construction-permanent loans, the Bureau is proposing to amend comment 17(c)(6)-5 to provide greater clarity on the allocation of amounts between the construction and permanent phases if a creditor chooses to disclose the credit extended as more than one transaction. The revised comment would explain that the creditor must allocate to the construction phase all amounts that would not be imposed but for the construction financing. All other amounts would be allocated to the permanent financing, including both all amounts that would not be imposed but for the permanent financing and all amounts that are not imposed exclusively because of the construction financing. The Bureau believes that this explanation provides a rational and workable method for allocating and disclosing amounts in construction-permanent loans. The Bureau also believes that applying the comment to all amounts will alleviate creditors' uncertainty as to the comment's scope. The amended comment would illustrate how the allocation would be made, using inspection and handling fees for the staged disbursement of construction loan proceeds as an example. The revised comment would also provide examples of how to allocate origination and application fees between the construction phase and the permanent phase.

The Bureau is making this proposal pursuant to its general rulemaking, exception, and exemption authorities under TILA section 105(a) and section 1032(a) of the Dodd-Frank Act.

The Bureau proposes the aforementioned amendments pursuant to its authority under TILA section 105(a) to effectuate the purposes of TILA and Regulation Z, prevent circumvention or evasion, as discussed above, and facilitate compliance with the statute. The Bureau believes this amendment effectuates the purposes of TILA under TILA section 102(a), because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute. In addition, consistent with section 1032(a) of the Dodd-Frank Act, this amendment would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

The Bureau requests comment on this proposed revision of comment 17(c)(6)-5. In particular, the Bureau requests comment on whether the proposal presents a clear and understandable method of allocating costs between the construction phase and the permanent phase, whether there are fees that may not be clearly allocated to one phase or the other, and whether the proposed revision would improve or obscure consumer understanding and promote or discourage comparison shopping.

*May Be Permanently Financed by the Same Creditor*

The Bureau proposes to add new comment 17(c)(6)-6 to clarify the meaning of the “may be permanently financed by the same creditor” condition specified in § 1026.17(c)(6)(ii) that, if satisfied, permits a creditor to treat a construction-permanent loan as one transaction or more than one transaction. Proposed comment 17(c)(6)-6 would explain that a loan to finance the construction of a dwelling may be permanently financed by the same creditor, within the meaning of § 1026.17(c)(6)(ii), if the creditor generally makes both construction and permanent

financing available to qualifying consumers, unless a consumer expressly states that the consumer will not obtain permanent financing from the creditor. Under this approach, the construction phase may be permanently financed by the same creditor, within the meaning of § 1026.17(c)(6)(ii), in all cases other than where permanent financing is not available at all from the creditor (*i.e.*, the creditor does not offer permanent financing) or the consumer expressly informs the creditor that the consumer will not be obtaining permanent financing from the creditor. The Bureau expects that, especially at the early stages of an application when the Loan Estimate is delivered, creditors usually would not yet have made a determination as to whether they will provide permanent financing to any given consumer. Moreover, the Bureau recognizes that any such determination may be subject to change and defining when the creditor has made such a determination could be complex. Consequently, the Bureau does not believe it is appropriate to determine whether a creditor “may” provide permanent financing based on the creditor’s actual determination as to any individual consumer. The comment would look instead to whether the creditor generally makes permanent financing available to consumers to determine whether the creditor “may” make permanent financing available, subject only to the consumer’s express statement that the consumer will not obtain permanent financing from the creditor.

The Bureau does not believe that a construction loan reasonably may be permanently financed by the same creditor, within the meaning of the regulation, if a consumer expressly states that the consumer will not obtain permanent financing from the creditor. In such cases, the Bureau believes that a Loan Estimate provided to the consumer that treats the construction and permanent phases as a single transaction would undermine the Loan Estimate’s purpose and impede the consumer’s ability to comparison shop. Therefore, the Bureau is proposing to

specify that, when a consumer expressly states that the consumer will not obtain permanent financing from the creditor, the permanent financing does not meet the condition that it “may be permanently financed by the same creditor” for purposes of § 1026.17(c)(6).

This proposed clarification of the meaning of “may be permanently financed by the same creditor” aligns with proposed comment 19(e)(1)(iii)-5, discussed below. That comment provides that a creditor determines the timing requirements for providing the Loan Estimate for both the construction and permanent financing based on when the application for the construction financing is received, so long as the creditor “may” provide the permanent financing. The creditor may still make the disclosures as a single transaction or as more than one transaction, as provided by § 1026.17(c)(6)(ii).

The Bureau is making this proposal pursuant to its authority under TILA section 105(a). The Bureau believes the greater clarity provided by proposed comment 17(c)(6)-6 as to what loans are eligible for the special treatment under § 1026.17(c)(6)(ii) would facilitate compliance with TILA.

The Bureau recognizes that determining whether a creditor may provide permanent financing based on a consumer’s express statement could complicate the determination of whether the creditor has the option of treating a construction-permanent loan as one transaction or more than one transaction. For example, a consumer may, after initially stating that permanent financing will not be obtained from the creditor and receiving a Loan Estimate on that basis, subsequently inquire with the creditor about permanent financing. At that point, a creditor, having already issued a Loan Estimate for the construction financing only, may be precluded from disclosing the construction phase and permanent phase as one transaction. Therefore, the Bureau solicits comment on whether the condition that a construction loan may be permanently

financed by the same creditor should be considered satisfied even if a consumer expressly states that the consumer will not seek permanent financing from the creditor, as long as the creditor generally makes permanent financing available to qualifying consumers. The Bureau also seeks comment on how the complexities described above might appropriately be addressed if the Bureau adopts the proposal as final, and on any additional complexities that may be presented by the proposal and how those might be addressed.

#### *17(f) Early Disclosures*

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to comments 17(f)-1 and -2, to reflect this proposed change to the coverage of § 1026.19(e) and (f).

#### *Section 1026.18 Content of Disclosures*

As detailed in in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to comments 18-3, 18(g)-6, and 18(s)-1 and -4 to reflect this proposed change to the coverage of § 1026.19(e) and (f).



## *Section 1026.19 Certain Mortgage and Variable-Rate Transactions*

### *Cooperatives*

The TILA-RESPA Rule, including § 1026.19(e) and (f), generally applies to closed-end consumer credit transactions secured by real property, other than reverse mortgages. Regulation Z does not define the term “real property,” but § 1026.2(b)(3) states that, unless defined in Regulation Z, the words used therein have the meanings given to them by State law or contract. Thus, whether the TILA-RESPA Rule applies to a given transaction turns, at least in part, on whether the collateral securing it is considered real property under applicable State or other applicable law, which has given rise to questions about the coverage of transactions secured by cooperative units.

The Bureau understands that there is uncertainty whether loans secured by cooperative units are considered, under a given State’s law and thus for purposes of the TILA-RESPA Rule’s coverage, to be secured by real property or personal property. In a typical housing cooperative, a cooperative association owns all of the real property. Each cooperative member owns a share of the cooperative association and has a proprietary lease for the member’s housing unit.<sup>50</sup> Cooperatives differ from condominiums, as condominiums typically vest ownership of the real property directly in unit owners (rather than in an association).<sup>51</sup> Cooperative ownership can be construed as ownership by the consumer of stock in the cooperative association (or some similar form of intangible personal property) or as ownership of real property. Whether ownership of a share in a cooperative association is treated as personal or real property can vary from State to

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<sup>50</sup> See generally National Conference of Commissioners on Uniform State Laws, *Real Estate Cooperative Summary*, <http://www.uniformlaws.org/ActSummary.aspx?title=Real%20Estate%20Cooperative>.

<sup>51</sup> *Id.*

State and even within a State. In at least some States, ownership of a share in a cooperative association is treated as personal property for some purposes and real property for other purposes.<sup>52</sup> If State law is not definitive whether cooperative units are real property or personal property, creditors may be unsure whether loans secured by cooperative units are covered by the TILA-RESPA Rule. Consequently, creditors may be inconsistent in the disclosures they provide on loans secured by cooperative units, impeding the ability of consumers to comparison shop. The Bureau, therefore, is proposing to amend the TILA-RESPA Rule to cover closed-end consumer credit transactions, other than reverse mortgages, secured by cooperative units.

RESPA and TILA each generally cover loans secured by cooperative units. For example, RESPA includes cooperatives within the definition of federally related mortgage loan.<sup>53</sup> TILA's Regulation Z<sup>54</sup> includes cooperatives within the § 1026.2(a)(19) definition of dwelling.<sup>55</sup>

However, unlike much of the rest of Regulation Z, the TILA-RESPA Rule does not use the term “dwelling” as a trigger for coverage. As stated in the TILA-RESPA Final Rule preamble, the Bureau believed that many parts of the integrated disclosures would be inapplicable to transactions secured by personal property.<sup>56</sup> Thus, the TILA-RESPA Final Rule used the phrase “real estate” instead of the term “dwelling” as a trigger for coverage. The Bureau did not anticipate the ensuing level of uncertainty whether loans secured by cooperative

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<sup>52</sup> For example, under New Jersey law, cooperative ownership constitutes a true ‘hybrid’ form of property that does not readily fall within traditional notions of either realty or personalty, although the cooperative owned interests are treated like real estate in most circumstances. *Drew Associates of N.J., L.P. v. Travisano*, 122 N.J. 249, 584 A.2d 807 (1991).

<sup>53</sup> 12 U.S.C. 2602(1).

<sup>54</sup> See § 1026.19(e) and (f).

<sup>55</sup> See also 15 U.S.C. 1602(w) (TILA definition of “dwelling”). TILA applies generally to consumer credit transactions of all kinds, regardless of whether secured by residential real property. See 15 U.S.C. 1602(f) (credit defined as the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment).

<sup>56</sup> 78 FR 79730, 79796 (Dec. 31, 2013).

units are considered to be secured by real property or personal property under a given State's law.

To resolve stakeholders' uncertainty, and consistent with RESPA's definition of federally related mortgage loan, the Bureau proposes to amend Regulation Z, including § 1026.19(e), (f), and (g) and comments 19(e)(1)(i)-1 and -2, 19(f)(1)(i)-1 and 19(f)(3)(ii)-3, to cover closed-end consumer credit transactions secured by cooperative units, regardless of whether State or other applicable law considers cooperative units to be real or personal property. The Bureau is proposing this amendment pursuant to its authority under Dodd-Frank Act section 1032(a) and (f), TILA section 105(a), and RESPA section 19(a). Section 1032(f) of the Dodd-Frank Act required that the Bureau propose for public comment rules and model disclosures combining the disclosures required under TILA and sections 4 and 5 of RESPA into a single, integrated disclosure for mortgage loan transactions covered by those laws,<sup>57</sup> and, as discussed above, RESPA and TILA each generally cover loans secured by cooperative units.

The Bureau believes that applying the TILA-RESPA Rule to cover closed-end consumer loans secured by cooperative units is consistent not only with both TILA and RESPA but also with general industry practice. Consequently, the Bureau believes that this extension of coverage would facilitate compliance by industry, which is one of the purposes of TILA. Furthermore, because this proposed amendment would ensure that more consumers receive the integrated disclosures, which the Bureau believes, based on its extensive testing of the disclosures, to be superior to the pre-existing TILA and RESPA disclosures and because the Bureau believes that the integrated disclosures are generally effective for transactions secured by

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<sup>57</sup> Public Law 111-203, 124 Stat. 1376, 2007 (2010) (codified at 12 U.S.C. 5532(f)).

cooperative units, whether or not the cooperative unit is treated as real property under State or other applicable law, the Bureau also believes this proposed amendment would carry out the purposes of TILA and RESPA to promote the informed use of credit and more effective advance disclosure of settlement costs, respectively. In addition, the Bureau believes the integrated disclosure requirements improve consumer understanding of the costs, benefits, and risks associated with the mortgage transaction, consistent with Dodd-Frank Act section 1032(a).

*19(e) Mortgage Loans—Early Disclosures*

*19(e)(1) Provision of Disclosures*

*19(e)(1)(iii) Timing*

Section 1026.19(e)(1)(iii) sets forth the timing requirements for providing the Loan Estimate. Generally, the creditor must 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. Section 1026.17(c)(6)(ii) provides that, when a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, the construction phase and permanent phase may be treated as either one transaction or more than one transaction. Comment 17(c)(6)-2 explains that, if the consumer is obligated on both phases of such construction-permanent financing and the creditor chooses to give two sets of disclosures, both sets must be given to the consumer initially because both transactions would be consummated at that time. Proposed comment 19(e)(1)(iii)-5 would explain how the timing requirements apply in the case of construction-permanent loans.

Proposed new comment 19(e)(1)(iii)-5 summarizes the relevant provisions for construction-permanent loans of §§ 1026.17(c)(6)(ii) and 1026.19(e)(1)(iii), and comment 17(c)(6)-2. Proposed comment 19(e)(1)(iii)-5 would also reference proposed comment 17(c)(6)-

6, which would explain that a loan to finance the construction of a dwelling meets the condition that it “may be permanently financed by the same creditor” if the creditor generally makes both construction and permanent financing available to qualifying consumers, unless the consumer expressly states that the consumer will not obtain permanent financing from the creditor.

Proposed comment 19(e)(1)(iii)-5 would then explain that, therefore, a creditor that generally makes both construction and permanent financing available, upon receiving a consumer’s application for either construction financing only, without the consumer expressly stating that the consumer will not obtain permanent financing from the creditor, or combined construction-permanent financing, complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing, either disclosed as one or more than one transaction, not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation.

Proposed comment 19(e)(1)(iii)-5.i through -5.iv provides illustrative examples of how the Loan Estimate timing provisions apply to construction-permanent loans. Proposed comment 19(e)(1)(iii)-5.v would explain that if a consumer expressly states that the consumer will not obtain permanent financing from the creditor after a combined construction-permanent financing disclosure already has been provided, the creditor complies with § 1026.17(c)(6)(ii) by issuing a revised disclosure for construction financing only in accordance with the timing requirements of § 1026.19(e)(4).

The Bureau considered proposing that a creditor provide the Loan Estimate only for the financing for which a consumer applies. If a consumer applied for construction financing only, a creditor would be required to provide the Loan Estimate for only the construction financing. If

the construction financing may be permanently financed by the same creditor, the creditor would be permitted to provide the Loan Estimate for the permanent financing at the same time as the Loan Estimate was provided for the construction financing but would not be required to do so. If the consumer applied for construction and permanent financing at the same time, the creditor would be required to provide the Loan Estimates for both phases within three days of receiving the application. If the consumer applied for construction and permanent financing separately, the creditor would be required to provide Loan Estimates within three days of receipt for each application. However, a Loan Estimate for the separately-applied-for permanent phase would not be required if the Loan Estimate for the permanent phase had already been provided because the transaction met the condition that the construction phase may be permanently financed by the same creditor. This alternative approach could create significantly more complexity in the Loan Estimate timing requirements. Nonetheless, the Bureau seeks comment on which of the alternatives described, or another alternative, would better promote consumer understanding and facilitate compliance.

The Bureau is making this proposal pursuant to its general rulemaking, exception, and exemption authorities under TILA section 105(a) and section 1032(a) of the Dodd-Frank Act. The Bureau proposes the aforementioned amendments pursuant to its authority under TILA section 105(a) to effectuate the purposes of TILA and Regulation Z and facilitate compliance with the statute. The Bureau believes this amendment effectuates the purposes of TILA under TILA section 102(a) because it would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute by clarifying when particular disclosures must be provided. In addition, consistent with section 1032(a) of the Dodd-Frank Act, this adjustment would promote the full, accurate, and effective disclosure of the features of consumer credit

transactions secured by real property in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

*19(e)(1)(vi) Shopping for Settlement Service Providers*

Section 1026.19(e)(1)(vi) defines how a creditor permits a consumer to shop for services and requires the creditor to identify the services the consumer may shop for and provide a written list identifying available providers of those services. The Bureau is proposing revisions to comments 19(e)(1)(vi)-2, -3, and -4. Comments 19(e)(1)(vi)-2 and -4 are discussed together, immediately following, because the revisions relate to how a creditor identifies available services and providers for purposes of compliance with § 1026.19(e)(1)(vi). The proposed revisions to comment 19(e)(1)(vi)-3 concern how the creditor provides the written list and are discussed after comments 19(e)(1)(vi)-2 and -4.

*Identifying Services and Available Providers*

Comment 19(e)(1)(vi)-2 notes that the content and format of disclosure of services for which the consumer may shop can be found at § 1026.37(f)(3). Proposed revised comment 19(e)(1)(vi)-2 would also clarify that, if the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor must specifically identify that service unless, based on the best information reasonably available, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Proposed revised comment 19(e)(1)(vi)-2 would also further clarify that specific identification of each service in such a package is not required provided that all such services are services for which the consumer is permitted to shop.

Comment 19(e)(1)(vi)-4 provides clarification concerning the identification of settlement service providers available to the consumer, including providing sufficient information to contact

the disclosed service providers. Proposed revised comment 19(e)(1)(vi)-4 would also clarify that, if the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor must specifically identify that service and an available provider of that service on the written list of providers unless, based on the best information reasonably available, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Proposed revised comment 19(e)(1)(vi)-4 would also further clarify that specific identification of each service in such a package is not required provided they all are services for which the consumer is permitted to shop.

#### *Methods of Providing Settlement Service Providers List*

Comment 19(e)(vi)-3 references form H-27 for a model list of the written list of providers. The Bureau understands there is uncertainty whether compliance with § 1026.19(e)(1)(vi)(C) requires use of form H-27(A). Unlike the model forms for the Loan Estimate and the Closing Disclosure,<sup>58</sup> which, under §§ 1026.37(o)(3) and 1026.38(t)(3), respectively, are mandatory forms for a transaction that is a federally related mortgage loan (as defined in Regulation X), form H-27(A) is not a mandatory form. Moreover, TILA section 105(b) permits creditors to delete non-required information or rearrange the format of a model form without losing the safe harbor protection afforded by use of the model form if, in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. Accordingly, the proposed revision to comment

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<sup>58</sup> Forms H-24(A) and (G), H-25(A) and (H) through (J), and H-28(A), (F), (I), and (J) are the model forms for the Loan Estimate and Closing Disclosure.



19(e)(1)(vi)-3 would clarify that, although use of the model form H-27(A) of appendix H to this part is not required, creditors using it properly will be deemed to be in compliance with § 1026.19(e)(1)(vi)(C).

*19(e)(3) Good Faith Determination for Estimates of Closing Costs*

The Bureau is proposing to amend § 1026.19(e)(3) and its commentary regarding the good faith determination for closing cost estimates. Section 1026.19(e)(3)(i) states the general rule that an estimated closing cost is in good faith if the charge paid by or imposed on the consumer does not exceed the estimate for the cost as disclosed on the Loan Estimate. However, § 1026.19(e)(3)(ii) provides that estimates for certain third-party services and recording fees 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 on the Loan Estimate by more than 10 percent (the “10-percent tolerance” category). Moreover, § 1026.19(e)(3)(iii) provides that certain other estimates are in good faith so long as they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether the amount paid by the consumer exceeds the estimate disclosed on the Loan Estimate.

As detailed below, the Bureau is proposing minor changes and technical corrections for clarification purposes to § 1026.19(e)(3). The proposed amendment to comment 19(e)(3)(i)-1 is a technical, non-substantive change to conform it with the regulation text of § 1026.19(e)(3)(iii). New proposed comment 19(e)(3)(i)-8 clarifies charges paid by or imposed on the consumer. Proposed amendments to comments 19(e)(3)(ii)-2 and 19(e)(3)(iii)-2 would clarify that, if the creditor permits the consumer to shop but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) and therefore

subject to zero tolerance. Proposed amendments to § 1026.19(e)(3)(iii) and comment 19(e)(3)(iii)-4 would clarify that good-faith for non-bona fide charges is determined under § 1026.19(e)(3)(i) and therefore such charges are subject to zero tolerance, even if they would otherwise satisfy the conditions of § 1026.19(e)(3)(iii). Proposed amendments to § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)-3 clarify, for purposes of § 1026.19(e)(1)(i), how good faith is determined for estimates of property taxes. Proposed amendments to § 1026.19(e)(3)(iv) and its commentary address certain details regarding the circumstances under which revised Loan Estimates may be provided to reset tolerances or for other informational purposes.

The Bureau is proposing these clarifications to § 1026.19(e)(3) and its commentary pursuant to its authority to prescribe standards for good faith estimates under TILA section 128 and RESPA section 5, as well as its authority under TILA sections 105(a), RESPA section 19(a), section 1032(a) of the Dodd-Frank Act, and, for residential mortgage loans, section 1405(b) of the Dodd-Frank Act. Section 128(b)(2)(A) of TILA provides that, for an extension of credit secured by a consumer's dwelling that also is subject to RESPA, good faith estimates of the disclosures in TILA section 128(a) shall be made in accordance with regulations of the Bureau.<sup>59</sup> Section 5(c) of RESPA states that lenders shall provide, within three days of receiving the consumer's application, a good faith estimate of the amount or range of charges for specific settlement services the borrower is likely to incur in connection with the settlement, as prescribed by the Bureau.<sup>60</sup>

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<sup>59</sup> 15 U.S.C. 1638(b)(2)(A).

<sup>60</sup> 12 U.S.C. 2604(c).

The Bureau believes these proposed clarifications are authorized under TILA section 105(a). They would effectuate TILA's purposes by ensuring that the cost estimates are more meaningful and better inform consumers of the actual costs associated with obtaining credit. The proposal would further TILA's goals by ensuring more reliable estimates, which could foster competition among financial institutions. The proposal could also prevent potential circumvention or evasion of TILA.

In addition, the Bureau believes that these proposed clarifications are consistent with Dodd-Frank Act section 1032(a) because requiring more accurate initial estimates of the costs of the transaction could ensure that the features of mortgage loan transactions and settlement services will be more fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the mortgage loan. The Bureau believes these proposed clarifications are also in the interest of consumers and in the public interest, consistent with Dodd-Frank Act section 1405(b), because providing consumers with more accurate estimates of the cost of the mortgage loan transaction could improve consumer understanding and awareness of the mortgage loan transaction through the use of disclosure.

Section 19(a) of RESPA authorizes the Bureau to prescribe regulations and make interpretations to carry out the purposes of RESPA,<sup>61</sup> which include the elimination of kickbacks, referral fees, and other practices that tend to increase unnecessarily the costs of certain settlement services.<sup>62</sup> The Bureau believes that these proposed clarifications are

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<sup>61</sup> 12 U.S.C. 2617(a).

<sup>62</sup> 12 U.S.C. 2601(a).

appropriate under RESPA section 19(a) because they effectively require charges to be bona fide and would thus encourage settlement service provider competition.

*19(e)(3)(i) General Rule*

Section 1026.19(e)(3)(i) provides that an estimated closing cost disclosed on the Loan Estimate is in good faith if the charge paid by or imposed on the consumer does not exceed the amount originally disclosed on the Loan Estimate. The Bureau is proposing to modify comment 19(e)(3)(i)-1 to conform with the regulation text of § 1026.19(e)(3)(iii). The Bureau is also proposing to add new comment 19(e)(3)(i)-8 to clarify that the phrases “paid by or imposed on the consumer” and “payable by the consumer” both reflect the same standard in Regulation Z.

Comment 19(e)(3)(i)-1 states that fees paid to, among others, the creditor, an affiliate of the creditor, or a mortgage broker are subject to the general rule and thus are subject to zero tolerance under § 1026.19(e)(3)(i). However, § 1026.19(e)(3)(iii) states that certain such charges, *e.g.*, prepaid interest, are in good faith if they are consistent with the best information reasonably available to the creditor at the time they are disclosed, regardless of whether the amounts paid by the consumer exceed the amounts disclosed under § 1026.19(e)(1)(i). The Bureau is proposing to make a technical, non-substantive change to comment 19(e)(3)(i)-1 to conform it with the regulation text of § 1026.19(e)(3)(iii). Consistent with § 1026.19(e)(3)(iii), the proposed amendment to comment 19(e)(3)(i)-1 would clarify that fees paid to, among others, the creditor, an affiliate of the creditor, or a mortgage broker are generally subject to § 1026.19(e)(3)(i), except as provided in § 1026.19(e)(3)(ii) or (iii).

While § 1026.19(e)(3)(i) provides that good faith is determined by whether a closing cost paid by or imposed on the consumer does not exceed the amount originally disclosed on the Loan Estimate, other sections of Regulation Z, including the finance charge definition in

§ 1026.4(a), are framed in terms of whether the charge is payable by the consumer rather than whether it is paid by or imposed on the consumer. The Bureau regards these standards, “paid by or imposed on the consumer” and “payable by the consumer,” as interchangeable. For example, existing commentary emphasizes that the term “payable” includes charges imposed on the consumer, even if the consumer does not pay for such charges at consummation.<sup>63</sup> Under § 1026.19(e)(3)(i), when a closing cost paid by or imposed on the consumer exceeds the amount disclosed on the Loan Estimate, the amount disclosed on the Loan Estimate was not made in good faith by the creditor. The use of the phrases “paid by or imposed on the consumer” and “payable by the consumer” both reflect the same standard. Accordingly, the Bureau also proposes to add comment 19(e)(3)(i)-8 to clarify that the terms “paid by or imposed on,” as used in § 1026.19(e)(3)(i), has the same meaning as the term “payable,” as used elsewhere in Regulation Z.

*19(e)(3)(ii) Limited Increases Permitted for Certain Charges*

Comment 19(e)(3)(ii)-2, among other things, explains that § 1026.19(e)(3)(ii) provides flexibility in disclosing the individual amount of a fee by focusing on aggregate amounts and illustrates the concept with an example. The Bureau has learned that there is some uncertainty regarding the interplay of the requirements for shopping in § 1026.19(e)(1)(vi) and the tolerance category requirements in § 1026.19(e)(3)(ii) and (iii).

The Bureau is proposing to revise comment 19(e)(3)(ii)-2 to clarify that creditors are in compliance with § 1026.19(e)(3)(ii) so long as the creditor permits the consumer to shop for the services listed consistent with § 1026.19(e)(1)(vi) and the aggregate increase in charges does not

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<sup>63</sup> See, e.g., comments 4(a)-2, 4(a)-4.ii.C, 4(a)-5, 4(a)(2)-2, 4(c)(2)-1.i, 4(c)(7)-1 and -2, and 32(b)1-1.i and -2.i.

exceed 10 percent, even if the amount of an individual fee was omitted from the Loan Estimate. The Bureau is proposing to revise comment 19(e)(3)(ii)-2 to clarify further that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) instead of § 1026.19(e)(3)(ii) or (iii) regardless of the provider selected by the consumer.

#### *19(e)(3)(iii) Variations Permitted for Certain Charges*

##### *Charges Paid to Affiliates of the Creditor*

Section 1026.19(e)(3)(iii) states that certain charges, including certain charges paid to affiliates of the creditor, are in good faith for purposes of § 1026.19(e)(1)(i) if they are consistent with the best information reasonably available, regardless of whether the amounts paid by the consumer exceed the amounts disclosed under § 1026.19(e)(1)(i). The exception in § 1026.19(e)(3)(iii) applies to the following five categories of charges: (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 § 1026.19(e)(1)(vi)(A) that are not on the list provided under § 1026.19(e)(1)(vi)(C); and (E) charges paid for third-party services not required by the creditor.

The Bureau understands that there is uncertainty whether all five of the § 1026.19(e)(3)(iii) categories include charges paid to affiliates of the creditor or if only the § 1026.19(e)(3)(iii)(E) category (*i.e.*, charges paid for third-party services not required by the creditor) includes charges paid to affiliates of the creditor. The Bureau believes there are reasonable arguments to support either of those interpretations under the current rule but is

proposing to change the rule prospectively so that all five categories expressly include charges paid to affiliates.

The Bureau proposes to amend § 1026.19(e)(3)(iii) to clarify that, for purposes of § 1026.19(e)(1)(i), good faith is determined under § 1026.19(e)(3)(iii) for all five of the categories of charges listed therein, regardless of whether such charges are paid to affiliates of the creditor, so long as the charges are bona fide. This proposed amendment is consistent with the preamble to the TILA-RESPA Final Rule, which stated that property insurance premiums are included in the category of settlement charges not subject to a tolerance, whether or not the insurance provider is a lender affiliate.<sup>64</sup>

The Bureau also proposes to add new comment 19(e)(3)(iii)-4 to clarify that, to be bona fide for purposes of § 1026.19(e)(3)(iii), charges must be lawful and for services that are actually performed. The Bureau believes that adding this explicit limitation to the determination of good faith under § 1026.19(e)(3)(iii) would limit any potential consumer harm associated with permitting variations for charges within the five categories, even if paid to an affiliate of the creditor.

The proposed bona fide determination under § 1026.19(e)(3)(iii) would be specifically for determining good faith for purposes of § 1026.19(e)(1)(i). For example, such determination is distinct from the broader finance charge determination under § 1026.4(c)(7) (*i.e.*, whether certain fees are bona fide and reasonable in amount) and the points and fees determination under § 1026.32(b) (*e.g.*, the bona fide discount point definition requires, among other things, a calculation that is consistent with established industry practices).

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<sup>64</sup> 78 FR 79730, 79829 (Dec. 31, 2013).

The Bureau requests comment on all aspects of the proposal permitting good faith to be determined under § 1026.19(e)(3)(iii) for charges within the five categories paid to affiliates of the creditor, including whether good faith for charges within the five categories should be determined under § 1026.19(e)(3)(i) instead, and whether different, additional, or fewer conditions should be imposed upon the use of § 1026.19(e)(3)(iii) for charges within the five categories paid to affiliates of the creditor.

*Good Faith Instead Determined Under § 1026.19(e)(3)(i)*

Comment 19(e)(3)(iii)-2 notes that differences between the amounts of 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. The comment also provides an illustrative example. The comment also states that, if the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C), then good faith is determined under § 1026.19(e)(3)(ii) instead of § 1026.19(e)(3)(iii), regardless of the provider selected by the consumer, unless the provider is an affiliate of the creditor, in which case good faith is determined under § 1026.19(e)(3)(i).

The Bureau is proposing to revise comment 19(e)(3)(iii)-2 to align with the requirements in §§ 1026.19(e)(1)(vi) and 1026.19(e)(3)(ii). Section 1026.19(e)(1)(vi) sets forth the requirements creditors must comply with if they permit a consumer to shop for settlement services. Among, other things, the creditor must identify the settlement service for which the consumer is permitted to shop and identify an available provider of that service. Section 1026.19(e)(3)(ii) sets forth the requirements for the 10 percent tolerance category, which



includes the requirement that the creditor permit the consumer to shop for the third-party service, consistent with § 1026.19(e)(1)(vi). The Bureau believes that a creditor did not permit a consumer to shop if the creditor failed to provide a written list of providers in compliance with § 1026.19(e)(1)(vi). Thus, the Bureau is proposing to revise comment 19(e)(3)(iii)-2 to state that good faith is determined under § 1026.19(e)(3)(i), regardless of the provider selected by the consumer, if a creditor fails to provide the list required by § 1026.19(e)(1)(vi)(C) or if the creditor provides a list that is not in compliance with § 1026.19(e)(1)(vi)(B) and (C).

*19(e)(3)(iii)(E)*

Under § 1026.19(e)(3)(iii)(E), charges paid for third-party services not required by the creditor are in good faith if they are consistent with the best information reasonably available to the creditor at the time such charges are disclosed. The Bureau understands that there may be some uncertainty whether real property taxes are included in this category.

The Supplementary Information to the TILA-RESPA Final Rule erroneously stated that property taxes and other fees were subject to tolerance under § 1026.19(e)(3)(i). In February 2016, the Bureau corrected this typographical error and clarified that property taxes (and property insurance premiums, homeowner's association dues, condominium fees, and cooperative fees) are not subject to tolerances, whether or not placed into an escrow or impound account.<sup>65</sup>

The Bureau believes the explicit enumeration of property taxes in § 1026.19(e)(3)(iii)(E) would facilitate compliance. Therefore, the Bureau is proposing to revise § 1026.19(e)(3)(iii)(E) and comment 19(e)(3)(iii)-3 to clarify that an estimate of property taxes is in good faith if it is

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<sup>65</sup> 81 FR 7032 (Feb. 10, 2016).

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 § 1026.19(e)(1)(i). The proposed revisions to comment 19(e)(3)(iii)-3 also provide an illustrative example.

*19(e)(3)(iv) Revised Estimates*

Section 1026.19(e)(3)(iv) provides that, 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 estimate of the charge originally disclosed on the Loan Estimate (*i.e.*, the creditor may reset the applicable tolerance) if the revision is due to any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Comment 19(e)(3)(iv)(A)-1.ii states that § 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, even in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Regardless of whether a creditor issues a revised disclosure to reset tolerances or simply for informational purposes, § 1026.17(c)(2)(i) requires that any disclosures provided to the consumer must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer.

The Bureau understands that there is some uncertainty whether a creditor is prohibited from providing the consumer with a revised Loan Estimate for informational purposes if a revision is not based on any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Although comment 19(e)(3)(iv)(A)-1.ii speaks explicitly to informational revisions of particular fees that are subject to the 10 percent tolerance under § 1026.19(e)(3)(ii), the Bureau considers the comment's principle equally applicable to all changes that may occasion an informational revision, regardless of the particular fee involved or which tolerance category applies to it.

Accordingly, consistent with comment 19(e)(3)(iv)(A)-1.ii, the Bureau proposes to amend comment 19(e)(3)(iv)-2 and to add new comment 19(e)(3)(iv)-4 to clarify that § 1026.19(e)(3)(iv) does not prohibit the creditor from issuing revised disclosures for informational purposes, even in situations where the creditor is not resetting tolerances for any of the reasons stated in § 1026.19(e)(3)(iv)(A) through (F). Consistent with § 1026.17(c)(2)(i), the Bureau also proposes to add new comment 19(e)(3)(iv)-5 to clarify that, regardless of whether a creditor issues a revised Loan Estimate to reset tolerances or simply for informational purposes, § 1026.17(c)(2)(i) requires that any disclosures on the revised Loan Estimate must be based on the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. For example, if the creditor issues revised disclosures reflecting a new rate lock extension fee for purposes of determining good faith under § 1026.19(e)(3)(i), other charges unrelated to the rate lock extension should be reflected on the revised disclosures based on the best information reasonably available to the creditor at the time the disclosures are provided. Nonetheless, any increases in those other charges unrelated to the lock extension may not be used for the purposes of determining good faith under § 1026.19(e)(3).

*19(e)(3)(iv)(D) Interest Rate Dependent Charges*

Section 1026.19(e)(3)(iv)(D) requires the creditor to provide a revised Loan Estimate to the consumer no later than three business days after the date the interest rate is locked. Section 1026.19(e)(4)(ii) prohibits a creditor from providing a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure. The Bureau understands that there is uncertainty as to how a creditor complies with § 1026.19(e)(3)(iv)(D) and provides a revised Loan Estimate if the interest rate is locked after the Closing Disclosure has been provided.

Consistent with § 1026.19(e)(4)(ii), the Bureau proposes to add new comment 19(e)(3)(iv)(D)-2 to clarify that the creditor may not provide a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure, even if the interest rate is locked on or after the date on which the creditor provides the Closing Disclosure. 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 to the consumer a corrected Closing Disclosure, at or before consummation, reflecting any changed terms. If the rate lock causes the Closing Disclosure to become inaccurate before consummation in a manner listed in § 1026.19(f)(2)(ii), the creditor must ensure that the consumer receives a corrected Closing Disclosure no later than three business days before consummation, as provided in that paragraph. For further discussion of corrected Closing Disclosures, see the section-by-section analysis of § 1026.19(e)(4)(ii), below.

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

Section 1026.19(e)(3)(iv)(E) provides that, 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 estimate of the charge originally disclosed on the Loan Estimate (*i.e.*, the creditor may reset the applicable tolerance) if the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided under § 1026.19(e)(1)(iii).

The Bureau understands that there is uncertainty whether a creditor, for the purpose of determining good faith under § 1026.19(e)(3)(i) and (ii), may reset tolerances under § 1026.19(e)(3)(iv)(E) if the consumer indicates an intent to proceed after the 10-business-day period but within a longer period for which the creditor has stated that it will honor the estimated charges originally disclosed on the Loan Estimate . The Bureau proposes to revise

§ 1026.19(e)(3)(iv)(E) and to add new comment 19(e)(3)(iv)(E)-2 to clarify that, if a creditor voluntarily extends the period disclosed under § 1026.37(a)(13)(ii) to a period greater than 10 business days, that longer time period becomes the relevant time period for purposes of using revised estimates under § 1026.19(e)(3)(iv)(E).

As amended, § 1026.19(e)(3)(iv)(E) would permit a creditor to use revised estimates under § 1026.19(e)(3)(iv) when 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 § 1026.19(e)(1)(i) are provided. Proposed comment 19(e)(3)(iv)(E)-2 states that, if the creditor establishes a period greater than 10 business days after the disclosures were provided (or subsequently extends it to such a longer period), the longer time period becomes the relevant time period for purposes of § 1026.19(e)(3)(iv)(E). Proposed comment 19(e)(3)(iv)(E)-2 further states that 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*

The proposed amendment to § 1026.19(e)(3)(iv)(F) would correct a typographical error, replacing a reference to § 1026.19(f) with a reference to § 1026.19(e)(3)(iv).

*19(e)(4) Provision and Receipt of Revised Disclosures*

*19(e)(4)(ii) Relationship to Disclosures Required Under § 1026.19(f)*

Section 1026.19(e)(4)(ii) imposes certain timing restrictions on the issuance of revised Loan Estimates relative to consummation and the issuance of a Closing Disclosure to ensure that the consumer does not receive disclosures containing estimates and disclosures containing actual costs at the same time. Existing comment 19(e)(4)(ii)-1 explains that, where the rule prohibits

issuance of a revised Loan Disclosure, the creditor can instead use the Closing Disclosure to reflect changes in costs that would otherwise justify issuing a revised estimate under § 1026.19(e)(3)(iv) and that that Closing Disclosure may be used for the purpose of determining good faith under § 1026.19(e)(3). The Bureau proposes to add comment 19(e)(4)(ii)-2 to clarify that creditors may use corrected Closing Disclosures provided under § 1026.19(f)(2)(i) or (ii) to reflect further changes in costs that will be used for purposes of determining good faith under § 1026.19(e)(3).

Section 1026.19(e)(4)(ii) requires that a creditor ensures receipt of any revised Loan Estimate no later than four business days before consummation and further prohibits the issuance of a revised Loan Estimate on or after the date on which the creditor provides the Closing Disclosure. Even when the creditor may not provide a revised Loan Estimate under § 1026.19(e)(4)(ii), however, it can still use revised amounts for the purpose of determining good faith if the revised amounts are reflected in the Closing Disclosure, subject to the other requirements of § 1026.19(e)(4).

Although existing comment 19(e)(4)(ii)-1 expressly references only the initial Closing Disclosure issued pursuant to § 1026.19(f)(1) in explaining this fact, the same logic applies to corrected Closing Disclosures issued pursuant to § 1026.19(f)(2). As explained in comment 19(f)(1)(i)-1, if a Closing Disclosure provided to comply with § 1026.19(f)(1)(i) later becomes inaccurate, a creditor can satisfy the requirements of § 1026.19(f)(1)(i) by providing corrected disclosures that contain the actual terms of the transaction, provided that the creditor meets the timing requirements of § 1026.19(f)(2). Thus, the provision of a corrected Closing Disclosure under § 1026.19(f)(2) is properly an extension of the ongoing requirements of § 1026.19(f)(1)(i).

As a result, the creditor's issuance of a corrected Closing Disclosure, as with the issuance of an original Closing Disclosure, falls within comment 19(e)(4)(ii)-1's ambit.

Accordingly, a creditor may use a corrected Closing Disclosure to reset applicable good faith tolerances when there are fewer than four business days remaining before consummation or when the Closing Disclosure has already been issued, provided that the creditor also complies with the other requirements of § 1026.19(e)(4). The Bureau is proposing comment 19(e)(4)(ii)-2 to clarify this point.

### *19(f) Mortgage Loans—Final Disclosures*

#### *19(f)(1) Provision of disclosures*

##### *19(f)(1)(i) Scope*

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is proposing conforming amendments to comment 19(f)(1)(i)-1 to reflect this proposed change to the coverage of § 1026.19(e) and (f).

##### *19(f)(2) Subsequent Changes*

###### *19(f)(2)(iii) Changes Due to Events Occurring After Consummation*

Section 1026.19(f)(1)(i) requires the creditor to provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction. 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 § 1026.19(f)(1)(i) 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), § 1026.19(f)(2)(iii) requires the creditor to deliver or place in the mail corrected disclosures not later than 30 days after receiving information sufficient to establish that such event has occurred.<sup>66</sup>

Section 1026.17(c)(2)(ii), however, provides that, 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. Proposed comment 19(f)(2)(iii)-2 would clarify that a creditor is not required to provide to the consumer a corrected Closing Disclosure as required under § 1026.19(f)(2)(iii) for any disclosure that is accurate under § 1026.17(c)(2)(ii), even if the amount actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o).

Section 121(c) of TILA provides that any disclosure with respect to per diem interest collected upon consummation is accurate if the disclosure is based on information actually known to the creditor at the time that the disclosure documents are being prepared for the consummation of the transaction. This 1995 amendment to section 121(c) of TILA is implemented in § 1026.17(c)(2)(ii). Additionally, a changed per diem interest amount does not result in a tolerance violation under § 1026.19(e)(3). Good faith is determined for per diem interest under § 1026.19(e)(3)(iii). Consequently, so long as the creditor makes the disclosure on the basis of the best information reasonably available, the creditor is not required to provide a

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<sup>66</sup> Section 1026.17(e) provides that 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 part 1026, although such inaccuracies may require new disclosures or a cure under § 1026.19(f).



refund for changed per diem interest under § 1026.19(f)(2)(v). Therefore, disclosures affected by the per diem interest amount are considered accurate under TILA if based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction and changes to per diem interest do not result in tolerance violations under § 1026.19(e)(3). As a result, the Bureau does not expect consumers to be harmed by not receiving post-consummation corrected disclosures reflecting the changed per diem interest amounts without a refund of any additional per diem charge to the consumer.

The Bureau is proposing to add comment 19(f)(2)(iii)-2 to clarify the interaction of §§ 1026.19(f)(2)(iii) and 1026.17(c)(2)(ii), such that a creditor is not required to provide to the consumer a corrected Closing Disclosure for any disclosure that is accurate under § 1026.17(c)(2)(ii), even if the amount actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). The Bureau seeks comment generally on the requirement in § 1026.19(f)(2)(iii) for creditors to provide corrected disclosures in certain circumstances as a result of post-consummation events. Specifically, the Bureau seeks comment on its proposed approach to the interaction between §§ 1026.17(c)(2)(ii) and 1026.19(f)(1)(i), including whether the Bureau should require disclosure of post-consummation changed per diem interest amounts despite the disclosure's accuracy under § 1026.17(c)(2)(ii) and the lack of any requirement on the part of the creditor to provide a refund for any change in the amount of per diem interest charged. The Bureau seeks comment on the benefits to consumers of receiving a post-consummation disclosure of the changed per diem interest amounts reflecting the actual amounts paid by the consumer. The Bureau also seeks comment on whether additional clarity is needed in § 1026.17(e) or § 1026.19(e) regarding the effect of post-consummation events on the

accuracy of disclosures or if additional clarity is needed on the interaction between §§ 1026.17(e) and 1026.19(e).

*19(f)(2)(v) Refunds Related to the Good Faith Analysis*

Comment 19(f)(2)(v)-1 explains that under § 1026.19(f)(2)(v), 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. Comment 19(f)(2)(v)-1 refers to comment 38(h)(3)-2 for additional guidance on disclosing refunds. The Bureau is proposing to revise comment 19(f)(2)(v)-1 to add a cross-reference to comment 38-4. As discussed in the section-by-section analysis of proposed comment 38-4, the Bureau is proposing to clarify that there are other options for disclosing refunds where a contractual or other legal obligation of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the borrower. The Bureau is also proposing to revise the example in comment 19(f)(2)(v)-1 for greater clarity.

*19(f)(3) Charges disclosed*

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

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is

proposing conforming amendments to comment 19(f)(3)(ii)-3 to reflect this proposed change to the coverage of § 1026.19(e) and (f).

*19(f)(4) Transactions Involving a Seller*

*19(f)(4)(i) Provision to Seller*

Comment 19(f)(4)(i)-1 explains that the settlement agent complies with § 1026.19(f)(4)(i) either by providing to the seller a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller's transaction, or by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable. Section 1026.38(t)(5)(v) permits the creditor or settlement agent preparing the form to use form H-25 of appendix H for the disclosure provided to both the consumer and the seller, with certain modifications to separate the information of the consumer and seller, as necessary. Section 1026.38(t)(5)(vi) permits certain information to be deleted from the form provided to the seller or a third-party, as illustrated by form H-25(I) of appendix H. As discussed in more detail below, the Bureau is proposing to streamline § 1026.19(f)(4)(i) and comment 19(f)(4)(i)-1 by eliminating unnecessary text and to add comment 19(f)(4)(i)-2 to clarify that, in purchase transactions with a simultaneous loan for subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the Closing Disclosure for the first-lien transaction if that Closing Disclosure records the entirety of the seller's transaction.

In purchase transactions with a simultaneous loan for subordinate financing, if the Closing Disclosure for the first-lien transaction records the entirety of the seller's transaction, the seller receives no additional benefit from receiving a copy of the Closing Disclosure for the simultaneous loan for subordinate financing that is provided to the consumer. Accordingly, the Bureau is proposing to add comment 19(f)(4)(i)-2 to clarify that, in purchase transactions with a

simultaneous loan for subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the Closing Disclosure for the first-lien transaction if that Closing Disclosure records the entirety of the seller's transaction. If the first-lien Closing Disclosure does not record the entirety of the seller's transaction, which may occur when, for example, the seller contributes to the costs of the simultaneous loan for subordinate financing, the Closing Disclosure for the simultaneous loan for subordinate financing must reflect the seller's transaction as applicable to the subordinate financing. The settlement agent in that case complies with § 1026.19(f)(4)(i) by providing the seller with a copy of the Closing Disclosure for both the first lien and the simultaneous loan for subordinate financing, if they also contain the information under § 1026.38 relating to the seller's transaction, or by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

The Bureau seeks comment on whether the appropriate determinate of whether a seller is provided a copy of the Closing Disclosure for the simultaneous loan for subordinate financing is if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau also seeks comment on whether there are other circumstances where the seller would benefit from receiving a copy of the Closing Disclosure for the simultaneous loan for subordinate financing.

*19(g) Special information booklet at time of application*

As detailed in the section-by-section analysis of § 1026.19, the Bureau is proposing to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law. The Bureau is

proposing conforming amendments to § 1026.19(g) to reflect this proposed change to the coverage of § 1026.19(e) and (f).

### *Section 1026.23 Right of Rescission*

#### *23(g) Tolerances for Accuracy*

TILA section 125 sets forth a consumer's right to rescind certain transactions.<sup>67</sup> For purposes of a consumer's right of rescission, TILA section 106(f)(2)<sup>68</sup> sets forth the applicable tolerances for accuracy of the finance charge<sup>69</sup> and other disclosures affected by any finance charge, which has been understood to include the total of payments.<sup>70</sup> Section 1026.23(g) implements this statutory provision.

As explained more fully in the section-by-section analysis of § 1026.38(o)(1), the finance charge tolerance historically applied to the total of payments because that calculation was affected by the finance charge. However, in the TILA-RESPA Final Rule, the Bureau modified the requirement under TILA section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge by requiring instead that a creditor disclose the total of payments on the Closing Disclosure as the sum of principal, interest, mortgage insurance, and loan costs. The Bureau believed that modifying the calculation of the disclosure would improve consumer understanding.<sup>71</sup> For the reasons discussed in the section-by-section analysis of § 1026.38(o)(1), the Bureau believes it is appropriate to continue to apply the tolerances for the

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<sup>67</sup> 15 U.S.C. 1635.

<sup>68</sup> 15 U.S.C. 1605(f)(2).

<sup>69</sup> Finance charge is defined in TILA section 106(a) (15 U.S.C. 1605(a)). Section 1026.4 implements this definition, provides examples, and excludes certain charges from the finance charge.

<sup>70</sup> See *Carmichael v. The Payment Ctr., Inc.*, 336 F.3d 636, 639 (7th Cir. 2003) (interpreting the total of payments as a disclosure affected by the finance charge and therefore subject to the finance charge tolerances as long as a misdisclosure of the total of payments resulted from a misdisclosure of the finance charge).

<sup>71</sup> 78 FR 79730, 80038 (Dec. 31, 2013).

finance charge and disclosures affected by the finance charge to the modified total of payments calculation. Accordingly, the Bureau proposes to revise § 1026.23(g) to apply the same tolerances for accuracy to the total of payments for purposes of the Closing Disclosure that already apply to the finance charge and other disclosures affected by the finance charge.

Specifically, the Bureau proposes to redesignate existing § 1026.23(g)(1) and (2) as § 1026.23(g)(1)(i) and (2)(i) and to amend § 1026.23(g)(1)(ii) to provide that, in general, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 if the disclosed total of payments: (A) is understated by no more than  $\frac{1}{2}$  of 1 percent of the face amount of the note or \$100, whichever is greater; or (B) is greater than the amount required to be disclosed. The Bureau further proposes to amend § 1026.23(g)(2)(ii) to provide that, 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, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 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. The Bureau seeks comment on these proposed revisions to § 1026.23(g). The Bureau also proposes to add new comment 23(g)-1, which would reference the examples set forth in proposed comment 38(o)-1 that illustrate the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

#### *Legal Authority*

The Bureau proposes to revise § 1026.23(g) to apply the same tolerances for accuracy of the finance charge and other disclosures affected by the finance charge to the total of payments

for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).<sup>72</sup> Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute.

The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted below in the section-by-section analysis of § 1026.38(o)(1), the Bureau has concluded that the proposed tolerances for the total of payments would promote consistency with the tolerances in effect before the TILA-RESPA Final Rule. The Bureau therefore believes that the proposed tolerances facilitate compliance with the statute.

Additionally, the Bureau believes that the tolerances in proposed § 1026.23(g)(1)(ii) and (2)(ii), which are identical to the finance charge tolerances provided by Congress in TILA section 106(f), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

#### *23(h) Special Rules for Foreclosures*

##### *23(h)(2) Tolerance for Disclosures*

For purposes of exercising rescission rights after the initiation of foreclosure, TILA section 125(i)(2) explains that the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate if the amount disclosed as the finance

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<sup>72</sup> 15 U.S.C. 1631(d).

charge does not vary from the actual finance charge by more than \$35 or is greater than the amount required to be disclosed.<sup>73</sup> Section 1026.23(h)(2) implements this statutory provision.

As explained more fully above in the section-by-section analysis related to § 1026.23(g) and below in the section-by-section analysis of § 1026.38(o)(1), the finance charge tolerance historically applied to the total of payments because that calculation was affected by the finance charge. Accordingly, for the reasons discussed in the section-by-section analyses of §§ 1026.23(g) and 1026.38(o)(1), the Bureau proposes to revise § 1026.23(h)(2) to apply the same tolerances for accuracy to the total of payments for purposes of the Closing Disclosure that already apply to the finance charge and other disclosures affected by the finance charge.

Specifically, the Bureau proposes to redesignate existing § 1026.23(h)(2) as § 1026.23(h)(2)(i) and to amend § 1026.23(h)(2)(ii) to provide that, after the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation, the total of payments for each transaction subject to § 1026.19(e) and (f) shall be considered accurate for purposes of § 1026.23 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. The Bureau seeks comment on this proposed amendment to § 1026.23(h)(2).

The Bureau proposes to revise comment 23(h)(2)-1 to explain that, for each transaction subject to § 1026.19(e) and (f), § 1026.23(h)(2) is also based on the accuracy of the total of payments, taken as a whole, rather than its components. The Bureau also proposes to add new comment 23(h)(2)-2, which would reference the examples set forth in proposed comment 38(o)-

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<sup>73</sup> 15 U.S.C. 1635(i)(2).



1 that illustrate the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

### *Legal Authority*

The Bureau proposes to revise § 1026.23(h)(2) to apply the same tolerances for accuracy of the finance charge and other disclosures affected by the finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).<sup>74</sup> Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted below in the section-by-section analysis of § 1026.38(o)(1), the Bureau has concluded that the proposed tolerances for the total of payments would promote consistency with the tolerances in effect before the TILA-RESPA Final Rule. The Bureau therefore believes that the proposed tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in proposed § 1026.23(h)(ii), which are identical to the finance charge tolerances provided by Congress in TILA section 125(i)(2), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

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<sup>74</sup> 15 U.S.C. 1631(d).

*Section 1026.25 Record Retention*

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

*25(c)(1) Records Related to Requirements for Loans Secured by Real Property*

As detailed in in the section-by-section analysis of § 1026.19 above, the Bureau is proposing amendments to conform the paragraph title for § 1026.25(c)(1), and a subheading for the commentary to § 1026.25(c)(1), with the Bureau's proposal to include closed-end credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e) and (f), regardless of whether a cooperative unit is treated as real property under State or other applicable law.

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

*37(a) General Information*

*37(a)(7) Sale Price*

Comment 37(a)(7)-1 explains the requirement in § 1026.37(a)(7)(ii) to provide the estimated value of the property in transactions where there is no seller. The comment states that, where there is no seller, the creditor may use the estimate provided by the consumer at application, or if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, use that estimate. The Bureau is proposing to revise comment 37(a)(7)-1 to clarify that, if a creditor has performed its own estimate of the property value by the time the disclosure is provided to the consumer, the creditor must disclose its own estimate under § 1026.37(a)(7)(ii). In addition, as discussed in relation to § 1026.19 above, the Bureau is proposing amendments to conform comment 37(a)(7)-2 with the Bureau's proposal to include closed-end credit transactions, other than reverse mortgages, that are secured by a

cooperative unit within the scope of loans covered by § 1026.19(e), regardless of whether a cooperative unit is treated as real property under State or other applicable law.

#### *37(a)(8) Loan Term*

Section 1026.37(a)(8) requires disclosure of the term to maturity of the credit transaction. The Bureau is proposing to add comment 37(a)(8)-3 to provide a cross-reference to proposed new comment app. D-7.i, which explains the disclosure of the loan term for a construction-permanent loan, taking into account the unique features of such a transaction.

#### *37(a)(9) Purpose*

Section 1026.37(a)(9) requires a creditor to disclose on the Loan Estimate the consumer's intended use for the credit, labeled "Purpose." Comment 37(a)(9)-1.i explains that the creditor must disclose the loan purpose as "Purchase" when the consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. Because the proceeds from a simultaneous loan for subordinate financing in a purchase transaction are used to purchase the property that will secure the extension of credit, the Bureau is proposing to amend comment 37(a)(9)-1.i to clarify that simultaneous subordinate financing in such cases is also disclosed with the purpose as "Purchase."

#### *37(a)(10) Product*

Section 1026.37(a)(10) requires a description of the loan product to be disclosed, including the features that may change the periodic payment. Comment 37(a)(10)-2.ii explains disclosure of the interest only feature. The Bureau is proposing to add a cross-reference in comment 37(a)(10)-2.ii to proposed comment app. D-7.ii, which would explain the disclosure of the time period of the interest only feature for a construction loan or a construction-permanent loan.

### *37(a)(13) Rate Lock*

Section 1026.37(a)(13) requires creditors to disclose the date and time at which estimated closing costs expire. Section 1026.19(e)(3)(iv)(E) provides that, 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 estimate of the charge originally disclosed on the Loan Estimate (*i.e.*, the creditor may reset the applicable tolerance) if the consumer indicates an intent to proceed with the transaction more than 10 business days after the Loan Estimate is provided under § 1026.19(e)(1)(iii). The Bureau proposes to amend comment 37(a)(13)-2 to clarify the relationship between the expiration date disclosure under § 1026.37(a)(13)(ii) and the ability to reset tolerances under § 1026.19(e)(3)(iv)(E). The Bureau also proposes to amend comment 37(a)(13)-2 by adding a cross-reference to new proposed comment 19(e)(3)(iv)(E)-2, which would clarify when the creditor may use a revised estimate of a charge for the purposes of determining good faith under § 1026.19(e)(3)(i) and (ii) when the creditor voluntarily extends the period for which it will honor the estimated charges disclosed on the Loan Estimate for a period beyond 10 business days. The Bureau further proposes to add new comment 37(a)(13)-3 to clarify that, once the consumer has indicated an intent to proceed with the transaction, the date and time at which estimated closing costs expire would be left blank on revised Loan Estimates, if any.

### *37(b) Loan Terms*

#### *37(b)(1) Loan Amount*

Section 1026.37(b)(1) currently requires the disclosure on the Loan Estimate of the amount of credit to be extended under the terms of the legal obligation, labeled “Loan Amount.” For federally related mortgage loans under RESPA, § 1024.7(d) of Regulation X required the

disclosure of the loan amount in the summary table on page 1 of the RESPA GFE. Other provisions in §§ 1026.37 and 1036.38 use this amount in the calculation of various disclosures throughout the Loan Estimate and Closing Disclosure, for instance, in the calculating cash to close tables under §§ 1026.37(h) and 1026.38(e) and (i). Section 1026.18(b) requires the disclosure of the amount financed for transactions not subject to the disclosure requirements of § 1026.19(e) and (f), along with a description of the amount financed such as “the amount of credit provided to you or on your behalf.”<sup>75</sup> The calculation of the amount financed under § 1026.18(b) is not the same as the dollar amount lent to the consumer by the creditor, despite the similar language used to define the two terms in § 1026.18(b) and § 1026.37(b)(1), respectively.

To reduce inconsistent language in Regulation Z and facilitate compliance, the Bureau proposes to revise § 1026.37(b)(1) to provide that the loan amount disclosed on the Loan Estimate (and, accordingly, on the Closing Disclosure) is the total amount the consumer will borrow, as reflected by the face amount of the note. This language would parallel that of § 1026.32(c)(5), which, as the Bureau noted in section-by-section analysis of § 1026.37(b)(1) in the TILA-RESPA Final Rule,<sup>76</sup> requires the disclosure of the total amount the consumer will borrow, as reflected by the face amount of the note, for loans subject to HOEPA. The Bureau believes that revising the definition of loan amount in § 1026.37(b)(1) to parallel the language in § 1026.32(c)(5) would make clearer that the same amount should be disclosed under both sections, as indicated in the 2012 TILA-RESPA Proposal. The Bureau also believes that most, if

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<sup>75</sup> The amount financed is also disclosed on the Closing Disclosure pursuant to § 1026.38(o)(3).

<sup>76</sup> 78 FR 79730, 79921 (Dec. 31, 2013).

not all, creditors currently understand this intent and follow it in disclosing the loan amount. Accordingly, the Bureau believes creditors would not have to change current processes or systems under the proposal. The Bureau requests comment, however, on whether changing the language defining the loan amount under 1026.37(b)(1) would require any changes to creditors' processes or systems or would change the loan amount that creditors currently disclose to the consumer.

#### *37(b)(2) Interest Rate*

Section 1026.37(b)(2) requires disclosure of the interest rate that will be applicable to the transaction at consummation. The Bureau is proposing to add a cross-reference in comment 37(b)(2)-1 to proposed comment app. D-7.iii, which, as discussed further below, would explain the disclosure of the permanent financing interest rate for a construction-permanent loan.

#### *37(b)(3) Principal and Interest Payment*

Section 1026.37(b)(3) requires disclosure of the initial periodic payment amount. The Bureau is proposing to add a cross-reference in comment 37(b)(3)-2 to proposed comment app. D-7.iv, which would explain the disclosure of an initial periodic payment for a construction or construction-permanent loan.

#### *37(b)(6) Adjustments After Consummation*

##### *37(b)(6)(iii) Increase in Periodic Payment*

Section 1026.37(b)(6)(iii) requires disclosures of increases in the periodic payment. The Bureau is proposing to add a cross-reference in comment 37(b)(6)(iii)-1 to proposed comment app. D-7.v, which, as discussed further below, would explain the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

### *37(c) Projected Payments*

Section 1026.37(c) requires itemization of each separate periodic payment or range of payments. As described below, the Bureau is proposing to amend the commentary accompanying § 1026.37(c), (c)(1)(iii)(B), and (c)(4)(iv). Proposed comment 37(c)-2 would provide a cross-reference to comment app. D-7.vi, which explains the projected payments disclosure for a construction or construction-permanent loan.

#### *37(c)(1) Periodic Payment or Range of Payments*

##### *37(c)(1)(iii)*

##### *37(c)(1)(iii)(B)*

Section 1026.37(c) requires creditors to disclose an itemization of the periodic payments. Section 1026.37(c)(1)(iii)(B) requires disclosing the minimum and maximum payment amount (the range) when the periodic principal and interest payment may change more than once during a single year. Section 1026.37(c)(1)(iii)(B) also requires disclosing the range when the periodic principal and interest payment may change during the same year as the initial periodic payment. Comment 37(c)(1)(iii)(B)-1 illustrates the disclosure of separate periodic payments or ranges when multiple events occur during a single year. The Bureau is proposing clarifying amendments to comment 37(c)(1)(iii)(B)-1.

The Bureau has identified inconsistencies in one of the examples in comment 37(c)(1)(iii)(B)-1 that should be harmonized to match the requirements of § 1026.37(c)(1). Specifically, one example in comment 37(c)(1)(iii)(B)-1 calls for disclosing as a single range in year two the payment that would apply on the first anniversary of the due date of the initial periodic payment as well as the periodic payment that would apply after the payment adjustment that occurs at 18 months. Section 1026.37(c)(1) does not require disclosing a range merely

because the periodic principal and interest payment may change once during a single year (unless such change may occur during the same year as the initial periodic payment). Moreover, the same example in comment 37(c)(1)(iii)(B)-1 also calls for an additional separate payment disclosure specifically for “the anniversary that immediately follows the occurrence of the multiple payments or ranges of payments that occurred during the second year of the loan.” However, § 1026.37(c)(1) does not require an additional separate payment disclosure for an anniversary unless the anniversary “immediately follows” the occurrence of multiple events whereby the periodic principal and interest payment may change during a single year. To correct these inconsistencies, the Bureau is proposing amendments to conform comment 37(c)(1)(iii)(B)-1 to the requirements of § 1026.37(c)(1). The Bureau is also designating subparagraphs in comment 37(c)(1)(iii)(B)-1 for clarity, without substantive changes.

The Bureau requests comment on the proposed amendments to comment 37(c)(1)(iii)(B)-1 and also solicits comment on whether additional or alternative approaches to correct the inconsistency should be adopted instead. Specifically, the Bureau requests comment on whether the text of § 1026.37(c)(1) should be amended to conform to the example in comment 37(c)(1)(iii)(B)-1 (instead of amending comment 37(c)(1)(iii)(B)-1 to conform to the text of § 1026.37(c)(1)). The Bureau also specifically requests comment on whether, rather than complying with a single, mandatory approach, creditors should have the discretion to disclose payments or ranges of payments in conformity with either the text of § 1026.37(c)(1) or the existing examples in comment 37(c)(1)(iii)(B)-1.



### *37(c)(4) Taxes, Insurance, and Assessments*

#### *37(c)(4)(iv)*

Section 1026.37(c)(4) requires the disclosures of taxes, insurance, and assessments on the Loan Estimate. Section 1026.37(c)(4)(iv) requires a statement that the amounts disclosed under § 1026.37(c)(4)(ii) include payments for property taxes and other amounts it requires to be disclosed and whether the amounts disclosed will be paid using escrow account funds. Comment 37(c)(4)(iv)-2 explains that creditors may indicate that only some of the amounts disclosed under § 1026.37(c)(4)(ii) will be paid using escrow account funds when that is the case. In February 2015, the Bureau removed “other than amounts for payments of property taxes or homeowner’s insurance” from comment 37(c)(4)(iv)-2.<sup>77</sup> The Bureau did so to permit creditors to disclose that a portion of the property taxes or homeowner’s insurance payments were being paid from escrow, consistent with other situations where the creditor pays only a portion of the disclosed amounts from escrow. The Bureau understands that uncertainty remains over the disclosure that only a portion of the property taxes and homeowner’s insurance payments will be paid from escrow. The Bureau is proposing to revise comment 37(c)(4)(iv)-2 to clarify that creditors may indicate that a portion of the property taxes and homeowner’s insurance will be paid by the creditor using funds from the escrow account when that is the case.

### *37(c)(5) Calculation of Taxes and Insurance*

#### *37(c)(5)(i)*

As detailed in in the section-by-section analysis of § 1026.19, the Bureau is proposing amendments to conform § 1026.37(c)(5)(i) with the Bureau’s proposal to include closed-end

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<sup>77</sup> 80 FR 8767, 8777 (Feb. 19, 2015)

credit transactions, other than reverse mortgages, that are secured by a cooperative unit within the scope of loans covered by § 1026.19(e), regardless of whether a cooperative unit is treated as real property under State or other applicable law.

*37(d) Costs at Closing*

*37(d)(2) Optional Alternative Table for Transactions Without a Seller and Simultaneous Loans for Subordinate Financing*

Section 1026.37(d)(2) only permits creditors to use the optional alternative cash to close disclosure in transactions without a seller. The Bureau has provided informal guidance that, in purchase transactions with a simultaneous loan for subordinate financing, the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate if the first-lien Closing Disclosure will record the entirety of the seller's transaction and the seller did not contribute to the cost of the subordinate financing. The Bureau is proposing to amend § 1026.37(d)(2) and comment 37(d)(2)-1 to clarify that creditors may use the optional alternative cash to close disclosure for simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically seeks comment on whether allowing a creditor to use the optional alternative cash to close table for disclosure of simultaneous loans for subordinate financing in purchase transactions only if the first-lien Closing Disclosure will record the entirety of the seller's transaction is an appropriate limitation.

*37(f) Closing Cost Details; Loan Costs*

*Construction Loan Inspection and Handling Fees*

Section 1026.37(f) requires the disclosure of all loan costs associated with the transaction. Construction loan inspection and handling fees are loan costs associated with the construction transaction for purposes of § 1026.37(f).

If such inspection and handling fees are collected at or before consummation, they are disclosed in the loan costs table in the same manner as any other loan cost. For example, if the creditor collects a handling fee at or before consummation to process the advances of a multiple-advance construction loan, the handling fee would be disclosed as an origination charge under § 1026.37(f)(1) as an amount the consumer will pay to the creditor for originating and extending the credit. If the creditor collects an inspection fee that will be used to pay a third-party inspector that is selected by the creditor, the fee would be disclosed as an amount the consumer will pay for settlement services for which the consumer cannot shop under § 1026.37(f)(2).

Under proposed comment 37(f)-3, a creditor would disclose construction loan inspection and handling fees that are collected after consummation in a separate addendum to the Loan Estimate rather than in the loan costs table, as proposed comment 37(f)(6)-3, discussed below, would provide. The creditor would not count such fees for purposes of the calculating cash to close table. The Bureau believes that disclosing the construction loan inspection and handling fees that are collected after consummation in an addendum would promote the informed use of credit by giving consumers loan cost information necessary to exercise such informed use, while preserving the accuracy of the total amount determined in the closing costs details table that must be provided by the consumer at consummation.

Proposed comment 37(f)-3 would include a cross-reference to proposed comment 37(f)(6)-3 for an explanation of the addendum that would be used to disclose post-consummation inspection and handling fees, as discussed below. Proposed comment 37(f)-3 also would include cross-references to comments 38(f)-2 and app. D-7.viii, for additional explanations of the disclosure of such fees. Because the number of post-consummation construction loan inspections and disbursements may not be known at the time the disclosures are required to be provided, comment 37(f)-3 would include a cross-reference to comment 19(e)(1)(i)-1, which includes instruction on providing disclosures based on the best information reasonably available. Finally, comment 37(f)-3 would provide a cross-reference to § 1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures. The Bureau requests comment in particular on whether additional guidance on the effect of subsequent events in construction financing would provide additional clarity and what issues such additional guidance might address.

#### *37(f)(6) Use of Addenda*

The Bureau is proposing to add comment 37(f)(6)-3 to provide instruction for the addendum that would be used to disclose post-consummation construction loan inspection and handling fees. If, pursuant to proposed comment 37(f)-3, a creditor is required to disclose construction loan inspection and handling fees that will be collected after consummation, proposed comment 37(f)(6)-3 would explain that the creditor discloses the total of such fees under the heading “Inspection and Handling Fees Collected After Closing” in an addendum. Proposed comment 37(f)(6)-3 would also cross-reference comment 19(e)(1)(i)-1 and explain that, if the amount of post-consummation inspection and handling fees is not known at the time the disclosures are provided, the disclosures in the addendum

would be based upon the best information reasonably available. To provide additional clarity, proposed comment 37(f)(6)-3 also includes an example of the best information reasonably available standard for purposes of disclosing post-consummation inspection and handling fees by providing such information could include amounts the creditor has previously charged in similar transactions.

*37(g) Closing Cost Details; Other Costs*

*37(g)(4) Other*

Section 1026.37(g)(4) requires the disclosure 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 consummation and of which the creditor is aware at the time of issuing the Loan Estimate. Comment 37(g)(4)-4 provides examples of items that are disclosed under § 1026.37(g)(4), including but not limited to 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. Currently, amounts for construction costs, payoff of existing liens, or payoff of unsecured debt may be, but are not required to be, disclosed under § 1026.37(g)(4). If such amounts are not disclosed under § 1026.37(g)(4), they are factored into the cash to close calculations but are not otherwise disclosed on the Loan Estimate. The Bureau is proposing to revise comment 37(g)(4)-4 to require the disclosure of construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.37(a)(6), or payoff of unsecured debt under § 1026.37(g)(4),

unless those items are disclosed under § 1026.37(h)(2)(iii) on the optional alternative calculating cash to close table.

The Bureau expects consumer understanding will be enhanced by the clear and conspicuous disclosure of these amounts on the Loan Estimate, if known to the creditor at the time the Loan Estimate is provided to the consumer. The proposed revisions to comment 37(g)(4)-4, together with the proposed revisions to comment 38(g)(4)-1 discussed in the section-by-section analysis of § 1026.38(g)(4), will also create greater consistency between disclosures on the Loan Estimate and Closing Disclosure, thus facilitating consumer understanding. The Bureau believes this is an appropriate place to list the three items because they are all other closing costs that must be paid when completing a mortgage transaction.

The Bureau does not intend, by requiring disclosure under § 1026.37(g)(4) of amounts for construction costs, payoff of existing liens, and payoff of unsecured debt, to subject them to a different determination of good faith than currently provided for in § 1026.19(e)(3). Section 1026.19(e)(3)(iii)(E) provides that the amounts disclosed for third-party services not required by the creditor are disclosed in good faith regardless of whether the amounts actually paid by the consumer exceed the estimated amounts disclosed, provided such estimates are consistent with the best information reasonably available to the creditor at the time the disclosures are provided. To the extent construction costs, payoff of existing liens, or payoff of unsecured debt are bona fide, they would be subject to the determination of good faith under § 1026.19(e)(3)(iii)(E), as discussed in the section-by-section analysis of § 1026.19(e)(3)(iii)(E) above.

The Bureau considered requiring the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under the summaries of transactions table on the Closing

Disclosure under § 1026.38(j)(1)(v), instead of as “closing costs” under §§ 1026.37(g)(4) and 1026.38(g)(4). However, the Loan Estimate does not have a comparable summaries of transactions table. Disclosing these optional third-party services on the summaries of transactions table on the Closing Disclosure would not result in these costs being enumerated consistently on both the Loan Estimate and the Closing Disclosure and would interfere with the comparability between the Loan Estimate and the Closing Disclosure.

The Bureau also considered requiring the disclosure of construction costs on an addendum, instead of as other closing costs, under § 1026.37(g)(4) on the Loan Estimate and § 1026.38(g)(4) on the Closing Disclosure. The construction costs would then be factored into the calculating cash to close table calculations with the sale price to yield an accurate cash to close amount. However, this approach could add complexity to the calculations required on the Closing Disclosure because amounts disclosed under § 1026.38(j)(1)(ii) and (k)(1)(ii) would no longer be the same.

For the foregoing reasons, the Bureau is proposing to revise comment 37(g)(4)-4 to require the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt even if payable directly or indirectly to the creditor, as provided for in § 1026.37(g)(4), unless those items are disclosed under § 1026.37(h)(2)(iii) on the optional alternative calculating cash to close table. For example, if a builder is also the creditor, the bona fide cost of construction is disclosed under § 1026.37(g)(4) and not § 1026.37(f). Finally, the Bureau is proposing to revise comment 37(g)(4)-4 to cross-reference proposed comment app. D-7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and proposed comment app. D-7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

### *37(g)(6) Total Closing Costs*

#### *37(g)(6)(ii)*

Section 1026.37(g)(6)(ii) requires creditors to disclose the amount of any lender credits. Comment 37(g)(6)(ii)-1 cross references comment 19(e)(3)(i)-5 and describes lender credits as payments from the creditor to the consumer that do not pay for a particular fee on the disclosures provided under § 1026.37.<sup>78</sup> However, as finalized in the TILA-RESPA Final Rule, comment 19(e)(3)(i)-5 states that lender credits, as identified in § 1026.37(g)(6)(ii), represent the sum of non-specific lender credits and specific lender credits. To correct this inconsistency, the Bureau is proposing to revise comment 37(g)(6)(ii)-1 to conform with the language in comment 19(e)(3)(i)-5.

#### *37(h) Calculating Cash to Close*

Section 1026.37(h) requires the disclosure of the calculation of an estimate of cash due from or to the consumer at consummation, under the heading “Calculating Cash to Close,” and permits the use of an alternative calculating cash to close table for transactions without a seller. The calculating cash to close table is designed to provide the consumer, using readily understandable language and a standardized calculation methodology, with a reasonably reliable estimate of the cash due from or to the consumer at consummation. The calculating cash to close table disclosures include the total closing costs and the amount of closing costs being financed, implementing, in part, TILA section 128(a)(17).

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<sup>78</sup> The language used in comment 37(g)(6)(ii)-1 was based on proposed commentary in the 2012 TILA-RESPA Proposal. 77 FR 51116, 51422 (Aug. 23, 2012).



The Bureau recognized when it adopted this requirement that the creditor may not know the amount of the deposit, payments to others, and funds that the consumer either will pay or will receive at consummation. The Bureau required that the disclosure of those elements of the calculating cash to close table be based on the best information reasonably available.<sup>79</sup> In doing so, the Bureau recognized that the actual amount of cash to close at consummation could differ significantly from the amount disclosed on the Loan Estimate. Notably, the amounts disclosed in the calculating cash to close table are not subject to the specific tolerances under § 1026.19(e)(3) or § 1026.22(a).

The Bureau has received many questions from industry on the proper calculation of the various amounts disclosed on the calculating cash to close table. The Bureau also understands that there is some variation among creditors in how the calculating cash to close disclosures are determined. The Bureau recognizes that a lack of consistency in how the calculating cash to close disclosures are made could undermine consumer understanding. Consequently, the Bureau is addressing many of these questions, inconsistencies, and requested clarifications below, as they relate to the various amounts disclosed in the calculating cash to close table.

The Bureau is proposing amendments to § 1026.37(h) and its commentary regarding the calculating cash to close table on the Loan Estimate pursuant to its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a). The Bureau believes that the proposed amendments will effectuate the purposes of TILA by facilitating the informed use of credit. Providing consumers with information about the cash to close amount and its critical components helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to

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<sup>79</sup> 78 FR 79730, 79966-67 (Dec. 31, 2013).

consumers in a manner that permits consumers to understand better the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a).

The Bureau recognizes that the fact that the amounts disclosed on the calculating cash to close table can change significantly between the issuance of the Loan Estimate and the issuance of the Closing Disclosure could compromise the ability of consumers to understand the costs, benefits, and risks of the transaction. In addition, the calculating cash to close table includes both amounts that are and are not subject to tolerances. As a result, some consumers may have difficulty determining the proper level of reliance to place on the calculating cash to close disclosures. Some consumers may believe that the early estimate of the cash to close on the Loan Estimate is more precise than it necessarily can be.

Accordingly, the Bureau seeks comment on the calculating cash to close table generally. This includes comments on possible alternative methods to determine the amounts disclosed on the calculating cash to close table, whether the proposed clarifications and revisions discussed below will result in more consistent calculation of the amounts on the calculating cash to close table, and other ways to simplify the calculating cash to close table while providing the consumer with a reasonably reliable estimate of the amount due from or to the consumer at consummation, consistent with the requirements of TILA section 128(a)(17) and the Bureau's goal of providing understandable and consistent information to consumers. The Bureau recognizes that any redesign of the calculating cash to close table, including its components, could require extensive changes to existing processes and software investments by industry and seeks comment on the extent of such changes that would be required by the Bureau's proposal, or by any other proposals suggested by commenters, for revisions to the calculating cash to close table.

*37(h)(1) For All Transactions*

Section 1026.37(h)(1) requires the disclosure of a calculation, yielding an estimate of the cash needed from the consumer at consummation of the transaction, based on seven components. Each of the seven components, disclosed under § 1026.37(h)(1)(i) through (vii), respectively, is determined by a prescribed calculation. The Bureau is proposing to add comment 37(h)(1)-2 to clarify that, on the Loan Estimate for a simultaneous loan for subordinate financing, the sale price disclosed under § 1026.37(a) is not used in any of the § 1026.37(h)(1) calculations. Omitting the sale price from the cash to close calculations required under § 1026.37(h)(1) for simultaneous loans for subordinate financing will result in a cash to close amount reflecting the proceeds of the subordinate financing, itself disclosed on the first-lien Loan Estimate under § 1026.37(h)(1)(vii).

*37(h)(1)(ii) Closing Costs Financed*

Comment 37(h)(1)(ii)-1 explains that 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). If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that it does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). If the result of the calculation is zero or negative, the amount of \$0 is disclosed under § 1026.37(h)(1)(ii). The Bureau is proposing to revise comment 37(h)(1)(ii)-1 and add comment 37(h)(1)(ii)-2 to provide greater clarity regarding the sale price and loan amount.

Revised comment 37(h)(1)(ii)-1 would clarify that the sale price may be included in the closing costs financed calculation as a payment to a third party not otherwise disclosed under

§ 1026.37(f) and (g). However, as explained in proposed comment 37(h)(1)-2, sale price is not used in any calculating cash to close calculations on the Loan Estimate for a simultaneous loan for subordinate financing in a purchase transaction. In addition, the Bureau is proposing to remove the word “total” from the phrase “total loan amount” because “total loan amount” is a defined term under § 1026.32(b)(4), and the Bureau intends only to reference the loan amount disclosed under proposed § 1026.37(b)(1).

Proposed comment 37(h)(1)(ii)-2 would explain that the loan amount disclosed under § 1026.37(b)(1) is the total amount the consumer will borrow, as reflected by the face amount of the note, consistent with proposed revisions to § 1026.37(b)(1), discussed above. The comment would also explain that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. The addition of this comment will clarify that, regardless of how the term “loan amount” is used by creditors or in relation to programmatic requirements of specific loan programs, for purposes of the Loan Estimate, the amount disclosed as the loan amount, and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected by the face amount of the note. This definition does not affect how other agencies may define or use similar terms for purposes of their own programmatic requirements. For example, the “Base Loan Amount” and “Total Loan Amount” for loans made under programs of the Federal Housing Administration may not be the same as the loan amount required to be disclosed under revised § 1026.37(b)(1).

*37(h)(1)(iii) Down Payment and Other Funds from Borrower*

Section 1026.37(h)(1)(iii)(A) requires the down payment amount in a purchase transaction as defined in § 1026.37(a)(9)(i) to be disclosed as a positive number. In these transactions, the down payment is calculated as the difference between the purchase price of the

property and the principal amount of the credit extended. Comment 37(h)(1)(iii)-1 explains that, in the case of a transaction, other than a construction loan, where the loan amount exceeds the purchase price of the property, the amount of the down payment disclosed must be \$0. The calculation does not capture the amount of existing loans “assumed or taken subject to” that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv). Section 1026.37(h)(1)(iii)(B) provides that, in all transactions other than purchase transactions as defined in § 1026.37(a)(9)(i), the amount of estimated funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). The Bureau is proposing to revise § 1026.37(h)(1)(iii)(A) to account for the amount expected to be disbursed to the consumer or used at the consumer’s discretion at consummation of the transaction in purchase transactions, to make conforming amendments to § 1026.37(h)(1)(iii)(B), to replace comment 37(h)(1)(iii)-1 with a new comment that clarifies the down payment calculation, and to add comment 37(h)(1)(iii)-2 to explain when the “Funds for Borrower” calculation under § 1026.37(h)(1)(v) is used.

Revised § 1026.37(h)(1)(iii)(A)(1) would specify that, in a purchase transaction as defined in § 1026.37(a)(9)(i), the creditor subtracts the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on the Closing Disclosure, based on the best information reasonably available at the time the creditor provides the Loan Estimate, from the sale price of the property, except as required by § 1026.37(h)(1)(iii)(A)(2). Revised § 1026.37(h)(1)(iii)(A)(2) would provide that , in a purchase transaction as defined in § 1026.37(a)(9)(i), when the sum of the loan amount and any amount for loans assumed or taken subject to that will be disclosed on the Closing Disclosure exceeds the sale price of the property, the creditor calculates the estimated funds from the consumer in accordance with proposed § 1026.37(h)(1)(v), as revised. These provisions, as proposed, would apply to all purchase

transactions as defined in § 1026.37(a)(9)(i), including purchase transactions that include a construction loan component.

Section § 1026.37(h)(1)(iii)(B), as revised, would provide that, for all other transactions, the estimated funds from the consumer would also be calculated in accordance with the “Funds for Borrower” calculation in proposed § 1026.37(h)(1)(v). Comment 37(h)(1)(iii)-2 would explain the amount to be disclosed under § 1026.37(h)(1)(iii)(A)(2) or (h)(1)(iii)(B) is determined in accordance with the “Funds for Borrower” calculation in proposed § 1026.37(h)(1)(v). See the section-by-section analysis of § 1026.37(h)(1)(v) for a discussion of the proposed revisions to that section and to comment 37(h)(1)(v)-1.

As a result of the proposed revisions to § 1026.37(h)(1)(iii), existing comment 37(h)(1)(iii)-1 would not be accurate or necessary. Therefore, the Bureau is proposing to replace it with a new comment. The Bureau recognizes that some loan programs require borrowers to provide minimum cash investments, which, under the regulations or requirements of those loan programs, may be referred to as “down payments.” Revised comment 37(h)(1)(iii)-1 would explain the down payment calculation that must be followed for accurate disclosure of the down payment amount. The comment would also explain that the minimum cash investments required of consumers under some loan programs are not necessarily reflected in the down payment disclosure, and accurate disclosure of the down payment does not affect compliance or non-compliance with such loan programs’ requirements.

*37(h)(1)(v) Funds for Borrower*

Section 1026.37(h)(1)(v) provides that the amount of funds from the consumer disclosed under § 1026.37(h)(1)(iii)(B) and of funds for the consumer disclosed under § 1026.37(h)(1)(v) are calculated by subtracting the principal amount of the credit extended, 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, except to the extent the satisfaction of such existing debt is disclosed under § 1026.37(g). “Funds for Borrower” represents generally the amount expected to be disbursed to the consumer or used at the consumer’s discretion at consummation of the transaction, such as in cash-out refinance transactions, and “Funds from Borrower” the amount expected to be paid by the consumer at consummation. The determination of whether the transaction will result in “Funds for Borrower” is made under § 1026.37(h)(1)(v). When the result of the calculation is positive, that amount is disclosed under § 1026.37(h)(1)(iii) as “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 under § 1026.37(h)(1)(v) as “Funds for Borrower,” and \$0 is disclosed under § 1026.37(h)(1)(iii) as “Funds from Borrower.” When the result is \$0, \$0 is disclosed as “Funds from Borrower” and “Funds for Borrower.” As discussed in more detail below, the Bureau is proposing to revise § 1026.37(h)(1)(v) to account for the amount expected to be disbursed to the consumer or used at the consumer’s discretion at consummation of the transaction in purchase transactions, to revise comment 37(h)(1)(v)-1 to explain when \$0 is disclosed as “Funds for Borrower” in purchase transactions, and to add comment 37(h)(1)(v)-2 to clarify what amounts are included as existing debt being satisfied in the transaction.

Existing comment 37(h)(1)(v)-1 clarifies that the “Funds for Borrower” calculation under § 1026.37(h)(1)(v) is used in a non-purchase transaction to determine the amount disclosed under § 1026.37(h)(1)(iii) as “Funds from Borrower,” and that, in a purchase transaction, other than a construction loan, the amount disclosed under § 1026.37(h)(1)(v) as “Funds for Borrower,” will be \$0, in accordance with § 1026.37(h)(1)(v)(A). The Bureau nonetheless recognizes that there

are circumstances when a purchase transaction will result in funds disbursed to the consumer such that the disclosure of “Funds for Borrower” under § 1026.37(h)(1)(v) should not be \$0.

As discussed in the section-by-section analysis of § 1026.37(h)(1)(iii) above, the Bureau proposes to amend the “Funds from Borrower” calculation under § 1026.37(h)(1)(iii) to specify that, in purchase transactions, when the sum of the loan amount and any amount for existing loans assumed or taken subject to that will later be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price, the “Funds for Borrower” calculation in proposed § 1026.37(h)(1)(v) will be used for the transaction. The Bureau is proposing conforming revisions to § 1026.37(h)(1)(v) to reflect that, in transactions where cash is expected to be disbursed to the consumer or used at the consumer’s discretion at consummation of the transaction, the “Funds for Borrower” calculation under § 1026.37(h)(1)(v) would be used.

The Bureau also is proposing to revise comment 37(h)(1)(v)-1 to conform with proposed revisions to § 1026.37(h)(1)(v). The comment would no longer provide that the “Funds for Borrower” calculation under § 1026.37(h)(1)(v) is only used in non-purchase transactions. Instead, the comment would provide that, when the down payment is determined in accordance with § 1026.37(h)(1)(iii)(A)(1), the amount disclosed under § 1026.37(h)(1)(v) as funds for the borrower is \$0.

Proposed comment 37(h)(1)(v)-2 would provide that the amounts disclosed under § 1026.37(h)(1)(iii)(A)(2) or (h)(1)(iii)(B), as applicable, and (h)(1)(v) are determined by subtracting the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans “assumed or taken subject to” that will be disclosed on the Closing Disclosure under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the transaction. Proposed comment



37(h)(1)(v)-2 would further clarify that the phrase “total amount of all existing debt being satisfied by the transaction” refers to amounts that will be disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau seeks comment on whether defining the phrase “total amount of all existing debt being satisfied by the transaction” to mean specifically amounts that will be disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the “total amount of all existing debt being satisfied by the transaction.”

*37(h)(1)(vi) Seller Credits*

Section 1026.37(h)(1)(vi) requires creditors to disclose the amount that the seller will pay for total loan costs and total other costs, labeled “Seller Credits,” under the heading “Calculating Cash to Close.” Section 1026.37(f) and (g) requires creditors to disclose loan costs and other transaction costs under the headings “Loan Costs” and “Other Costs,” respectively. The Bureau proposes to amend comment 37(h)(1)(vi)-2 to clarify that specific seller credits may be disclosed in the calculating cash to close table under § 1026.37(h)(1)(vi) or, at the creditor’s option, may be reflected within the amounts disclosed for those specific items in the loan costs and other costs tables, under § 1026.37(f) and (g), respectively. The Bureau believes that neither approach significantly affects overall consumer comprehension or risk of other consumer harm, but the Bureau solicits comment on this view and on whether one of the two approaches should be mandatory rather than leaving the treatment of specific seller credits in the creditor’s discretion and, if so, why.

*37(h)(1)(vii) Adjustments and Other Credits*

Section 1026.37(h)(1)(vii) requires that the amount of all loan costs determined under § 1026.37(f) and other costs determined under § 1026.37(g) that are to be paid by persons other

than the loan originator, creditor, consumer, or seller, together with any other amounts that are required to be paid by the consumer at consummation pursuant to a purchase and sale contract, be disclosed as a negative number. This assumes that the amount required to be paid by the consumer at consummation pursuant to a purchase and sale contract will be greater than the amount of credits, which, the Bureau understands, may not always be the case. Therefore, the Bureau is proposing to revise § 1026.37(h)(1)(vii) to eliminate the requirement that the amount disclosed be a negative number and to make corresponding revisions to comment 37(h)(1)(vii)-6. As discussed below, the Bureau is also proposing to revise comment 37(h)(1)(vii)-1 to clarify that amounts expected to be provided to consumers in advance of consummation are not required to be disclosed, comment 37(h)(1)(vii)-5 to clarify that subordinate financing must be disclosed on the first-lien transaction Loan Estimate, and comment 37(h)(1)(vii)-6 to clarify what amounts are included in the adjustments and other credits calculation under § 1026.37(h)(1)(vii).

Comment 37(h)(1)(vii)-1 clarifies that amounts expected to be paid by third parties not involved in the transaction, such as gifts from family members, and not otherwise identified under § 1026.37(h)(1) are included in the amount disclosed under § 1026.37(h)(1)(vii), but the comment does not specify whether amounts received by the consumer prior to consummation must be included in the calculation. The Bureau is proposing to revise comment 37(h)(1)(vii)-1 to distinguish between amounts paid by third parties at consummation and amounts given to consumers in advance of consummation. As proposed, the revision to comment 37(h)(1)(vii)-1 would state that amounts expected to be paid at consummation by third parties not involved in the transaction, such as gifts from family members, and not otherwise identified under § 1026.37(h)(1), are included in the amount disclosed under § 1026.37(h)(1)(vii), although amounts expected to be provided to consumers in advance of consummation by third parties not

otherwise involved in the transaction, including gifts from family members, are not required to be disclosed under § 1026.37(h)(1)(vii).

Comment 37(h)(1)(vii)-5 clarifies that 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), but the comment does not specify whether this requirement pertains to the first- or subordinate-lien transaction. The Bureau is proposing to revise comment 37(h)(1)(vii)-5 to clarify that 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 Loan Estimate. The funds that are provided to the consumer from the proceeds of subordinate financing and that will be applied to the first-lien transaction are not included in the adjustments and other credits calculation on the simultaneous loan for subordinate financing Loan Estimate. The Bureau seeks comment on whether there are circumstances in which local or State housing assistance grants are applied towards subordinate financing and not to the first lien.

Comment 37(h)(1)(vii)-6 clarifies that adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional personal property, that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) may be included in the amount disclosed under § 1026.37(h)(1)(vii) and would reduce the total amount disclosed. However, such amounts may have already been factored into calculations for prior components of the calculating cash to close table, thereby being counted twice. The Bureau is proposing to revise comment 37(h)(1)(vii)-6 to clarify that amounts 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) may be included in the adjustments and other credits amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), provided they are not also included in the calculation for proposed § 1026.37(h)(1)(iii) or (v) as debt being satisfied in the real estate transaction. Otherwise, such amounts will be factored into the cash to close calculations twice. See the section-by-section analysis of § 1026.37(h)(1)(iii) and (v) above for further details.

*37(h)(2) Optional Alternative Calculating Cash to Close Table for Transactions Without a Seller and Simultaneous Loans for Subordinate Financing*

Section 1026.37(h)(2) only permits the use of the optional alternative calculating cash to close table in transactions without sellers. The Bureau has provided informal guidance that, in purchase transactions with a simultaneous loan for subordinate financing, the optional alternative calculating cash to close table may be used for the simultaneous subordinate financing Loan Estimate if the first-lien Closing Disclosure will record the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau is proposing to amend § 1026.37(h)(2) and comment 37(h)(2)-1 to permit creditors to use the optional alternative calculating cash to close table for the disclosure of simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction. The Bureau specifically seeks comment on whether allowing a creditor to use the optional alternative cash to close table for disclosure of simultaneous loans for subordinate financing in purchase transactions only if the first-lien Closing Disclosure will record the entirety of the seller's transaction is an appropriate limitation.

*37(h)(2)(iii) Payoffs and Payments*

Section 1026.37(h)(2)(iii) requires the disclosure of the total of all payments to third parties not otherwise disclosed under § 1026.37(f) and (g) as a negative number. The

requirement to disclose a negative number, however, does not account for limited circumstances in which funds provided by third parties and the proceeds of subordinate financing exceed the total amount of payoffs and payments to third parties. Comment 37(h)(2)(iii)-1 provides examples of payoffs and payments, including payoff of existing liens secured by the property identified under § 1026.37(a)(6). As discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau would require the disclosure, under revised § 1026.37(g)(4), of construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified in § 1026.37(a)(6), and payoff of unsecured debt, unless those amounts are disclosed under § 1026.37(h)(2)(iii) on the optional alternative calculating cash to close table. This provision is intended to give creditors the flexibility to disclose the payoff of existing liens secured by the property identified in § 1026.37(a)(6) on the payoffs and payments table or to standardize the disclosure of this and other amounts across the calculating cash to close table for transactions with and without sellers by disclosing such amounts under revised § 1026.37(g)(4). The Bureau is proposing to revise § 1026.37(h)(2)(iii) to permit disclosure of the total of all payments to third parties not otherwise disclosed under § 1026.37(f) or (g) as a negative or positive number, to revise comment 37(h)(2)(iii)-1 to make conforming amendments, and to add comment 37(h)(2)(iii)-2 to provide clarity on the disclosure of simultaneous loans for subordinate financing.

The Bureau is proposing to revise § 1026.37(h)(2)(iii) to allow for the disclosure of the total of all payments to third parties not otherwise disclosed under § 1026.37(f) or (g) as a positive amount and to make conforming revisions to comment 37(h)(2)(iii)-1, consistent with the proposed revisions discussed in the section-by-section analysis of § 1026.37(g)(4). The Bureau also is proposing to add comment 37(h)(2)(iii)-2 to provide additional clarity on the

disclosure of proceeds from a simultaneous loan for subordinate financing on the Loan Estimate for a first-lien transaction disclosed under § 1026.37(h)(2), such as a refinance. Proposed comment 37(h)(2)(iii)-2 would explain that, on the first-lien Loan Estimate, the proceeds of the simultaneous loan for subordinate financing are included, as a positive number, in the total amount disclosed under § 1026.37(h)(2)(iii). On the first-lien Loan Estimate, the total amount disclosed under revised § 1026.37(h)(2)(iii) will be a negative number unless the proceeds from subordinate financing and any amounts entered as credits under comment 37(h)(2)(iii)-1 exceed the total amount of other payoffs and payments that are included in the calculation for the amount disclosed under § 1026.37(h)(2)(iii). The funds from the subordinate financing that will be applied to the first-lien transaction are not included in the estimated total payoffs and payments amount on the simultaneous loan for subordinate financing Loan Estimate.

*37(k) Contact information*

The Bureau is proposing to make a technical, non-substantive, amendment to comment 37(k)-3 to correct a typographical error. The Bureau is proposing to replace the current reference to § 1026.38(k)(2) in comment 37(k)-3 with a reference to § 1026.37(k)(2), which describes the disclosure of license numbers or other unique identifiers.

*37(l) Comparisons*

*37(l)(1) In Five Years*

*37(l)(1)(i)*

The Bureau is proposing to make a technical, non-substantive amendment to comment 37(l)(1)(i)-1 to correct a typographical error. The Bureau is proposing to replace the word “fractional” with “functional” in comment 37(l)(1)(i)-1 to conform to the language of comment 37(c)(1)(i)(C)-1.

### *37(l)(3) Total Interest Percentage*

Section 1026.37(l)(3) requires creditors to disclose the total interest percentage (TIP) and provides that the total interest percentage is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. The Bureau explained in the TILA-RESPA Final Rule that prepaid interest is included in the TIP calculation.<sup>80</sup> The Bureau is proposing to amend comment 37(l)(3)-1 to clarify further that prepaid interest is included when calculating the TIP.

### *37(o) Form of Disclosures*

#### *37(o)(4) Rounding*

The Bureau understands that there is continued uncertainty about rounding requirements on the Loan Estimate. Section 1026.37(o)(4)(i)(A) requires rounded numbers for the information disclosed pursuant to § 1026.37(b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l), except that the per diem amount required to be disclosed by § 1026.37(g)(2)(iii) and the monthly amounts required to be disclosed by § 1026.37(g)(3)(i) through (iii) and (g)(3)(v) shall not be rounded. Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed pursuant to § 1026.37(b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), and (l)(3) to be disclosed up to two or three decimal places and the percentage amount disclosed pursuant to § 1026.37(l)(2) to be disclosed up to three decimal places. The Bureau is proposing revisions to § 1026.37(o)(4)(i)(A) and (ii) and to comments 37(o)(4)(i)(A)-1 and 37(o)(4)(ii)-1 to simplify the rounding and disclosure requirements of § 1026.37(o)(4).

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<sup>80</sup> 78 FR 79730, 79982 (Dec. 31, 2013).

The proposed revisions to § 1026.37(o)(4)(i)(A) would clarify that the per diem amount required to be disclosed by § 1026.37(g)(2)(iii) and the monthly amounts required to be disclosed by § 1026.37(g)(3)(i) through (iii) and (g)(3)(v) are rounded to the nearest cent and disclosed to two decimal places. The proposed revision to comment 37(o)(4)(i)(A)-1 adds clarifying language and adds an illustrative example of the disclosure of per diem interest.

The Bureau is proposing revisions to § 1026.37(o)(4)(ii) to simplify the rounding requirements for amounts disclosed under § 1026.37(o)(4)(ii). Proposed § 1026.37(o)(4)(ii) states that the percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), (l)(2), and (l)(3) of this section must be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point. Proposed comment 37(o)(4)(ii)-1 illustrates the requirements of § 1026.37(o)(4)(ii) with examples.

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

Section 1026.38 sets forth the content of the Closing Disclosure required by § 1026.19(f) to be provided to the consumer. Comments applicable generally to § 1026.38 are included as commentary to § 1026.38. The Bureau is proposing to add comment 38-4, which would provide options for the disclosure of reductions in principal balance, referred to as a principal curtailments, in various provisions of § 1026.38.

Creditors may use lender credits disclosed under § 1026.38(h)(3) to provide a credit for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3). However, contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, may prevent the creditor from refunding cash to the consumer as lender credits. Therefore, the Bureau is proposing to add



comment 38-4, which would provide options for the disclosure of principal curtailments under § 1026.38(g)(4), (j)(4)(i), (t)(5)(vii)(B), and (t)(5)(ix) to provide refunds related to the good faith analysis under § 1026.19(f)(2)(v). The disclosure would contain a statement conveying that the disclosed amount includes a refund for an amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3) and the amount of such refund under § 1026.19(f)(2)(v).

The Bureau seeks comment on whether there is sufficient space in the corresponding rows on the Closing Disclosure for such a statement and whether the Bureau should prescribe a specific statement or permit creditors discretion in developing such statement.

#### *38(a) General Information*

##### *38(a)(3) Closing Information*

##### *38(a)(3)(iii) Disbursement Date*

Section 1026.38(a)(3)(iii) requires disclosure of the disbursement date. In a purchase transaction under § 1026.37(a)(9)(i), the disbursement date is the date the amounts disclosed under § 1026.38(j)(3)(iii) (cash to close from or to borrower) and (k)(3)(iii) (cash from or to seller) are expected to be paid to the consumer and seller. In a non-purchase transaction, the disbursement date is the date the amounts disclosed under § 1026.38(j)(2)(iii) (loan amount) or (t)(5)(vii)(B) (payoffs and payments) are expected to be paid to the consumer or a third party. As discussed below, the Bureau is proposing to revise § 1026.38(a)(3)(iii) to provide that the disbursement date in non-purchase transactions is the date some or all of the loan amount is expected to be paid to the consumer or a third party, and to add comment 38(a)(3)(iii)-1 to clarify to disbursement date for simultaneous loans for subordinate financing.

Currently, if a non-purchase transaction is disclosed using the alternative disclosures, the disbursement date will be the date amounts disclosed under § 1026.38(t)(5)(vii)(B) are expected

to be paid to the consumer or a third party. If a non-purchase transaction is not disclosed using the alternative disclosures, the disbursement date will be the date the loan amount disclosed under § 1026.38(j)(2)(iii) is expected to be paid to the consumer or a third party. Regardless of whether a non-purchase transaction is disclosed using the alternative disclosures, the Closing Disclosure for the non-purchase transaction will include the loan amount under § 1026.38(b). Therefore, to streamline the provision, the Bureau is proposing to revise § 1026.38(a)(3)(iii) regarding the disbursement date for non-purchase transactions by replacing the cross-references to § 1026.38(j)(2)(iii) and (t)(5)(vii)(B) with a cross-reference to § 1026.38(b). In addition, because the entire loan amount may not be disbursed at one time, such as in non-purchase construction transactions, the Bureau proposes to clarify that the disbursement date is the date some or all of the loan amount is expected to be paid to the consumer or a third party.

The Bureau is also proposing to add comment 38(a)(3)(iii)-1 to clarify that, although a simultaneous loan for subordinate financing is disclosed as a purchase transaction under § 1026.37(a)(9)(i), the disbursement date for this type of transaction will be the same as the disbursement date for non-purchase transactions. The comment would clarify that the disbursement date on the Closing Disclosure for a simultaneous loan for subordinate financing is the date some or all of the loan amount disclosed under § 1026.38(b) is expected to be paid to the consumer or a third party. The Bureau seeks comment on all aspects of this proposal, including whether there are any unintended consequences from structuring the disclosure of the disbursement date in this manner, or if there is a better way to ensure clarity and consistency.

#### *38(a)(3)(vii) Sale Price*

In a transaction where there is no seller, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. Comment 38(a)(3)(vii)-1 explains that, to comply

with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine loan approval or, if none has been obtained, the estimated value of the property. In the latter case, the creditor may use the estimate provided by the consumer at application, or, if it has performed its own estimate of the property value by the time the disclosure is provided to the consumer, it may disclose that estimate. The Bureau is proposing to revise comment 38(a)(3)(vii)-1 to clarify that, if the creditor 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.

#### *38(a)(4) Transaction Information*

Section 1026.38(a)(4) requires the disclosure of specific information about the transaction, including the name and address of the seller. Comment 38(a)(4)-2 clarifies that, in transactions where there is no seller, such as in a refinancing or home equity loan, the disclosure of the seller's name and address required by § 1026.38(a)(4)(ii) may be left blank. The Bureau is proposing to revise comment 38(a)(4)-2 to include simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction in transactions for which a creditor may leave the § 1026.38(a)(4)(ii) disclosure blank and omit the seller's name. The Bureau specifically seeks comment on whether the borrower or seller would benefit if the Closing Disclosure for the simultaneous loan for subordinate financing in purchase transactions contains the seller's name and address even if the first-lien Closing Disclosure will record the entirety of the seller's transaction, including the seller's name and address.

Section 1026.38(a)(4)(i) also requires the consumer's name and mailing address, labeled "Borrower." Section 1026.2(a)(11) defines "consumer" as a natural person to whom consumer credit is offered or extended. The definition further provides that, in rescindable transactions, 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. The Bureau proposes to add new comment 38(a)(4)-4 to clarify that, in rescindable transactions, § 1026.38(a)(4)(i) requires disclosure of the name and mailing address of each natural person in whose principal dwelling a security interest is or will be retained or acquired, if that person's ownership interest in the dwelling is or will be subject to the security interest and regardless of whether that person is an obligor.

*38(d) Costs at Closing*

*38(d)(2) Alternative Table for Transactions Without a Seller and Simultaneous Loans for Subordinate Financing*

Section 1026.38(d)(2) only permits creditors to use the optional alternative cash to close table on the Closing Disclosure in transactions without seller where the creditor disclosed the optional alternative calculating cash to close table under § 1026.37(d)(2) on the Loan Estimate. The Bureau has provided informal guidance that, in purchase transactions with a simultaneous loan for subordinate financing, the optional alternative table may be used for the simultaneous subordinate financing Closing Disclosure if the first-lien Closing Disclosure records the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau is proposing to amend § 1026.38(d)(2) and comment 38(d)(2)-1 to permit explicitly the use of the optional alternative cash to close table for simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure records the entirety of the

seller's transaction. The Bureau specifically seeks comment on whether allowing a creditor to use the optional, alternative cash to close table for disclosure of simultaneous loans for subordinate financing in purchase transactions only if the first-lien Closing Disclosure records the entirety of the seller's transaction is an appropriate limitation.

*38(e) Alternative Calculating Cash to Close Table for Transactions Without a Seller and Simultaneous Loans for Subordinate Financing*

Section 1026.38(e) provides for the disclosure of an alternative calculation of an estimate of cash needed from the consumer at consummation for transactions without a seller, using the heading "Calculating Cash to Close." As discussed in the section-by-section analysis of § 1026.37(h) above, the Bureau seeks comment on the calculating cash to close table generally. The Bureau is proposing to revise § 1026.38(e) and comment 38(e)-1 to clarify when a simultaneous loan for subordinate financing in a purchase transaction may use the optional alternative calculating cash to close table and to add comment 38(e)-6 to specify which amounts are disclosed under the subheading "Loan Estimate" on the Closing Disclosure's calculating cash to close table.

Specifically, § 1026.38(e) requires a creditor to disclose the optional alternative calculating cash to close table when the creditor disclosed the optional alternative table on the Loan Estimate under § 1026.37(h)(2). The Bureau has provided informal guidance that, in purchase transactions with a simultaneous loan for subordinate financing, the optional alternative calculating cash to close table may be used for the simultaneous subordinate financing Closing Disclosure if the first-lien Closing Disclosure records the entirety of the seller's transaction and the seller did not contribute to the subordinate financing. The Bureau is proposing to amend § 1026.38(e) and comment 38(e)-1 to permit explicitly the use of the optional alternative

calculating cash to close table for simultaneous loans for subordinate financing in purchase transactions, if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of the alternative calculating cash to close table is required if the alternative calculating cash to close table was provided on the Loan Estimate.

The Bureau proposes comment 38(e)-6 to clarify that the amounts disclosed 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. This is true whether the amounts on the most recent Loan Estimate provided to the consumer reflected updated amounts provided for informational purposes only or the amounts used for purposes of determining good faith under § 1026.19(e)(3). The Bureau believes that the consumer should always have the benefit of receiving the most accurate and current information available, even if the disclosures are outside the tolerances or not relevant for the tolerances. The Bureau further believes that, for purposes of comparison, the amounts disclosed under the subheading "Loan Estimate" on the Closing Disclosure's alternative calculating cash to close table should reflect the most recent information given the consumer, again, regardless of whether that information was provided for purposes of resetting the tolerances or for information purposes only.

The Bureau notes that the amounts disclosed on the Closing Disclosure's alternative calculating cash to close table under the subheadings "Loan Estimate" and "Final" are not, in and of themselves, subject to the § 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided. Any increases or changes to the amounts, based on the best information reasonably available to the creditor, do not result in any separate violation of any standard under Regulation Z. For purposes of determining good faith under § 1026.19(e)(3), the amounts used are the

amounts disclosed under § 1026.37. The amounts used for determining good faith may be disclosed over multiple Loan Estimates, or even corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings “Loan Estimate” and “Final” on the Closing Disclosure’s alternative calculating cash to close table.

The Bureau seeks comment on this approach. In particular, the Bureau seeks comment on whether the disclosure of the amounts on the most recent Loan Estimate on the alternative calculating cash to close table provides a helpful comparison to consumers with the final amounts disclosed on the Closing Disclosure. The Bureau seeks comment on other alternatives to provide consumers with a comparison of estimated and final amounts.

#### *38(e)(2) Total Closing Costs*

##### *38(e)(2)(ii)*

For transactions using the alternative calculating cash to close table, § 1026.38(e)(2)(ii) requires the creditor to disclose the amount of total closing costs disclosed under § 1026.38(h)(1). The “Final” total closing costs disclosed under § 1026.38(e)(2)(ii) show an amount owed by the consumer; therefore, the Bureau specified that the total closing costs be disclosed as a negative number. However, lender credits under § 1026.38(h)(3) may sometimes exceed the subtotal of closing costs under § 1026.38(h)(2), resulting in a net credit to the consumer. In that case, the total closing costs disclosed under § 1026.38(e)(2)(ii) should be disclosed as a positive number, to reflect the expected credit to the consumer. Therefore, the Bureau is proposing to revise § 1026.38(e)(2)(ii) to explain that the amount disclosed under that section is disclosed as a negative number if the amount disclosed under § 1026.38(h)(1) is a

positive number and is disclosed as a positive number if the amount disclosed under § 1026.38(h)(1) is a negative number.

*38(e)(2)(iii)*

Section 1026.38(e)(2)(iii)(A)(3) provides that, if the amount of closing costs actually charged to the consumer exceeds the limitations on increases in closing costs under § 1026.19(e)(3), the creditor must provide 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 § 1026.38(h)(3). As discussed above in the section-by-section analysis of proposed comment 38-4, the Bureau would clarify that, when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the borrower as lender credits, a reduction in principal balance (principal curtailment) may be used to provide a refund under § 1026.19(f)(2)(v). Such principal curtailment would be disclosed as a negative number under § 1026.38(g)(4) or (t)(5)(vii)(B) for transactions using the optional alternative calculating cash to close table under § 1026.38(e). Accordingly, the Bureau is proposing to revise § 1026.38(e)(2)(iii)(A)(3) and comment 38(e)(2)(iii)(A)-3 to allow a creditor to provide a statement directing the consumer to the disclosure of the principal curtailment under § 1026.38(g)(4) or (t)(5)(vii)(B), rather than directing the consumer to the disclosure of a refund under § 1026.38(h)(3).



*38(e)(3) Closing Costs Paid Before Closing*

*38(e)(3)(iii)*

*38(e)(3)(iii)(B)*

Comment 38(e)(3)(iii)(B)-1 discusses the circumstances under which the creditor gives a statement that the amount under the subheading “Final” under § 1026.38(e)(3)(ii) is equal to the amount disclosed under the subheading “Loan Estimate” under § 1026.38(e)(3)(i) and, in so doing, refers to an amount of “\$0” under the subheading “Final.” The Bureau proposes two technical corrections in comment 38(e)(3)(iii)(B)-1. First, the Bureau is proposing to change “\$0” to “\$0.00” to reflect the required disclosure of the amount disclosed under § 1026.38(e)(3)(ii) to two decimal places under § 1026.38(t)(4). Second, the reference to “settlement agent” would be removed from comment 38(e)(3)(iii)(B)-1. As the introductory paragraph to § 1026.38(e) makes clear, the responsibility to provide the § 1026.38(e) disclosures lies with the creditor, not the settlement agent.

*38(e)(4) Payoffs and Payments*

*38(e)(4)(ii)*

Section 1026.38(e)(4)(ii) provides that the total amount of payoffs and payments made to third parties disclosed under § 1026.38(t)(5)(vii)(B), to the extent known, is disclosed as a negative number. The requirement to disclose a negative number under § 1026.38(e)(4)(ii) supposes that the amount disclosed under § 1026.38(t)(5)(vii)(B) will always be a positive number. The Bureau is proposing to revise § 1026.38(e)(4)(ii) to allow for the disclosure of a negative or positive amount, based on the facts and circumstances of the transaction.

As discussed in the section-by-section analysis of § 1026.38(t)(5)(vii) below, proposed comment 38(t)(5)(vii)(B)-1 would clarify that the amount of payoffs and payments disclosed

under § 1026.38(t)(5)(vii)(B) may include amounts that offset payoffs and payments. As a result, if the aggregate offsets exceed the payoffs and payments amounts, then the amount disclosed under § 1026.38(t)(5)(vii)(B) will be negative. Therefore, the Bureau is proposing to revise § 1026.38(e)(4)(ii) such that the amount disclosed under revised § 1026.38(e)(4)(ii) is disclosed as a negative number if the amount disclosed under § 1026.38(t)(5)(vii)(B) is a positive number, signifying amounts owed by the consumer, and is disclosed as a positive number if the amount disclosed under § 1026.38(t)(5)(vii)(B) is a negative number, signifying amounts due to the consumer.

*38(f) Closing Cost Details; Loan Costs*

The Bureau is proposing to add comment 38(f)-2. Consistent with proposed comments 37(f)-3 and 37(f)(6)-3 above, proposed comment 38(f)-2 would provide that construction loan inspection and handling fees are loan costs associated with the transaction for purposes of the Closing Disclosure under § 1026.38(f). The proposed new comment would also add a cross-reference to proposed comments 37(f)-3, 37(f)(6)-3, and app. D-7.viii, making those comments' discussions of inspection and handling fees for the staged disbursement of construction loan proceeds explicitly applicable to the disclosures required by § 1026.38(f).

*38(g) Closing Cost Details; Other Costs*

*38(g)(1) Taxes and Other Government Fees*

Section 1026.38(g)(1) requires creditors to disclose an itemization of each amount that is expected to be paid to State and local governments for taxes and government fees, including recording fees. Closing Disclosure form H-25 of appendix H illustrates such disclosures on a line labeled "Recording Fees," with the additional labels "Deed" and "Mortgage," respectively.

The Bureau understands that there is uncertainty as to how recording fees should be disclosed on the Closing Disclosure. Consistent with form H-25 of appendix H, the Bureau proposes to amend § 1026.38(g)(1) to clarify that the total amount of fees for recording deeds and the total amount of fees for recording security instruments must each be disclosed on the first line under the subheading “Taxes and Other Government Fees” before the columns described in § 1026.38(g). The Bureau also proposes to amend § 1026.38(g)(1) to clarify that the total amounts paid for recording fees (including but not limited to fees for recording deeds and security instruments) must be disclosed in the applicable column described in § 1026.38(g). Finally, the Bureau proposes to add new comment 38(g)(1)-3 to clarify the labels for recording fees on form H-25 of appendix H.

#### *38(g)(2) Prepays*

Comment 38(g)(2)-3 provides that \$0 must be disclosed if interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment. The Bureau is proposing to revise comment 38(g)(2)-3 to require \$0.00 to be disclosed because the amount disclosed under § 1026.38(g)(2) is disclosed to two decimal places under § 1026.38(t)(4).

#### *38(g)(4) Other*

Comment 38(g)(4)-1 clarifies that the charges for services 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 transaction but not required by the creditor or disclosed elsewhere in § 1026.38. Currently, amounts for construction costs, payoff of existing liens, or payoff of unsecured debt may be, but are not required to be, disclosed under § 1026.38(g)(4). As discussed in more detail

below, and consistent with the proposed revisions discussed in the section-by-section analysis of § 1026.37(g)(4), the Bureau is proposing to revise comment 38(g)(4)-1 to require that construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.38(a)(3)(vi), and payoff of unsecured debt be disclosed under § 1026.38(g)(4), unless those items are disclosed under § 1026.38(t)(5)(vii)(B) on the optional alternative calculating cash to close table.

The Bureau expects consumer understanding will be enhanced by the clear and conspicuous disclosure of these amounts in corresponding tables on the Loan Estimate and Closing Disclosure. The proposed revisions to comment 37(g)(4)-4 discussed in the section-by-section analysis of § 1026.37(g)(4), together with the proposed revisions to comment 38(g)(4)-1, will also create greater consistency between the Loan Estimate and Closing Disclosure. The Bureau believes this is an appropriate and consistent place to list the three items, because they are all other closing costs of the mortgage transaction.

The Bureau considered requiring the disclosure of construction costs, payoff of existing liens, and payoff of unsecured debt under the summaries of transactions table on the Closing Disclosure under § 1026.38(j)(1)(v) instead of as “closing costs” under §§ 1026.37(g)(4) and 1026.38(g)(4). Disclosing these costs on the summaries of transactions table would not provide for comparability between the Loan Estimate and Closing Disclosure, however, because the Loan Estimate does not have a summaries of transactions table.

The Bureau also considered requiring the disclosure of construction costs only on an addendum, instead of under § 1026.37(g)(4) on the Loan Estimate and § 1026.38(g)(4) on the Closing Disclosure. (The Bureau did not consider the disclosure of the payoff of existing liens or unsecured debt on an addendum because those amounts are necessarily factored into the cash to

close calculation and must be disclosed either explicitly or implicitly in the calculating cash to close table.) The construction costs would then be factored into the calculating cash to close table calculations in conjunction with the sale price to yield an accurate cash to close amount. However, this approach could add complexity to the calculations required on the Closing Disclosure because amounts disclosed under § 1026.38(j)(1)(ii) and (k)(1)(ii) would no longer be the same.

For the foregoing reasons, the Bureau is proposing to revise comment 38(g)(4)-1 to reflect the disclosure of construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified in § 1026.38(a)(3)(vi), and payoff of unsecured debt, even if payable directly or indirectly to the creditor, under § 1026.38(g)(4) unless those items are disclosed under § 1026.38(t)(5)(vii)(B) on the optional alternative calculating cash to close table. See the section-by-section analysis of § 1026.38(t)(5)(vii)(B) below for a discussion of the proposed change to the requirement to include payoff of existing liens secured by the property identified in § 1026.38(a)(3)(vi) in the payoffs and payments calculation on the optional alternative calculating cash to close table. The Bureau is also proposing to revise comment 38(g)(4)-1 to cross-reference proposed comment app. D-7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and proposed comment app. D-7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

The Bureau also is proposing to revise comment 38(g)(4)-1 to clarify that inspection fees disclosed under § 1026.38(g)(4) are for pre-consummation inspection fees, not post-consummation inspection fees, such as those often associated with construction loans. As discussed in the section-by-section analysis of § 1026.38(f), post-consummation inspection fees

would be disclosed in an addendum attached as an additional page after the last page of the Closing Disclosure. Revised comment 38(g)(4)-1 would also clarify that, if amounts for construction costs are contracted to be paid at closing, even though they will be disbursed after closing, they are disclosed in the paid “At Closing” column.

*38(i) Calculating Cash to Close*

Section 1026.38(i) requires the disclosure of the calculation of an estimate of cash needed from the consumer at consummation of the transaction, using the heading “Calculating Cash to Close.” The Bureau is proposing amendments to § 1026.38(i) and its commentary regarding the calculating cash to close table on the Closing Disclosure pursuant to its authority under TILA section 105(a) and Dodd-Frank Act sections 1032(a). The Bureau believes that, with the proposed amendments, this disclosure will effectuate the purposes of TILA by facilitating the informed use of credit. Providing consumers with information about the cash to close amount, its critical components, and how such amounts changed from the estimated amounts disclosed on the Loan Estimate helps ensure that the features of the transaction are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to better understand the costs, benefits, and risks associated with the transaction, in light of the facts and circumstances, consistent with Dodd-Frank Act section 1032(a). As discussed in the section-by-section analysis of § 1026.37(h) above, the Bureau seeks comment on the calculating cash to close table generally.

The Bureau is proposing to revise comment 38(i)-2 to streamline the comment and clarify how amounts should be disclosed under the subheading “Loan Estimate” on the Closing Disclosure’s calculating cash to close table. The Bureau is proposing to revise comment 38(i)-3

for consistency with proposed changes discussed in the section-by-section analysis of § 1026.38(i)(7) below.

The Bureau is proposing to add comment 38(i)-5 to clarify that the amounts disclosed under the subheading “Loan Estimate” 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. This is true whether the amounts on the most recent Loan Estimate provided to the consumer reflect updated amounts provided for informational purposes only or the amounts to be used for purposes of determining good faith under § 1026.19(e)(3). The Bureau believes that the consumer should always have the benefit of receiving the most accurate and current information available, even if the disclosures are outside the tolerances or not relevant for the tolerances. The Bureau further believes that, for purposes of comparison, the amounts disclosed under the subheading “Loan Estimate” on the Closing Disclosure’s calculating cash to close table should reflect the most recent information given the consumer, again, regardless of whether that information was provided for purposes of resetting the tolerances or for information purposes only.

The Bureau notes that the disclosures on the Closing Disclosure’s calculating cash to close table under the subheadings “Loan Estimate” and “Final” are not, in and of themselves, subject to the § 1026.19(e)(3) good faith standard. These amounts are disclosed based on the best information reasonably available to the creditor at the time the disclosure is provided and any increases or changes to the amounts based on the best information reasonably available to the creditor do not result in any separate violation of any standard under Regulation Z. For purposes of determining good faith under § 1026.19(e)(3), the amounts used are the amounts disclosed under § 1026.37, and may be disclosed over multiple Loan Estimates, or even

corrected Closing Disclosures, depending upon the facts and circumstances of the transaction. Accordingly, good faith cannot be determined based on a comparison of the amounts disclosed under the subheadings “Loan Estimate” and “Final” on the Closing Disclosure’s calculating cash to close table.

The Bureau seeks comment on this approach. In particular, the Bureau seeks comment on whether the disclosure of the amounts on the most recent Loan Estimate on the calculating cash to close table provides a helpful comparison to consumers with the final amounts disclosed on the Closing Disclosure. The Bureau seeks comment on other alternatives to provide consumers with a comparison of estimated and final amounts.

*38(i)(1) Total Closing Costs*

*38(i)(1)(iii)*

Section 1026.38(i)(1)(iii)(A) specifies that, if the amount of closing costs disclosed under the subheading “Final” in the row labeled “Total Closing Costs (J)” is different than the estimated amount of such costs as shown on the Loan Estimate (unless the difference is due to rounding), the creditor must state, 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) and include a reference to such disclosures, as applicable.

Section 1026.38(i)(1)(iii)(A)(3) also 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) if a credit is provided under § 1026.19(f)(2)(v). Comment 38(i)(1)(iii)(A)-3 provides guidance regarding these statements. The Bureau is proposing to revise § 1026.38(i)(1)(iii)(A)(3) and comment 38(i)(1)(iii)(A)-3 to provide additional options for disclosing refunds to consumers.



As discussed above in the section-by-section analysis of proposed comment 38-4, the Bureau is proposing to clarify that, when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer as lender credits, a reduction in principal balance (principal curtailment) may be disclosed, as a negative number, under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix) to provide a refund under § 1026.19(f)(2)(v). The Bureau is proposing to revise both § 1026.38(i)(1)(iii)(A)(3) and comment 38(i)(1)(iii)(A)-3 to allow a creditor to provide a statement directing the consumer to the disclosure of a principal reduction (principal curtailment) under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix) if a principal curtailment is used to provide such refund. As a result of these proposed clarifications, the Bureau also is proposing to clarify that the examples provided by form H-25(F) of appendix H only relate to statements provided under § 1026.38(h)(3).

*38(i)(2) Closing Costs Paid Before Closing*

*38(i)(2)(iii)*

*38(i)(2)(iii)(B)*

Comment 38(i)(2)(iii)(B)-1 discusses the circumstances under which the creditor gives a statement that the amount disclosed under the subheading “Final” under § 1026.38(i)(2)(ii) is equal to the amount disclosed under the subheading “Loan Estimate” under § 1026.38(i)(2)(i) and, in so doing, refers to an amount of “\$0” under the subheading “Final.” The Bureau is proposing to change \$0 to \$0.00 because the amount disclosed under § 1026.38(i)(2)(ii) is disclosed to two decimal places under § 1026.38(t)(4) .

### *38(i)(3) Closing Costs Financed*

Section 1026.38(i)(3) requires the disclosure of the actual amount of the closing costs that are to be paid out of loan proceeds, as a negative number, and a comparison of the estimated and actual amounts of the closing costs that are to be paid out of loan proceeds. If the amount under the subheading “Final” in the row labeled “Closing Costs Financed (Paid from your Loan Amount)” is different than the estimated amount (unless the excess is due to rounding), the creditor or closing agent must state under the subheading “Did this change?” that the consumer included these closing costs in the loan amount, which increased the loan amount. The Bureau is proposing to add comment 38(i)(3)-1 to explain how to calculate closing costs financed and to add comment 38(i)(3)-2 to clarify the loan amount that is used in the closing costs financed calculation.

Although the Loan Estimate has commentary explaining how to perform the closing costs financed calculation (see the section-by-section analysis of § 1026.37(h)(1)(ii)), the Closing Disclosure does not have such commentary. Therefore, the Bureau is proposing to add comment 38(i)(3)-1 to explain that 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), which may include, for example, the sale price of the property disclosed under § 1026.38(j)(1)(ii), from the loan amount disclosed under § 1026.38(b). If the result of the calculation is zero or negative, the amount of \$0.00 would be disclosed under § 1026.38(i)(3). If the result of the calculation is positive, that amount would be disclosed as a negative number under § 1026.38(i)(3), but only to the extent that that the absolute value of the amount disclosed under § 1026.38(i)(3) does not exceed the total amount of closing costs disclosed under § 1026.38(h)(1). The total amount of closing costs disclosed under

§ 1026.38(h)(1) would never be less than zero because, if the total amount of closing costs disclosed under § 1026.38(h)(1) is a negative number, the amount of \$0.00 would be disclosed under § 1026.38(i)(3).

Consistent with proposed comment 37(h)(1)(ii)-2, the Bureau is proposing to add comment 38(i)(3)-2 to clarify that the loan amount disclosed under § 1026.38(b) is the total amount the consumer will borrow, as reflected by the face amount of the note, which is consistent with proposed revisions to § 1026.37(b)(1), discussed above. The comment would also explain that financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount. The addition of this comment would clarify that regardless of how the term “loan amount” is used by creditors or in relation to programmatic requirements of specific loan programs, for purposes of the Closing Disclosure, the amount disclosed as the loan amount, and the basis for the calculating cash to close table calculations, is the total amount the consumer will borrow as reflected in the face amount of the note. This definition does not affect how other agencies may define or use similar terms for purposes of their own programmatic requirements. For example, the “Base Loan Amount” and “Total Loan Amount” for loans made under programs of the Federal Housing Administration may not be the same as the loan amount required to be disclosed under § 1026.38(b).

*38(i)(4) Down Payment/Funds from Borrower*

Section 1026.38(i)(4)(ii)(A) requires the down payment amount in a purchase transaction as defined in § 1026.37(a)(9)(i) to be disclosed as a positive number. In these transactions, the down payment is calculated as the difference between the purchase price of the property and the principal amount of the credit extended. The calculation does not capture the amount of existing loans, assumed or taken subject to, disclosed under § 1026.38(j)(2)(iv). Section

1026.38(i)(4)(ii)(B) requires that, in all other transactions, the “Funds from Borrower” is determined in accordance with § 1026.38(i)(6)(iv). As discussed in more detail below, the Bureau is proposing to revise § 1026.38(i)(4)(ii)(A) to account for any amount disbursed to the consumer or used at the consumer’s discretion at consummation of the transaction in purchase transactions, to make conforming revisions to § 1026.38(i)(4)(ii)(B), to revise comment 38(i)(4)(ii)(A)-1 to explain the down payment calculation, to add comment 38(i)(4)(ii)(A)-2 to explain the amount disclosed as “Funds for Borrower,” and to revise comments 38(i)(4)(ii)(B)-1 and 38(i)(4)(iii)(A)-1 to make conforming revisions.

For the reasons discussed in the section-by-section analysis of § 1026.37(h)(1)(iii) above, the Bureau is proposing to revise § 1026.38(i)(4)(ii)(A) to specify that, in a purchase transaction as defined in § 1026.37(a)(9)(i), the creditor subtracts the sum of the loan amount and any amount for loans assumed or taken subject to from the sale price of the property, except when the sum of the loan amount and any amount for loans assumed or taken subject to exceed the sale price of the property. When the sum of the loan amount and any amount for existing loans assumed or taken subject to exceeds the sale price of the property, the creditor instead calculates the funds from the consumer in accordance with § 1026.38(i)(6)(iv). New comment 38(i)(4)(ii)(A)-2 would explain the amount that the creditor discloses under § 1026.38(i)(4)(ii)(A)(2) under the funds for borrower calculation under § 1026.38(i)(6)(iv). See the section-by-section analysis of § 1026.38(i)(6)(iv) below for a discussion of the proposed revisions to that section. The Bureau is also proposing conforming amendments to § 1026.38(i)(4)(ii)(B) and comments 38(i)(4)(ii)(B)-1 and 38(i)(4)(iii)(A)-1.

The Bureau recognizes that some loan programs require borrowers to provide minimum cash investments, which, under the regulations or requirements of those loan programs, may be

referred to as “down payments.” Revised comment 38(i)(4)(ii)(A)-1 would explain the down payment calculation that must be followed for accurate disclosure of the down payment amount on the Closing Disclosure. The comment would also explain that the minimum cash investments required of borrowers under some loan programs are not necessarily reflected in the down payment disclosure, and accurate disclosure of the down payment does not affect compliance or non-compliance with such loan programs’ requirements.

To conform with proposed clarifications discussed in the section-by-section analysis of § 1026.37(h)(1)(iii) and (v) above, the Bureau is proposing to revise comment 38(i)(4)(ii)(B)-1 to clarify that the “total amount of all existing debt being satisfied in the real estate transaction” means the sum of amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau seeks comment whether defining the phrase “total amount of all existing debt being satisfied by the transaction” to mean specifically amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the “total amount of all existing debt being satisfied by the transaction.”

Consistent with proposed revisions to § 1026.37(h)(1)(iii) and (v) above, the Bureau is further proposing to revise comment 38(i)(4)(ii)(B)-1 to account for the amount of existing loans “assumed or taken subject to” disclosed under § 1026.38(j)(2)(iv). The Bureau also is proposing a technical correction in comment 38(i)(4)(ii)(B)-1 to change \$0 in reference to the final amount to \$0.00 because the amount disclosed under § 1026.38(i)(4)(ii) is disclosed to two decimal places under § 1026.38(t)(4) .

### *38(i)(5) Deposit*

The Bureau is proposing a technical correction in comment 38(i)(5)-1 to specify that, when no deposit is paid in connection with a purchase transaction, the amount disclosed on the Closing Disclosure under § 1026.38(i)(5)(ii) is \$0.00 because the amount disclosed under § 1026.38(i)(5)(ii) is disclosed to two decimal places under § 1026.38(t)(4).

### *38(i)(6) Funds for Borrower*

#### *38(i)(6)(ii)*

Comment 38(i)(6)(ii)-1 provides clarification about how the actual “Funds for Borrower” amount is determined under § 1026.38(i)(6)(iv) and to whom such amount is disbursed. The Bureau is proposing to revise comment 38(i)(6)(ii)-1 to conform to proposed revisions and clarifications discussed in the section-by-section analysis of § 1026.38(i)(6)(iv) below. The Bureau is proposing to add comment 38(i)(6)(ii)-2 to conform to proposed revisions to comment 37(h)(1)(v)-1 discussed in the section-by-section analysis of § 1026.37(h)(1)(v) above.

#### *38(i)(6)(iv)*

Section 1026.38(i)(6)(iv) provides that the “Funds for Borrower” disclosed under § 1026.38(i)(4)(ii)(B) and “Funds from Borrower” disclosed under § 1026.38(i)(6)(ii) are determined by subtracting the principal amount of the credit extended (excluding closing costs financed, disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate consummation and disclosed under § 1026.38(j)(1)(v) (except to the extent the satisfaction of such existing debt is disclosed under § 1026.38(g)). This calculation does not capture the amount of existing loans, assumed or taken subject to, disclosed under § 1026.38(j)(2)(iv). As discussed in more detail below, the Bureau is proposing to revise § 1026.38(i)(6)(iv) to account for the amount expected to be disbursed to the consumer or used at

the consumer's discretion at consummation of the transaction in purchase transactions and improve clarity, consistent with the proposed revisions discussed in the section-by-section analysis of § 1026.37(h)(1)(v).

The Bureau is proposing to revise § 1026.38(i)(6)(iv) consistent with proposed revisions discussed in the section-by-section analysis of § 1026.37(h)(1)(v) above. The Bureau is proposing to revise § 1026.38(i)(6)(iv) to account for the amount of existing loans, assumed or taken subject to, disclosed under § 1026.38(j)(2)(iv). The Bureau also is proposing to revise § 1026.38(i)(6)(iv) to clarify that the phrase "total amount of all existing debt being satisfied by the transaction" means amounts that are disclosed in the summaries of transactions table under § 1026.38(j)(1)(ii), (iii), and (v). The Bureau seeks comment whether defining the phrase "total amount of all existing debt being satisfied by the transaction" to mean amounts disclosed under § 1026.38(j)(1)(ii), (iii), and (v) is too prescriptive and how else the Bureau might provide greater clarity around amounts that must be included in this calculation as part of the "total amount of all existing debt being satisfied by the transaction." The Bureau is proposing technical corrections to § 1026.38(i)(6)(iv)(A), (B), and (C) to change \$0 in reference to the amounts under § 1026.38(i)(4)(ii) and (6)(ii) to \$0.00 because the final amounts disclosed under § 1026.38(i)(4)(ii) and (6)(ii) are disclosed to two decimal places under § 1026.38(t)(4)

#### *38(i)(7) Seller Credits*

Section 1026.38(i)(7) requires creditors to compare the amount of seller credits disclosed on the Loan Estimate under § 1026.37(h)(1)(vi) to the amount disclosed on the Closing Disclosure under § 1026.38(j)(2)(v). If there is a difference (for reasons other than rounding), § 1026.38(i)(7)(iii)(A) requires the creditor to disclose a statement that the consumer should see the seller credits disclosed under § 1026.38(j)(2)(v). However, § 1026.38(j)(2)(v) and comment

38(j)(2)(v)-1 state that only general (*i.e.*, lump sum) seller credits are disclosed under § 1026.38(j)(2)(v), whereas seller credits attributable to a specific cost should be reflected in the seller-paid column in the Closing Cost Details tables under § 1026.38(f) or (g).

Consistent with § 1026.38(j)(2)(v) and comment 38(j)(2)(v)-1, the proposed amendment to § 1026.38(i)(7)(iii)(A) would clarify that, if there is a difference between the amount of seller credits disclosed under § 1026.37(h)(1)(vi) and that disclosed under § 1026.38(j)(2)(v) that is not attributed to rounding of the disclosed under § 1026.37(h)(1)(vi), the creditor must disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) and, as applicable, in the seller-paid column under § 1026.38(f) or (g). The Bureau also proposes new comment 38(i)(7)(iii)(A)-1 with examples of the required statement.

#### *38(i)(8) Adjustments and Other Credits*

##### *38(i)(8)(i)*

The Bureau is proposing a technical correction in § 1026.38(i)(8)(i) to remove the phrase “rounded to the nearest whole dollar.” The amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii) that is required to be disclosed under § 1026.38(i)(8)(i) is already rounded to the nearest whole dollar under § 1026.37(o)(4)(i)(A).

##### *38(i)(8)(ii)*

Section 1026.38(i)(8)(ii) provides that the amount disclosed is the total of the amounts due from the borrower disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) and (v) through (x), reduced by the amounts already paid by or on behalf of the borrower disclosed on the Closing Disclosure under § 1026.38(j)(2)(vi) through (xi). However, amounts disclosed under § 1026.38(j)(1)(iii) and (v) may have already been factored into calculations for prior components of the calculating cash to close table, thereby being counted twice. The Bureau is



proposing to revise § 1026.38(i)(8)(ii) to clarify that, when amounts disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments disclosed on the Closing Disclosure under § 1026.38(j)(1)(v) are accounted for in the calculations for § 1026.38(i)(4) or (6) as debt being satisfied in the real estate transaction, as provided by proposed revisions to those paragraphs, they are not also counted in the adjustments and other credits calculation under revised § 1026.38(i)(8)(ii). The Bureau also is proposing a technical correction to comment 38(i)(8)(ii)-1, which incorrectly references § 1026.37(h)(7) instead of § 1026.37(h)(1)(vii).

*38(i)(8)(iii)*

As discussed in the section-by-section analysis of § 1026.38(i)(8)(ii) above, the Bureau is proposing to exclude the amounts disclosed under § 1026.38(j)(1)(iii) or (v) that are accounted for in the calculations for § 1026.38(i)(4) or (6) as debt being satisfied in the real estate transaction, from the calculation of adjustments and other credits under § 1026.38(i)(8)(ii). The Bureau is proposing to revise § 1026.38(i)(8)(iii)(A) to conform with revised § 1026.38(i)(8)(ii).

*38(j) Summary of Borrower's Transaction*

Comment 38(j)-3 clarifies that certain amounts disclosed under 38(j) are the same as the amounts disclosed under corresponding provisions identified in § 1026.38(k). The Bureau is proposing to revise comment 38(j)-3 to conform with the proposed revisions to § 1026.38(j)(2)(vi) discussed below.

*38(j)(1) Itemization of Amounts Due from Borrower*

*38(j)(1)(ii)*

In purchase transactions where there is a seller, the contract sales price is disclosed under § 1026.38(j)(1)(ii), in addition to § 1026.38(a)(3)(vii)(A). To conform with proposed amendments to the commentary of § 1026.37(h)(1) regarding the use of the sale price in the

calculating cash to close table calculations on the Loan Estimate for a simultaneous loan for subordinate financing as discussed above, the Bureau is proposing to revise comment 38(j)(1)(ii)-1. Revised comment 38(j)(1)(ii)-1 would clarify that the sale price is not disclosed under § 1026.38(j)(1)(ii) on the simultaneous loan for subordinate financing Closing Disclosure.

38(j)(1)(v)

Section 1026.38(j)(1)(v) requires the creditor to provide a description and the amount of any additional seller-paid items that are reimbursed by the consumer at the real estate closing. It also requires a description and the amount of any other items owed by the consumer not otherwise disclosed under proposed § 1026.38(f), (g), or (j). Comment 38(j)(1)(v)-1 provides examples of amounts disclosed under § 1026.38(j)(1)(v), which include contractual adjustments not disclosed elsewhere under § 1026.38(j). The Bureau is proposing to revise comment 38(j)(1)(v)-1 to clarify the amounts disclosed can include amounts owed to the seller but payable to the consumer after the real estate closing, providing as examples: any balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption; any rent the consumer would collect after closing for a time period prior to closing; and any tenant security deposit. Comment 38(j)(1)(v)-1 would also provide that the amounts owed to the seller but payable to the consumer after the real estate closing would be listed under the heading "Adjustments."

In addition, as discussed in the section-by-section analysis of § 1026.38(g)(4) above, the Bureau proposes to require the disclosure of payoff of existing liens secured by the property identified in § 1026.38(a)(3)(vi) under § 1026.38(g)(4) on the Closing Disclosure. The Bureau therefore proposes to revise comment 38(j)(1)(v)-2 to conform with revised § 1026.38(g)(4).

*38(j)(2) Itemization of Amounts Already Paid by or on Behalf of Borrower*

*38(j)(2)(vi)*

Section 1026.38(j)(2)(vi) provides for the disclosure of “Other Credits” and “Adjustments” in the summary of the borrower’s transaction table. Comment 38(j)(2)(vi)-2 clarifies that any subordinate financing proceeds not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) must be disclosed under § 1026.38(j)(2)(vi). Comment 38(j)(2)(vi)-5 clarifies that a credit must be disclosed for any money or other payments made by family members or third parties, not otherwise associated with the transaction, along with a description of the nature of the funds provided under § 1026.38(j)(2)(vi). The Bureau is proposing to revise § 1026.38(j)(2)(vi) to explain what items should be disclosed under the heading “Adjustments.” Amounts due from the seller to the consumer, under the purchase and sale agreement, would be disclosed under the “Adjustments” heading. As discussed in more detail below, the Bureau is proposing to revise comment 38(j)(2)(vi)-2 to clarify that subordinate financing proceeds are disclosed on the first-lien transaction Closing Disclosure and to revise comment 38(j)(2)(vi)-5 to clarify that amounts provided to consumers in advance of the real estate closing are not required to be disclosed. The Bureau also proposes to add new comment 38(j)(2)(vi)-6 to provide an example of type of amounts that would be disclosed under the heading “Adjustments.”

Comment 38(j)(2)(vi)-2 does not specify whether the disclosure of subordinate financing proceeds not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) is made on the first-lien transaction Closing Disclosure or on the subordinate financing Closing Disclosure. The Bureau proposes to revise comment 38(j)(2)(vi)-2 to clarify that the disclosure of subordinate financing proceeds under § 1026.38(j)(2)(vi) is made on the first-lien transaction disclosure. Comment 38(j)(2)(vi)-2, as revised, would provide an example of how the disclosure works when a

consumer uses a second mortgage to finance part of the purchase price. Comment 38(j)(2)(vi)-2 would also explain that the principal amount of the second loan must be disclosed on the summaries of transactions table for the consumer's transaction either on line 04 under the subheading "L. Paid Already by or on Behalf of Borrower at Closing," or under the subheading "Other Credits."

Comment 38(j)(2)(vi)-5 does not explain whether the requirement to disclose a credit for any money or other payments made by family members, not otherwise associated with the transaction, applies to amounts provided to consumers in advance of consummation. The Bureau proposes to revise comment 38(j)(2)(vi)-5 to clarify that the requirement to disclose any money or other payments made by family members or third parties, not otherwise associated with the transaction, only applies to money or payments provided at the real estate closing; amounts provided to consumers in advance of the real estate closing by third parties, including family members, not otherwise associated with the transaction, would not be required to be disclosed under revised § 1026.38(j)(2)(vi).

*38(j)(2)(xi)*

Comment 38(j)(2)(xi)-1 clarifies that the amounts disclosed under § 1026.38(j)(2)(xi) are for other items not paid by the seller, such as utilities used by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the closing date, and interest on loan assumptions. The Bureau proposing to remove the example of rent collected in advance by the seller from a tenant for a period extending beyond the closing date from comment 38(j)(2)(xi)-1. Proposed comment 38(j)(2)(vi)-6 would add that example as an item to be disclosed under the "Adjustments."

### *38(j)(4) Items Paid Outside of Closing Funds*

#### *38(j)(4)(i)*

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.” Comment 38(j)(4)(i)-1 explains that the disclosure must include a statement of the party making the payment, such as the consumer, seller, loan originator, real estate agent, or any other person and cites to an example on form H-25(D) of appendix H of part 1026. As discussed in the section-by-section analysis of proposed comment 38-4 above, the Bureau is proposing to clarify that, when contractual or other legal obligations of the creditor, such as the requirements of a government loan program or the purchase criteria of an investor, prevent the creditor from refunding cash to the consumer as lender credits, a reduction in principal balance (principal curtailment) may be used to provide a refund under § 1026.19(f)(2)(v). Proposed comment 38-4 would provide options for the disclosure of principal curtailments, including under § 1026.38(j)(4)(i). The Bureau is proposing to revise comment 38(j)(4)(i)-1 to provide a cross reference to comment 38-4. The Bureau is also proposing to clarify that “a statement of the party making the payment” means the disclosure must identify the party making the payment.

#### *38(k) Summary of Seller’s Transaction*

Comment 38(k)-1 explains that § 1026.38(k) does not apply in transactions where there is no seller, such as a refinance transaction. The Bureau is proposing to add additional examples of transactions for which § 1026.38(k) does not apply in revised comment 38(k)-1, such as loans with a construction purpose as defined in § 1026.37(a)(9)(iii) that also do not have a seller or simultaneous loans for subordinate financing if the first-lien Closing Disclosure records the entirety of the seller’s transaction.

*38(l) Loan Disclosures*

*38(l)(7) Escrow Account*

*38(l)(7)(i)*

Section 1026.38(l)(7)(i)(A)(1), (2), and (4), as well as (B)(1), require certain disclosures based on the tax, insurance, and assessment amounts described in § 1026.37(c)(4)(ii). Section 1026.37(c)(4)(ii), in turn, includes the mortgage-related obligations identified in § 1026.43(b)(8). However, § 1026.37(c)(4)(ii) specifically excludes amounts for mortgage insurance identified in § 1026.4(b)(5) (because amounts for mortgage insurance are already disclosed in the projected payments table under § 1026.37(c)(2)(ii)).

The Bureau is aware that, in some instances, creditors may establish an escrow account for the payment of ongoing mortgage insurance premiums. The Bureau proposes amending § 1026.38(l)(7)(i) and comments 38(l)(7)(i)(A)(2)-1, 38(l)(7)(i)(A)(4)-1, and 38(l)(7)(i)(B)(1)-1 to permit disclosure of such escrow accounts by removing references to § 1026.37(c)(4)(ii) and adding references to mortgage-related obligations, including mortgage insurance, described in § 1026.37(c)(2) or 1026.43(b)(8), as appropriate.

*38(l)(7)(i)(A)*

*38(l)(7)(i)(A)(2)*

As discussed below, § 1026.38(l)(7)(i)(A)(5) and related commentary explain the escrow account analysis prescribed under Regulation X, 12 CFR 1024.17. The escrow account analysis method can be used as an alternative method to calculate the amounts disclosed pursuant to § 1026.38(l)(7)(i)(A)(1) and (4). The Bureau is proposing to add new comment 38(l)(7)(i)(A)(2)-2 to allow the methods used to calculate escrowed property costs when calculating non-escrowed property cost. The Bureau is seeking comment on the use of the

escrow account analysis prescribed in § 1026.38(l)(7)(i)(A)(5) to calculate non-escrowed property costs.

*38(l)(7)(i)(A)(5)*

Section 1026.38(l)(7)(i)(A)(5) provides that a creditor complies with the requirements of § 1026.38(l)(7)(i)(A)(1) and (4) if the creditor bases the numerical disclosures on amounts derived from the escrow account analysis prescribed under Regulation X, 12 CFR 1024.17. 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. 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.

To reduce uncertainty about whether the amounts disclosed under § 1026.38(l)(7)(i)(A)(1) and (4) should be based on 12 payments or less than 12 payments, the Bureau is proposing to add new comment 38(l)(7)(i)(A)(5)-1 to clarify, for example, that 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.

### *38(o) Loan Calculations*

#### *38(o)(1) Total of Payments*

Section 1026.38(o)(1) defines the total of payments, for purposes of the Closing Disclosure, as the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled. The Bureau is proposing to adopt tolerances for the total of payments that parallel the statutory tolerances for the finance charge and disclosures affected by the finance charge because, historically, the total of payments has been understood to be a disclosure affected by the finance charge and therefore subject to its tolerances. In the TILA-RESPA Final Rule, to promote consumer understanding, the Bureau adopted a definition of total of payments for purposes of the Closing Disclosure that differs from the statutory definition under TILA section 128(a)(5), which explicitly references finance charges. This in turn may have introduced ambiguity as to whether the total of payments for purposes of the Closing Disclosure is a disclosure affected by the finance charge and therefore subject to the same tolerances.

TILA section 128(a)(5) and (8) requires a creditor to disclose the sum of the amount financed and the finance charge, using the term “Total of Payments,” and a descriptive explanation of that term.<sup>81</sup> For transactions subject to § 1026.19(e) and (f), § 1026.38(o)(1) implements this disclosure requirement. TILA section 128(a)(3) and (8) requires a creditor to disclose the finance charge, using that term.<sup>82</sup> As amended by Congress in 1995,<sup>83</sup> TILA section

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<sup>81</sup> 15 U.S.C. 1638(a)(5), (8).

<sup>82</sup> 15 U.S.C. 1638(a)(3).

<sup>83</sup> Truth in Lending Act Amendments of 1995, Public Law 104–29, § 3(a), 109 Stat 271 (1995).



106(f)(1) sets forth the tolerances for accuracy of the finance charge and other disclosures affected by any finance charge and states that, in connection with credit transactions (not under an open end credit plan) that are secured by real property or a dwelling, the disclosure of the finance charge and other disclosures affected by any finance charge shall be treated as being accurate, except for purposes of rescission under TILA section 125, if the amount disclosed as the finance charge (A) does not vary from the actual finance charge by more than \$100; or (B) is greater than the amount required to be disclosed.<sup>84</sup> For transactions subject to § 1026.19(e) and (f), § 1026.38(o)(2) implements the finance charge disclosure requirement in TILA section 128(a)(3) and the statutory tolerance provision for the finance charge in TILA section 106(f)(1).

In the TILA-RESPA Final Rule, the Bureau modified the requirement under TILA section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge to require that a creditor instead disclose the total of payments on the Closing Disclosure as the sum of principal, interest, mortgage insurance, and loan costs. Accordingly, § 1026.38(o)(1) requires the disclosure of 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. This modification of the total of payments calculation for purposes of the Closing Disclosure results in loan costs that are not components of the finance charge being included in the total of payments. In addition, the modification of the total of payments calculation also results in components of the finance charge being excluded from the total of payments if such

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<sup>84</sup> 15 U.S.C. 1605(f)(1). As discussed in the section-by-section analysis of 1026.23(g), 15 U.S.C. 1605(f)(2) sets forth specific treatment for the disclosure of the finance charge and other disclosures affected by any finance charge for purposes of rescission under TILA section 125.

components are not interest, loan costs, or included in the principal amount of the loan. As a result, the total of payments is now arguably not a disclosure affected by any finance charge. To apply the tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge unambiguously to the total of payments on the Closing Disclosure, the Bureau proposes to revise § 1026.38(o)(1).

The Bureau modified the total of payments in the TILA-RESPA Final Rule because it understood that this disclosure had been unclear to consumers historically. As the Bureau explained in the 2012 TILA-RESPA Proposal and TILA-RESPA Final Rule, a Board-HUD Joint Report analyzing the TILA and RESPA disclosures recommended changes to several disclosures, including the total of payments.<sup>85</sup> The Board’s consumer testing found that many consumers did not understand the total of payments and that, even when consumers understood its meaning, most did not consider it important in their decision-making process.<sup>86</sup>

To enhance consumer understanding, in the TILA-RESPA Final Rule, the Bureau modified the requirement of TILA section 128(a)(5) that the total of payments disclose the sum of the amount financed and the finance charge in two ways.<sup>87</sup> First, the Bureau adopted § 1026.37(l)(1)(i) to require that a creditor disclose on the Loan Estimate the total payments over five years, rather than the life of the loan, using the label “In 5 Years.”<sup>88</sup> Second, the Bureau adopted § 1026.38(o)(1) to require that a creditor disclose on the Closing Disclosure the total of payments to reflect the total the consumer will have paid after making all payments of principal,

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<sup>85</sup> 77 FR 51116, 51124 (Aug. 23, 2012), 78 FR 79730, 79976 (Dec. 31, 2013).

<sup>86</sup> 77 FR 51116, 51222 (Aug. 23, 2012), 78 FR 79730, 79976 (Dec. 31, 2013).

<sup>87</sup> The Bureau modified the requirement of TILA section 128(a)(5) pursuant to its authority under TILA section 105(a) (15 U.S.C. 1604(a)), Dodd-Frank Act 1032(a) (12 U.S.C. 5532(a)), and, for residential mortgage loans, Dodd-Frank Act section 1405(b) (15 U.S.C. 1601 note). 78 FR 79730, 80038 (Dec. 31, 2013).

<sup>88</sup> 77 FR 51116, 51223 (Aug. 23, 2012), 78 FR 79730, 79977 (Dec. 31, 2013).

interest, mortgage insurance, and loan costs, as scheduled.<sup>89</sup> Comment 38(o)(1)-1 explains that the total of payments is calculated in the same manner as the “In 5 Years” disclosure, except that the disclosed amount reflects the total payments through the end of the loan term.

The Bureau’s inclusion of loan costs in the definition of the total of payments in the TILA-RESPA Final Rule was a modification of TILA’s requirement under section 128(a)(5) to disclose the total of payments as the sum of the amount financed and the finance charge. Loan costs are those costs disclosed under § 1026.38(f) and include origination charges as well as the costs of services required by the creditor but provided by persons other than the creditor, including services that the borrower did and did not shop for.<sup>90</sup> These services commonly include fees for appraisal, credit reporting, survey, title search, and lender’s title insurance. Under § 1026.4, these services may or may not be included in the finance charge, and whether they are included in the finance charge is a fact-specific determination.<sup>91</sup> As the Bureau explained in the 2012 TILA-RESPA Proposal and TILA-RESPA Final Rule, including mortgage insurance and other loan costs rather than the finance charge in the “In 5 Years” and the total of payments disclosures was intended to enhance consumer understanding of mortgage transactions and allow consumers to compare loans more easily and usefully.

Since the effective date of the rule, the Bureau has learned that there is uncertainty whether the total of payments, as modified by the Bureau, is subject to the tolerance for accuracy applicable to the disclosed finance charge and other disclosures affected by the disclosed finance charge under § 1026.38(o)(2). In modifying the total of payments calculation in the TILA-

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<sup>89</sup> 78 FR 79730, 80038 (Dec. 31, 2013).

<sup>90</sup> See 78 FR 79730, 80010 (Dec. 31, 2013).

<sup>91</sup> Finance charge is defined in TILA section 106(a) (15 U.S.C. 1605(a)). Section 1026.4 implements this definition, provides examples, and excludes certain charges from the finance charge.

RESPA Final Rule, the Bureau did not intend to alter the tolerances for accuracy applicable to the total of payments. Therefore, the Bureau proposes to amend § 1026.38(o)(1) to explicitly establish that the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge apply to the total of payments for each transaction subject to § 1026.19(e) and (f).

The Bureau understands that clarity regarding the applicable tolerances for accuracy of the total of payments is especially important because of the statutory consequences of misdisclosure of the total of payments. The total of payments is one of the disclosures that may give rise to civil liability as set forth in TILA section 130 for a creditor's failure to comply, including actual damages, statutory damages (individual and class action), costs, and attorney's fees.<sup>92</sup> The total of payments is also one of the even more limited set of material disclosures where a misdisclosure can give rise to TILA's extended right of rescission for certain transactions as set forth in TILA section 125, which generally is available for three years after the date of consummation of the transaction, serves to void the creditor's security interest in the property, and eliminates the consumer's obligation to pay any finance charge (even if accrued) or any other costs incident to the loan.<sup>93</sup> Nothing in the TILA-RESPA Final Rule altered this defined statutory liability for the total of payments or any other disclosure.

The Bureau believes that its proposal to apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the

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<sup>92</sup> 15 U.S.C. 1640(a).

<sup>93</sup> 15 U.S.C. 1635. Section 1026.23 implements TILA's rescission provision and defines material disclosures to mean 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). *See* § 1026.23(a)(3)(ii).

total of payments for purposes of the Closing Disclosure is appropriate. The TILA-RESPA Final Rule adopted its own good faith analysis and requires a creditor to refund any excess paid by the consumer, when necessary, to promote accurate disclosure. Additionally, since Congress amended TILA in 1995, the tolerances for accuracy of the finance charge have been understood to apply to the total of payments. Congress was clear that, to the extent other disclosures with statutory liability were affected by a misdisclosure of the finance charge within the tolerance limits, the same protections should apply. At the time Congress adopted the finance charge tolerance rules, assuming that no errors or clerical mistakes were made in the total of payments calculation, the total of payments was by definition determined by the finance charge calculation. Congress did not alter the statutory tolerances in adopting the Dodd-Frank Act and in requiring the Bureau to integrate the TILA and RESPA disclosures. Therefore, to promote consistency with the tolerances in effect before the TILA-RESPA Final Rule, the Bureau proposes to apply the same tolerances for accuracy of the finance charge to the total of payments for purposes of the Closing Disclosure.

Specifically, the Bureau proposes to revise § 1026.38(o)(1) to provide that 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. The Bureau requests comment on these proposed revisions. The Bureau also proposes conforming revisions to § 1026.23(g) and (h)(2) as discussed in the section-by-section analysis of each of those sections. The Bureau also proposes new comment 38(o)-1 to provide two examples illustrating the interaction of the finance charge and total of payments accuracy requirements for each transaction subject to § 1026.19(e) and (f).

Further, the Bureau proposes to revise comment 38(o)(1)-1. Comment 38(o)(1)-1 explains that the total of payments is calculated in the same manner as the “In 5 Years” disclosure under § 1026.37(l)(1)(i), except that the disclosed amount reflects the total payments through the end of the loan term. The Bureau has learned that market participants have taken differing views regarding whether to reflect lender or seller credits in the total of payments on the Closing Disclosure. Therefore, the Bureau proposes to revise comment 38(o)(1)-1 to clarify that the total of payments calculation on the Closing Disclosure excludes charges for loan costs disclosed under § 1026.38(f) that are designated on the Closing Disclosure as paid by seller or paid by others.

A seller or other party, such as a lender, may agree to offset a particular loan cost, whether in whole or in part, through a specific credit, for example through a specific seller or lender credit. The proposed revision to the comment would clarify that, because these loan costs are not paid by the consumer, the amounts of such loan costs offset by specific credits are excluded from the total of payments calculation. The proposed revision to comment 38(o)(1)-1 references only loan costs offset by specific credits as being 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, under the proposed revision to comment 38(o)(1)-1, would not offset loan costs for purposes of the total of payments calculation.

The Bureau believes that the distinct treatment of specific credits from a seller or other party between the “In 5 Years” disclosure and the total of payments disclosure is appropriate given the difference between the information available to the creditor when it provides the Loan Estimate and when it provides the Closing Disclosure. At the Loan Estimate stage, a creditor may not know whether a specific credit will be applied to offset a loan cost, whether in whole or

in part. Further, unlike the Closing Disclosure form, the Loan Estimate form does not allow for the itemized disclosure of costs paid by the seller or others. The Bureau seeks comment on the proposed revision to comment 38(o)(1)-1.

#### *Legal Authority*

The Bureau proposes to revise § 1026.38(o)(1) and its commentary to apply the same tolerances for accuracy of the disclosed finance charge and other disclosures affected by the disclosed finance charge to the total of payments for each transaction subject to § 1026.19(e) and (f) pursuant to its authority to set tolerances for numerical disclosures under TILA section 121(d).<sup>94</sup> Section 121(d) of TILA generally authorizes the Bureau to adopt tolerances necessary to facilitate compliance with the statute, provided such tolerances are narrow enough to prevent misleading disclosures or disclosures that circumvent the purposes of the statute. The Bureau has considered the purposes for which it may exercise its authority under TILA section 121(d). As noted above, the Bureau has concluded that the proposed tolerances for the total of payments would promote consistency with the tolerances in effect before the TILA-RESPA Final Rule. The Bureau therefore believes that the proposed tolerances facilitate compliance with the statute. Additionally, the Bureau believes that the tolerances in proposed § 1026.38(o)(1), which are identical to the finance charge tolerances provided by Congress in TILA section 106(f), are sufficiently narrow to prevent these tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of TILA.

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<sup>94</sup> 15 U.S.C. 1631(d).

### *38(t) Form of Disclosures*

#### *38(t)(3) Form*

The Bureau proposes to make technical amendments to comment 38(t)(3)-1 to insert two missing words and make a non-substantive stylistic edit. Specifically, in the first sentence of the comment, the Bureau proposes to add the words “is not” and delete the prefix “non” that precedes the word “federally.” This proposed technical amendment would not alter the substance of comment 38(t)(3)-1.

#### *38(t)(4)(ii) Rounding*

Section 1026.38(t)(4)(ii) provides rounding rules for the percentage amounts disclosed under § 1026.38(b), (f)(1), (n), (o)(4), and (o)(5). The Bureau required rounding, based on testing results, for certain amounts to reduce information overload, aid in consumer understanding of the transaction, prevent misconceptions regarding the accuracy of certain estimated amounts (*e.g.*, estimated property costs over the life of the loan), and ensure a meaningful disclosure of credit terms. Section 1026.38(t)(4)(ii) requires the percentage amounts disclosed for loan terms, origination charges, the adjustable interest rate table, and the TIP shall not be rounded and shall be disclosed up to two or three decimal places and the percentage amount required to be disclosed for the annual percentage rate shall not be rounded and shall be disclosed up to three decimal places. If the amount is a whole number, then the amount disclosed shall be truncated at the decimal point.

The Bureau understands that there is uncertainty about the rounding requirements under § 1026.38(t)(4)(ii). The Bureau is proposing to revise § 1026.38(t)(4)(ii) to simplify the rounding requirements required for the percentages disclosed pursuant to the requirements of § 1026.38(t)(4)(ii). As proposed, § 1026.38(t)(4)(ii) would require that the percentage amounts



disclosed under § 1026.38(b), (f)(1), (n), (o)(4), and (o)(5) be disclosed by rounding the exact amounts to three decimal places and then dropping any trailing zeros to the right of the decimal point.

*38(t)(5) Exceptions*

*38(t)(5)(v) Separation of consumer and seller information*

Regulation Z requires the use of the Closing Disclosure by the creditor to provide the required disclosures concerning the transaction to the consumer and also requires the settlement agent to provide a copy of the Closing Disclosure to the seller under § 1026.19(f). Under § 1026.38(t)(5)(vi), the creditor or settlement agent is permitted to provide a separate Closing Disclosure to the seller that contains limited consumer information. The settlement agent must provide to the seller either a copy of the Closing Disclosure or a permissible separate Closing Disclosure, under § 1026.19(f)(4)(iv). Regulation Z does not contain any further explanation of parties to whom the Closing Disclosure may be provided, the extent to which the consumer's information may be provided to the seller or the seller's agent, or the extent to which the seller's information may be provided to the consumer or consumer's agent. The Bureau is proposing to add new commentary under § 1026.38(t)(5)(v) to clarify that, at its discretion, the creditor may make modifications to the Closing Disclosure form to accommodate the provision of separate Closing Disclosure forms to the consumer and seller.

The Bureau recognizes that consumer credit transactions secured by real property where the consumer is purchasing the property from a seller pose particular considerations related to the sharing of information. Creditors must collect and share information related to the seller's portion of the transaction to satisfy the requirements of government insurance programs, government-sponsored enterprises, and secondary market investors in the ordinary course of

providing the financial service (the consumer credit transaction secured by real property).<sup>95</sup>

Additionally, many parties to the transaction rely on sharing information to complete the transaction, including real estate agents, loan officers, and settlement agents, among others.

Prior to the effective date of the TILA-RESPA Rule, RESPA and Regulation X required the settlement agent to issue a HUD-1 form to borrowers, sellers, and their agents and provided that the borrower and seller can receive separate HUD-1 forms, with the terms of the buyer's transaction omitted from the seller's disclosure and vice versa. Revisions to RESPA in 1975 permitted separate disclosures to both borrowers and sellers.<sup>96</sup> Regulation X explicitly required the settlement agent to provide to the lender a copy of the HUD-1 with the borrower's and seller's information, or a copy of each separate disclosure that is provided to the buyer and seller, as applicable.

The Bureau has been asked repeatedly by creditors, settlement agents, and real estate agents about the sharing of the Closing Disclosure with third parties involved in the mortgage transaction. These inquiries have largely concerned which third parties may receive a copy of the Closing Disclosure but have also concerned whether a combined Closing Disclosure form must be provided to the consumer and seller or whether separate Closing Disclosure forms may

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<sup>95</sup> For example, see FannieMae Single Family Selling Guide, March 29, 2016, pages 32-5, 435-41, 562-63, and 570-71 (available at <https://www.fanniemae.com/content/guide/selling/index.html>); FHA Handbook 4000.1, revised 03/14/2016 pages 115-17, 143-45, and 224-25 (available at [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/handbook\\_4000-1](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/handbook_4000-1)); VA Pamphlet 26-7, Revised, Chapter 8: Borrower Fees and Charges and the VA Funding Fee, pages 8-11 to 8-13 (available at [http://benefits.va.gov/warms/pam26\\_7.asp](http://benefits.va.gov/warms/pam26_7.asp)).

<sup>96</sup> See Real Estate Settlement Procedures Act Amendments of 1975, Section 3(3), Public Law 94-205, 89 Stat. 1157 (1975).

be provided to the consumer and the seller. The Bureau provided guidance on this topic in its webinar on April 12, 2016.<sup>97</sup>

The Gramm-Leach-Bliley Act (GLBA) was passed by Congress after both RESPA and TILA were enacted. Financial institutions involved in the residential real estate settlement process, among others, must comply with the GLBA's requirements relating to the sharing of consumer information as well as with similar State law requirements, where applicable. The GLBA's privacy provisions are implemented by the Bureau's Regulation P, 12 CFR part 1016, and by analogous regulations issued by the Securities and Exchange Commission, the Commodity Futures Trading Commission, and the Federal Trade Commission. Regulation P generally provides that a financial institution (such as a creditor or settlement agent) may not disclose its customer's nonpublic personal information to a nonaffiliated third party without providing notice to the customer of such information sharing and an opportunity to opt-out of such sharing.

There are several exceptions to these notice and opt-out requirements, however. For example, GLBA section 502(e)(8) provides an exception that applies if a financial institution shares its customer's non-public personal information to comply with Federal, State, or local laws, rules and other applicable legal requirements. GLBA sections 502(e)(1) and 509(7)(A) provide another exception that applies if a financial institution's sharing of its customers' non-public personal information is required, or is a usual, appropriate, or acceptable method, to provide the customer or the customer's agent or broker with a confirmation, statement, or other

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<sup>97</sup> A recording of the webinar posted on a website by the Federal Reserve System (registration required) can be found on the Bureau's website at <http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/>

record of the transaction, or information on the status or value of the financial service or financial product.

The Closing Disclosure, whether provided as a combined form containing consumer and seller information or separate forms reflecting each side of the real estate transaction conveying the real property from the seller to the consumer, is a record of the transaction (among other things), both for the consumer and creditor, of the transactions between the consumer, seller, and creditor, as required by both TILA and RESPA. Such records may be informative to real estate agents and others representing both consumers and creditors as part of both the consumer credit and real estate portions of residential real estate sales transactions, as they provide the consumer or the consumer's agent with a record of the transaction. Based on its understanding of the real estate settlement process, the Bureau understands that it is usual, appropriate, and accepted for creditors and settlement agents to provide the combined or separate Closing Disclosure as a confirmation, statement, or other record of the transaction, to consumers, sellers, and their agents, or information on the status or value of the financial service or financial product to their customers or their customers' agents or brokers.

The Bureau recognizes that incorporating the guidance provided in the April 12, 2016 webinar on how to separate Closing Disclosure forms for the consumer and the seller into Regulation Z commentary may provide additional certainty to creditors. Accordingly, the Bureau is proposing to add comment 38(t)(5)(v)-1 to clarify that, at its discretion, the creditor may make modifications to the Closing Disclosure form to accommodate the provision of separate Closing Disclosure forms to the consumer and the seller and the three methods by which a creditor can separate such information. The Bureau further proposes to add comments

38(t)(5)(v)-2 and -3 to provide examples where the creditor may choose to provide separate Closing Disclosure forms to the consumer and seller.

*38(t)(5)(vi) Modified version of the form for a seller or third-party*

The Bureau proposes to add comment 38(t)(5)(vi)-1 to cross-reference comment 38(t)(5)(v)-1 for additional clarity on permissible form modifications in relation to the modified version of the Closing Disclosure for sellers or third parties.

*38(t)(5)(vii) Transactions Without a Seller and Simultaneous Loans for Subordinate Financing*

Section 1026.38(t)(5)(vii) permits modifications to form H-25 of appendix H for a transaction that does not involve a seller and for which the alternative tables are disclosed pursuant to § 1026.38(d)(2) and (e). Comment 38(t)(5)(vii)-2 explains that, as required by § 1026.38(a)(3)(vii)(B), a form used for a transaction that does not involve a seller must contain the label “Appraised Prop. Value” or “Estimated Prop. Value” where there is no appraisal. The Bureau is proposing to revise § 1026.38(t)(5)(vii), consistent with proposed revisions discussed in the section-by-section analysis of § 1026.38(d)(2) and (e), to include simultaneous loans for subordinate financing as transactions for which a modification of form H-25 of appendix H is permitted. The Bureau is also proposing a technical correction so that comment 38(t)(5)(vii)-2 correctly references § 1026.38(t)(5)(vii) instead of § 1026.38(t)(5)(viii) and additional minor clarifying edits. The Bureau is also proposing to add comment 38(t)(5)(vii)(B)-1 to clarify that amounts provided by third parties may be disclosed as credits in the payoffs and payments table, comment 38(t)(5)(vii)(B)-2 to clarify the disclosure of subordinate financing proceeds, and comment 38(t)(5)(vii)(B)-3 to cross-reference comment 37(h)(2)(iii)-1 for additional examples and comment 38-4 for the disclosure of a reduction in principal balance (principal curtailment) to provide a refund.

Proposed comment 38(t)(5)(vii)(B)-1 would clarify that amounts paid by third parties who provide funds on behalf of the consumer are considered funds provided by designees, and may be disclosed as credits in the payoffs and payments table using negative numbers. The proposed comment also would provide examples of such amounts. Proposed comment 38(t)(5)(vii)(B)-2 would clarify that, on the Closing Disclosure for a first-lien transaction that also has a simultaneous loan for subordinate financing, the proceeds of the subordinate financing are included in the payoffs and payments table under § 1026.38(t)(5)(vii)(B) as a negative number. The disclosure of a negative amount for proceeds of the subordinate financing signifies additional cash being provided to the transaction on behalf of the borrower. Proposed comment 38(t)(5)(vii)(B)-3 would refer to other examples provided in comment 37(h)(2)(iii)-1. Proposed comment 38(t)(5)(vii)(B)-3 would also refer to proposed comment 38-4, which would provide options for the disclosure of a reduction in principal balance (principal curtailment) to provide a refund under § 1026.19(f)(2)(v), including disclosure under § 1026.38(t)(5)(vii)(B).

#### *38(t)(5)(ix) Customary Recitals and Information*

Comment 38(t)(5)(ix)-1 provides examples of information permitted to be disclosed on an additional page for the disclosure of customary recitals and information used locally in real estate settlements. The Bureau is proposing to revise comment 38(t)(5)(ix)-1 to cross-reference proposed comment 38-4, which would provide options for the disclosure of a reduction in principal balance (principal curtailment) to provide a refund under § 1026.19(f)(2)(v), including disclosure under § 1026.38(t)(5)(ix).

#### *Appendix D—Multiple-Advance Construction Loans*

Creditors have expressed difficulty with making disclosures under the TILA-RESPA Final Rule for construction financing because of certain inherent characteristics of

construction financing that differ from most other transactions. Appendix D, which provides instructions concerning the disclosure of multiple-advance construction loans, has been part of Regulation Z since 1981.<sup>98</sup> Appendix D provides special procedures 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. The appendix reflects § 1026.17(c)(6)(ii), which permits creditors to treat multiple-advance construction loans that may be permanently financed by the same creditor as one transaction or more than one transaction. The Bureau is proposing to revise comment app. D-7 to provide additional explanations for the disclosure of construction and construction-permanent loans under §§ 1026.37 and 1026.38 that the Bureau has provided informally. These additional explanations for construction-permanent loans would address the disclosures of the loan term, product, interest rate, initial periodic payment, increase in periodic payment, projected payments table, construction costs, and construction loan inspection and handling fees.

Comment app. D-7 was added by the TILA-RESPA Final Rule to clarify that some home construction loans that are secured by real property require disclosure of the projected payments tables pursuant to §§ 1026.37(c) and 1026.38(c) and not the general payment schedule required by § 1026.18(g). The comment provides two illustrations, in comments app. D-7.i and -7.ii, to clarify the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c) when the creditor elects to treat a multiple-advance construction loan that may be permanently financed by the same creditor as either one

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<sup>98</sup> See 46 FR 20847 (April 7, 1981).

transaction or more than one transaction pursuant to § 1026.17(c)(6)(ii). The Bureau is proposing to amend comment app. D-7 to clarify how certain additional, specific disclosure requirements of §§ 1026.37 and 1026.38 apply in the unique context of construction and construction-permanent loans and to provide additional methods that creditors may use, at their option, to estimate and disclose those terms. In so doing, the Bureau proposes to preserve and further clarify the content of existing comments app. D-7.i and -7.ii, regarding the disclosure of the projected payments tables, in new comment app. D-7.vi. The proposed amendments to comment app. D-7 are further discussed below.

The Bureau proposes to exercise its authority under TILA section 105(a) and Dodd-Frank Act section 1032(a) to amend appendix D to Regulation Z by revising the guidance provided concerning appendix D. The Bureau believes the adjustments described below effectuate the purposes of TILA under TILA section 102(a), because they would ensure meaningful disclosure of credit terms to consumers and facilitate compliance with the statute. In addition, consistent with section 1032(a) of the Dodd-Frank Act, these adjustments would ensure that the features of consumer credit transactions secured by real property are fully, accurately, and effectively disclosed to consumers in a manner that permits consumers to understand the costs, benefits, and risks associated with the product or service, in light of the facts and circumstances.

#### *Loan Term*

Proposed comment app. D-7.i would clarify how a creditor may disclose the loan term, pursuant to §§ 1026.37(a)(8) and 1026.38(a)(5)(i), for a construction-permanent loan, taking into account the fact that such loans may be disclosed as one transaction or as more than one transaction. Under proposed comment app. D-7.i.A, if the creditor discloses the construction and



permanent financing as a single transaction, the loan term disclosed would be the total combined term of the construction period and the permanent period. To illustrate this result, the proposed comment provides an example of how to disclose the loan term when a single set of disclosures is used for the combined construction-permanent loan. In the example, if the term of the construction period is 12 months and the term of the permanent period is 30 years, and both phases are disclosed as a single transaction, the loan term disclosed is 31 years. Proposed comment app. D-7.i.A also includes a cross-reference to comment 37(a)(8)-3, which explains that, in accordance with § 1026.17(c)(3) and its accompanying commentary, the effect of minor variations in the number of days counted for the months or years of a loan may be disregarded for purposes of the loan term disclosure.

Proposed comment app. D-7.i.B clarifies how to disclose the term of the permanent phase of a construction-permanent loan when the creditor elects to disclose the two phases as separate transactions. Because the permanent phase may be consummated and disclosed at the same time as the construction phase and may also be disclosed as a separate transaction with payments that do not begin until months after consummation, creditors have reported some uncertainty about when to begin counting the loan term of the permanent phase for disclosure purposes. Proposed comment app. D-7.i.B explains that, consistent with proposed comment 37(a)(8)-3, the loan term of the permanent financing is counted from the date that interest for the first scheduled periodic payment of the permanent financing begins to accrue, regardless of when the permanent phase is disclosed.

#### *Product*

Proposed comment app. D-7.ii would explain how to disclose the duration of the “Interest Only” feature of a construction loan or the construction phase of a construction-

permanent loan under §§ 1026.37(a)(10)(ii)(B) and 1026.38(a)(5)(iii). The duration of the interest only period depends on whether the construction phase is disclosed separately, which would be covered by proposed comment app. D-7.ii.A, or as a combined transaction with the permanent phase, which would be covered by proposed comment app. D-7.ii.B.

Section 1026.37(a)(10) requires disclosure of the loan product, including the features that may change the periodic payment on the loan. Section 1026.37(a)(10)(iv) requires disclosure of the duration of the payment period of certain of the loan features, including the “Interest Only” feature under § 1026.37(a)(10)(ii)(B). Disclosure of an “Interest Only” feature is required if the loan does not have a negative amortization feature and one or more regular periodic payments may be applied only to interest accrued and not to the loan principal. The duration of the “Interest Only” payment period, therefore, counts the regular periodic payments that may be applied only to interest accrued and not to the loan principal.

In a construction loan disclosure or when a separate disclosure is provided for the construction phase of a construction-permanent loan, the final payment will typically be a balloon payment that is the sum of the final interest payment and the loan principal. As a payment that includes principal, the final balloon payment is not counted for purposes of determining the duration of the “Interest Only” payment period. This means, for example, that the product disclosure for a fixed rate construction loan with a term of one year is “11 mo. Interest Only, Fixed Rate.” Proposed comment app. D-7.ii.A would provide this explanation and example.

Proposed comment app. D-7.ii.B would explain that, 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. In such cases, the construction and permanent phases are considered together as a single loan or transaction, and there is no balloon payment of principal and interest at the end of the construction phase. Proposed comment app. D-7.ii.B would provide an example explaining that a creditor discloses the “Product” for a fixed rate, construction-permanent loan with an interest only construction phase of 12 months as “1 Year Interest Only, Fixed Rate.”

#### *Interest Rate*

Proposed comment app. D-7.iii would explain the disclosure of the interest rate in a construction-permanent loan pursuant to §§ 1026.37(b)(2) and 1026.38(b). The comment addresses a unique aspect of construction-permanent loans: If the permanent phase is disclosed at the same time as the construction phase, either in a combined disclosure with the construction phase or in a separate disclosure of only the permanent phase, the interest rate of the permanent financing may not be known because the conversion to permanent financing may not take place for several months. If the permanent financing has an adjustable rate and separate disclosures are provided, the proposed comment would state that 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, proposed comment app. D-7.iii would clarify that the rate disclosed is based on the best information reasonably available at the time the disclosures are made and would include a cross-reference to comments 19(e)(1)(i)-1 and 19(f)(1)(i)-2, which provide explanation of the best information reasonably available standard. The proposed comment would also provide instruction on post-consummation disclosures that may be required if the creditor may modify the rate disclosed for the permanent financing when the construction financing converts to permanent financing. If such a modification of the interest rate occurs at

the time of conversion and results in a payment change, the creditor must provide the rate and adjustment disclosures required by § 1026.20(c) at least 60 days, and no more than 120 days, before the first payment at the adjusted level is due, without regard to whether the permanent financing has a fixed, adjustable, or step rate. The Bureau seeks comment on the appropriateness of the provision of the § 1026.20(c) disclosures in connection with the conversion to permanent financing and any operational changes for creditors in a construction-permanent loan context to provide the rate and adjustment disclosure required by § 1026.20(c) at least 60 days, and no more than 120 days, before the first payment at the adjusted level is due.

#### *Initial Periodic Payment*

Proposed comment appendix D-7.iv would clarify that the general rule of § 1026.17(c)(3), which allows creditors to disregard the effects of certain minor variations in making calculations and disclosures, applies to the appendix D calculation of the initial periodic payment amount disclosed under §§ 1026.37(b)(3) and 1026.38(b). For example, the effect of the fact that months have different numbers of days may be disregarded in making the disclosure.

#### *Increase in Periodic Payment*

Section 1026.37(b)(6) requires a creditor to provide an affirmative or negative answer to the question, “Can this amount increase after closing?” with respect to certain amounts, including the initial periodic payment amount disclosed under § 1026.37(b)(3). Creditors have asked the Bureau what answer may be provided to this question in the case of construction financing if the actual schedule of advances is not known. Proposed comment app. D-7.v explains that, in general, the answer a creditor provides will depend upon whether the construction financing has a fixed rate or an adjustable rate. Proposed comment app. D-7.v.A

and B discusses the disclosure of fixed-rate construction financing, and proposed comment app. D-7.v.C discusses the disclosure of adjustable-rate construction financing.

The payments made during the construction phase are often interest-only payments. The amount of any particular interest-only payment on a construction loan is typically determined by applying the contract interest rate to the amounts advanced. The amounts advanced may be tied to construction milestones and the total of the amounts advanced will increase with each milestone, usually resulting in increases in the amounts of the interest-only payments that become due. If the construction financing has a fixed rate, the periodic interest-only payments will increase over the term of the loan, reflecting increases in the amounts advanced. If the construction financing has an adjustable rate, the periodic interest-only payments may also increase over time, but the increase may be due to both an increase in the adjustable interest rate and increases in the amounts advanced.

A creditor may use the methods in appendix D to estimate interest and make disclosures for construction loans if the actual schedule of advances is not known. The calculation of the periodic payments in a fixed-rate construction loan using appendix D produces interest-only periodic payments that are equal in amount. Although the actual interest-only payments will increase over the term of the construction financing as the amounts advanced increase, because the methods provided by appendix D to estimate interest may be used to make disclosures, a technically correct and compliant answer to “Can this amount increase after closing?” is “NO.” The periodic payments for fixed rate construction financing, as calculated under appendix D, do not increase but are equal.

Creditors nonetheless have expressed concern over providing an answer of “NO” to the question, “Can this amount increase after closing?” This technically correct disclosure may not

reflect the actual increase in payments that will occur over the term of the construction financing, even though the amount of such increases is not known at or before consummation. The Bureau is therefore proposing comment app. D-7.v.A to explain that a creditor may disclose the initial periodic payment using appendix D and nevertheless may answer “YES” to the question, “Can this amount increase after closing?” Comment app. D-7.v.A would also explain that a technically correct answer to “Can this amount increase after closing” is “NO.”

Proposed comment app. D-7.v.B would explain that, if separate disclosures are provided for fixed-rate construction financing and appendix D is used to compute the periodic payment, the disclosures under § 1026.37(b)(6)(iii) and the disclosure of a range of payments under § 1026.37(c)(2)(i) may be omitted. As discussed above, the periodic payments calculated under appendix D for a fixed rate loan are equal. Consequently, a creditor in that case does not provide the increase in periodic payments disclosures under § 1026.37(b)(6)(iii), such as the due date of the first adjusted principal and interest payment or a reference to the adjustable payments table required by § 1026.37(i). Such a creditor also does not disclose the principal and interest payment under § 1026.37(c)(2)(i) as a range of payments in the projected payments table, even though the interest-only payments would increase over the term of the construction financing, reflecting increases in the total amount advanced.

As a practical matter, there is no method for calculating the § 1026.37(b)(6)(iii) and (c)(2)(i) disclosures as they relate to changes in the total amount advanced in construction financing when the amounts or timing of advances is unknown at or before consummation. Any method devised to take into account increases in the total amount advanced would introduce significant complexity and would have to differ from the method used for calculating the initial periodic payment under appendix D, which assumes a single amount outstanding for the entire

construction period. The Bureau does not believe that increasing the complexity of compliance would serve the purpose of this proposal, which is to provide instructions and clarity for the existing disclosure requirements.

Proposed comment app. D-7.v.C would clarify that, if separate disclosures are provided for adjustable-rate construction financing and appendix D is used to calculate the periodic payment, the disclosures reflect the changes that are due to changes in the interest rate but not the changes that are due to changes in the amounts advanced and provides an illustrative example. While a creditor extending fixed-rate construction financing may answer either “YES” or “NO” as the answer to the question, “Can this amount increase after closing?,” because payments may increase based on increases in advances, proposed comment app. D-7.v.C. states that a creditor extending adjustable-rate construction financing would disclose “YES” as the answer to the question, “Can this amount increase after closing?” When a creditor extends adjustable rate construction financing, unlike when it extends fixed rate construction financing, payments may increase based on an increase in the adjustable interest rate as well as an increase in the amount advanced. Because the payments may increase in such cases, without regard to the amount of advances, a creditor would disclose “YES” as the answer to the question, “Can this amount increase after closing?” and “NO” would not be a technically correct answer.

Proposed comment app. D-7.v.C. would also clarify that, for adjustable-rate construction financing, a creditor must provide disclosures reflecting, changes that are due to changes in the interest rate, but may omit disclosures reflecting changes that are due to changes in the total amount advanced. Proposed comment app. D-7.v.C. would explain that the creditor may omit the adjustable payment table disclosure required by § 1026.37(i) because the disclosure would reflect a change due to a change in the total amount advanced. Consistent with these disclosures,

the creditor also discloses a range of payments in the principal and interest row of the projected payments table under § 1026.37(c)(2)(i).

### *Projected Payments Table*

Comment app. D-7 currently addresses only the disclosure of a projected payments table under §§ 1026.37(c) and 1026.38(c). Comment app. D-7.i provides an illustration of the construction phase projected payments table disclosure if the creditor elects to disclose the construction and permanent phases as separate transactions. Comment app. D-7.ii provides an illustration of the projected payments table disclosure if the creditor elects to disclose the construction and permanent phases as a single transaction. Current comment app. D-7.i would be restated in proposed new comment app. D-7.vi.A. Clarifying language would be added to specify that the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1 if interest is payable only on the amount actually advanced for the time it is outstanding. Language consistent with informal guidance provided by the Bureau would also be added to clarify that the existing language “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)” applies, unless the transaction has negative amortization, interest only, or step payment features, consistent with § 1026.37(a)(10)(iii). To provide more complete explanations concerning balloon payments, references to the balloon payment disclosures under §§ 1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) would be added to the existing statement that the creditor must disclose the balloon payment in the projected payments table.

Current comment app. D-7.ii would be restated in proposed new comment app. D-7.vi.B. Language consistent with informal guidance provided by the Bureau would be added to clarify



existing language stating that “the projected payments table must reflect the interest-only payments during the construction phase in a first column.” As proposed, the comment would explain that the first column also reflects the amortizing payments for the permanent phase if the term of the construction phase is not a full year. This clarification would ensure consistency with § 1026.37(c)(1)(iii)(B), which requires disclosure of a range of payments if the periodic principal and interest payment or range of payments may change during the same year as the initial periodic payment or range of payments. A clarifying revision would also be added to proposed comment app. D-7.vi.B, noting that 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, if interest is payable only on the amount actually advanced for the time it is outstanding.

#### *Construction Costs as “Other” Costs*

Proposed comment app. D-7.vii.A would explain the amount of construction costs is disclosed under the subheading “Other” under § 1026.37(g)(4), consistent with informal guidance provided by the Bureau and the proposed changes to § 1026.37(g)(4). Section 1026.37(g)(4) requires disclosure 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. Construction costs are costs that the consumer contracts, at or before closing, to pay in whole or in part with loan proceeds under § 1026.37(g)(4). Because the creditor is making the loan, in whole or in part, to cover construction costs and is therefore aware of such costs at the time of issuing the Loan Estimate, the requirements for disclosure under § 1026.37(g)(4) are met.

This proposed comment is consistent with proposed amendments to comment 37(g)(4)-4, which would provide that, in situations where the cost of improvements on the property is

financed by a builder that is also the creditor, such costs are disclosed under § 1026.37(g)(4). The amount of construction costs is therefore disclosed under the subheading “Other” pursuant to § 1026.37(g)(4).

Proposed comment app. D-7.vii.B would clarify disclosure of a portion of a construction loan’s proceeds that is placed in a reserve or other account at consummation. Such amounts are sometimes referred to as a “construction holdback.” Consistent with informal guidance provided by the Bureau, the proposed comment would explain that the amount of such an account may be disclosed separately from other construction costs or may be included in the amount disclosed for construction costs for purposes of required disclosures and calculations under §§ 1026.37 and 1026.38, at the creditor’s option. If the creditor chooses to disclose the amount of loan proceeds placed in a reserve or other account at consummation separately, the creditor may disclose the amount as a separate itemized cost, along with a separate itemized cost for the balance of the construction costs, in accordance with § 1026.37(g)(4). The amount may be labeled with any accurate term, so long as any label the creditor uses is in accordance with the clear and conspicuous standard explained at comment 37(f)(5)-1. If the amount is disclosed separately, the balance of construction costs must exclude the designated amount to avoid double counting.

#### *Construction Loan Inspection and Handling Fees*

Proposed comment app. D-7.viii would provide instructions for the disclosure of construction loan inspection and handling fees consistent with informal guidance provided by the Bureau. The proposed comment explains that comment 4(a)-1.ii.A identifies inspection and handling fees for the staged disbursement of construction loan proceeds as finance charges. The proposed comment would also provide cross-references to proposed comments 37(f)-3, 37(f)(6)-3, and 38(f)-2, which are discussed in the section-by-section analysis above. The Bureau

believes that, by directing readers of the appendix D commentary to these other comments, proposed comment app. D-7.viii would facilitate compliance.

*Appendix H—Closed-End Forms and Clauses*

Appendix H to Regulation Z includes blank forms illustrating the master headings, headings, subheadings, etc., that are required by §§ 1026.37 and 1026.38, *i.e.*, forms H-24(A) and (G), H-25(A) and (H) through (J), and H-28(A), (F), (I), and (J) (together, the integrated disclosure model forms). The titles of those blank forms each include the designation “Model Form.” Appendix H to Regulation Z also includes non-blank forms providing samples of disclosures, *i.e.*, forms H-24(B) through (F), H-25(B) through (G), and H-28(B) through (E), (G), and (H) (together, the integrated disclosure samples). The titles of those non-blank forms each include the designation “Sample”.

Pursuant to TILA section 105(b), a creditor is deemed to be in compliance with TILA’s disclosure provisions with respect to other than numerical disclosures if the creditor uses any appropriate model form or clause as published by the Bureau.<sup>99</sup> Accordingly, use of an appropriate integrated disclosure model form, if properly completed with accurate content, constitutes compliance with the requirements of § 1026.37 or § 1026.38, as applicable. Moreover, under §§ 1026.37(o)(3) and 1026.38(t)(3), use of an appropriate integrated disclosure model form is mandatory for a transaction that is a federally related mortgage loan (as defined in Regulation X). That information is also noted in Regulation Z comment app. H-30. However, in comment app. H-30, the Bureau did not distinguish between the integrated disclosure model

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<sup>99</sup> 15 U.S.C. 1604(b). A creditor may delete any information which is not required by TILA or rearrange the format, if in making such deletion or rearranging the format, the creditor does not affect the substance, clarity, or meaningful sequence of the disclosure. *Id.*

forms and the integrated disclosure samples and, instead, refers to all forms H-24(A) through (G), H-25(A) through (J), and H-28(A) through (J) as “model forms.”

The Bureau understands that, because of the overbroad reference to “model forms” in comment app. H-30, uncertainty exists whether creditors may rely on the integrated disclosure samples to demonstrate compliance with the requirements of § 1026.37 or § 1026.38, as applicable. Unlike the integrated disclosure model forms, whose respective titles include the designation “Model Form,” the integrated disclosure samples are not model forms providing safe harbor protection. Rather, the integrated disclosure samples are illustrations of particular disclosures; these samples are not a substitute for the text of §§ 1026.37 and 1026.38 and the commentary to those sections.

The Bureau is proposing to revise comment app. H-30 to distinguish between the integrated disclosure model forms and the integrated disclosure samples. Thus, proposed comment app. H-30 would state that the integrated disclosure model forms, specifically forms H-24(A) and (G), H-25(A) and (H) through (J), and H-28(A), (F), (I), and (J), are model forms for the disclosures required under §§ 1026.37 and 1026.38. Moreover, proposed comment app. H-30 would state that, under §§ 1026.37(o)(3) and 1026.38(t)(3), for federally related mortgage loans forms H-24(A) (or, alternatively, H-24(G)) and H-25(A) (or, alternatively, H-25(H), (I) or (J)) are standard forms required to be used for the disclosures required under §§ 1026.37 and 1026.38, respectively.

The Bureau also has received inquiries as to whether there are inaccurate calculations or other errors in the integrated disclosure samples as published and whether, if so, such inaccurate content has any legal consequence or effect. As noted above, even if such errors exist, the integrated disclosure samples, unlike the integrated disclosure model forms, are not controlling

authority for any purpose. Accordingly, they should not be read as changing or overriding the requirements of §§ 1026.37 and 1026.38, which are the controlling authorities regarding the disclosures' content. Sample forms are provided by the Bureau purely for illustration and as an aid to compliance. Because any errors in the integrated disclosure samples have such limited legal consequences, the Bureau has not conducted a systematic review of their accuracy; should the Bureau undertake such a review in the future and identify errors, it will adopt appropriate revisions.

## **VI. Dodd-Frank Act Section 1022(b)(2) Analysis**

### *A. Overview*

In developing the proposed rule, the Bureau has considered the potential benefits, costs, and impacts.<sup>100</sup> The Bureau requests comment on the preliminary analysis presented below as well as submissions of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts. The Bureau has consulted, or offered to consult with, the prudential regulators, the Securities and Exchange Commission, the Department of Housing and Urban Development, the Federal Housing Finance Agency, the Federal Trade Commission, the U.S. Department of Veterans Affairs, the U.S. Department of Agriculture, and the Department of the Treasury, including regarding consistency with any prudential, market, or systemic objectives administered by such agencies.

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<sup>100</sup> Specifically, section 1022(b)(2)(A) of the Dodd-Frank Act calls for the Bureau to consider the potential benefits and costs of a regulation to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.

This proposal would make four substantive changes to the TILA-RESPA Final Rule, along with other clarifications, minor changes, and technical corrections: tolerances for the total of payments, adjustment of the partial exemption under § 1026.3(h); coverage of loans secured by cooperative units, whether or not treated as real property under State law; rules concerning the information sharing between the parties involved in a mortgage transaction. This section discusses the first three of those substantive changes. The fourth change is discussed elsewhere in the preamble. The potential benefits and costs of the provisions contained in the proposed rule are evaluated relative to the baseline where the current provisions of the TILA-RESPA Rule remain in place.

The first of these three substantive changes would provide tolerances for the total of payments that parallel the existing tolerances for the finance charge. Prior to the TILA-RESPA Final Rule, the calculation of the total of payments was based directly on the finance charge. As a result, the disclosure of the total of payments was generally subject to the statutory tolerance for the finance charges and disclosures affected by the finance charge. Because the calculation of the total of payments, as revised in the TILA-RESPA Final Rule, is now no longer based directly on the calculation of the finance charge, ambiguity exists as to the applicability of the statutory tolerance for the finance charge to the total of payments. The Bureau would resolve this ambiguity by expressly applying a parallel tolerance to the total of payments.

The second change would adjust the partial exemption under § 1026.3(h) from the integrated disclosures, which, as cross-referenced at § 1024.5(d)(2), also provides an exemption from the RESPA disclosures. If a creditor is not required to provide the integrated disclosures and is not eligible for the partial exemption under § 1026.3(h), the creditor must provide the pre-existing RESPA disclosures. The partial exemption often applies to low-cost down payment or

other types of housing assistance loans originated by housing finance agencies (HFAs) or by creditors that partner with HFAs and originate loans in accord with HFA guidelines. The partial exemption was designed to facilitate such low cost lending by HFA's and their partners in the recognition that such loans provide consumers with significant benefits.

The Bureau has heard from HFAs and others that, in some jurisdictions, the applicability of the partial exemption has been limited. In order to satisfy the partial exemption, the total costs on the loan, payable by the consumer at consummation, including transfer taxes and recording fees, cannot exceed 1 percent of the total amount of credit extended. Many HFAs have told the Bureau that, due to the increase in both transfer taxes and recording fees in recent years and the small size of many of these loans, often less than \$5,000, these loans often have upfront costs exceeding the 1 percent threshold. Consequently, these loans do not meet criteria for the partial exemption in § 1026.3(h)(5), and creditors must provide consumers with the RESPA disclosures, unless the creditor is otherwise obligated to provide the integrated disclosures.

The divisions of creditors who work most closely with HFAs may not have experience with the other loan products, such as reverse mortgages, that also still require the provision of the RESPA disclosures. Software systems used by HFAs also may no longer support the RESPA disclosures, making it necessary to complete the RESPA disclosures manually. Manual completion of the disclosures, while compliant, may be costly and error-prone. As a result of these operational complexities, some creditors may be less willing to work with HFAs and other organizations to continue providing these housing assistance loans. As adjusted, the exemption would make explicit that transfer taxes are among the permissible costs for these loans and provide that neither transfer taxes nor recording fees count towards the 1 percent threshold, thus

expanding the scope of the partial exemption for the low-cost and deferred or contingent repayment lending described by § 1026.3(h).

The third change is to include loans secured by cooperative units in the TILA-RESPA Rule's coverage, whether or not cooperative units are treated as real property under applicable State law. As discussed in the section-by-section analysis of § 1026.19, State law varies, sometimes even within the same State, as to whether cooperative units are treated as real property. The proposed change would create uniform application, with the integrated disclosures issued for all covered transactions secured by cooperative units.

The proposed rule also includes a variety of minor changes and technical corrections. Among these changes is a proposed requirement to provide the post-consummation escrow cancellation and partial payment disclosures regardless of application date. This proposed change is discussed further below.

The Bureau seeks comment on data that would help to quantify costs and benefits and any associated burden with the proposed changes. Specifically, the Bureau is seeking information on the incidence of errors in the total of payments calculation on the Closing Disclosure and on the magnitude of such errors. Further, the Bureau is seeking input on the nationwide volume of loans that satisfy all conditions of § 1026.3(h) but whose upfront costs exceed 1 percent of the loan amount. The Bureau is also seeking information on current practices by servicers and other covered persons regarding the issuance of post-consummation disclosures (escrow cancellation disclosure, partial payment disclosure). The Bureau is further seeking data on the number of transactions secured by cooperative units where applicable State law does not unambiguously treat cooperative units as real property.



The Bureau is requesting any other data that would assist in quantifying the costs and benefits of this proposal.

*B. Potential Benefits and Costs to Consumers and Covered Persons*

*Tolerance for Total of Payments*

Under the proposed rule, the same tolerances would apply to the total of payments as apply, by statute, to the finance charge. The Bureau is concerned that, absent the explicit application of the finance charge tolerances to the total of payments, even a minor error in the calculation of the total of payments could potentially result in claims under TILA.

The Bureau believes that the proposed change, if adopted, would benefit creditors, in the limited circumstances where a small, within tolerance, error in total of payments calculation occurs. Creditors and their assignees would be less likely to face litigation, and its accompanying costs and risks, over minor errors. The Bureau also believes that the provision of an explicit tolerance for the total of payments may ease liquidity constraints in the secondary market. There is evidence that, in the current marketplace, investors are concerned with litigation risks associated with loans that are affected by even minor disclosure-related errors. The proposal could benefit creditors by alleviating investor concern regarding risks associated with small errors in the total of payments calculation.

Two factors could reduce the magnitude of these benefits. First, the Bureau has no information to indicate that there have yet been any claims based on a misdisclosure of the total of payments that would be covered by the proposed tolerance, nor is the Bureau aware of evidence to date to suggest that, specifically, errors in the total of payments have created difficulties for creditors in selling these loans. Investors, consequently, may not have specific concerns about errors in the total of payments. If investor concerns are minimal now, alleviating

them further many not provide much benefit to creditors. Second, the relative benefits of the proposed change to creditors also would be reduced to the extent that affected creditors would be able to pass some of these costs on to consumers, in the form of higher prices, in the event the proposed change is not adopted.

The Bureau does not believe that creditors would bear any associated costs from the proposed change.

To the extent creditors would increase the price of credit in the absence of the adoption of explicit tolerance for the total of payments, consumers could benefit from the adoption of the tolerances through a reduced cost of credit. To date, the Bureau has no evidence that creditors have increased the cost of credit; therefore, the benefits to consumers from the proposed provision are discounted by the possibility that such issues may not materialize in the future even absent the change the Bureau is proposing.

The proposed rule may potentially create costs to consumers stemming from less precise disclosures of the total of payments. However, such costs would arise only in a narrow set of circumstances where: a) the error is small; b) the creditor would have avoided such error in the absence of tolerances, and, importantly, c) the error creates costs to the consumer. The Bureau is unable to quantify the incidence and the magnitude of such costs, and is seeking comment on the issue.

*Excluding recording fees and transfer taxes from § 1026.3(h) exemption requirements*

Under the proposed rule, State and local recording fees and transfer taxes would be excluded from the calculation of the 1 percent threshold (as specified in § 1026.3(h)(5)). As a result, the § 1026.3(h) partial exemption would be available for some loans that currently do not satisfy § 1026.3(h)(5) but satisfy the other provisions of § 1026.3(h). Creditors issuing loans

would be exempted from providing the RESPA disclosures and would only have to provide a TILA disclosure (as per § 1026.18).

This provision, if adopted, would benefit creditors by allowing them to provide the more streamlined disclosures under § 1026.18 in connection with loans that satisfy the partial exemption at § 1026.3(h). The Bureau does not believe that creditors would bear any associated costs from the proposed provision.

This provision could benefit consumers by making down payment assistance loans and other non-interest bearing housing assistance loans potentially more accessible. While the Bureau notes that the § 1026.18 disclosures do not require the provision of the full level of detailed disclosures required either by RESPA or under the TILA-RESPA integrated disclosures, the loans eligible for the partial exemption under § 1026.3(h) generally have a simpler cost structure that the Bureau believes is adequately communicated by the § 1026.18 TILA disclosures.

*Including cooperatives in the coverage of the TILA-RESPA Final Rule*

Under the proposed change, consumer credit transactions secured by a cooperative unit would be covered by the TILA-RESPA Rule, whether or not applicable State law treats cooperative units as real property. The proposed change would benefit creditors who originate mortgages on cooperative units by eliminating any uncertainty regarding the applicable disclosures. Creditors who currently issue RESPA disclosures for loans secured by cooperative units would have to switch to the integrated disclosure on such loans. The Bureau believes the cost of such change to be minimal: the systems that generate the integrated disclosures must already be in place for other types of property.

The proposed change would benefit consumers who borrow against cooperative units in States where such units are treated as personal property under applicable State law. Such consumers would receive an integrated disclosure which, the Bureau believes, is better designed to communicate cost information than is the legacy RESPA disclosure.

*Minor changes and technical corrections*

The Bureau believes that the proposed minor changes and technical corrections would generally benefit creditors by helping them to comply with the law in a more cost-effective way. One provision with a potential cost for creditors is the proposed change to the post-consummation disclosures.

Under the proposed change, the escrow cancellation notice required by § 1026.20(e) and the partial payment disclosure required by § 1026.39(d)(5) would be provided for all loans, not only those with an application date on or after October 3, 2015. Servicers and other covered persons that currently do not provide such disclosures for loans with an application before October 3, 2015, may incur additional costs, if the provision is adopted. The Bureau does not believe these costs to be significant because the systems that generate such disclosures must already be in place, in order to provide disclosures for loans with application dates on or after October 3, 2015. The additional cost would only consist of printing and mailing such disclosures and of a programming change to software to remove any tracking by application date. Moreover, the Bureau believes that most servicers and other covered persons have already adopted a uniform approach to post-consummation disclosures, as it is both compliant with the existing regulations and is cost-saving: Under the uniform approach, covered persons have no need to verify the application date when providing escrow cancellation notices under

§ 1026.20(e), nor do they need to maintain two separate mortgage transfer disclosures to comply with § 1026.39(d)(5).

Consumers would benefit from the proposed change by receiving timely and accurate disclosures.

*C. Impact on Covered Persons with No More Than \$10 Billion in Assets*

The Bureau believes that covered persons with no more than \$10 billion in assets will not be differentially affected by the proposed provisions. A possible exception are creditors that provide loans that satisfy criteria in § 1026.3(h): To the extent that the majority of such creditors have \$10 billion or less in assets, the proposed exemption of recording fees and transfer taxes from the § 1026.3(h) requirements would create a disproportional benefit for covered persons in that asset category.

*D. Impact on Access to Credit*

As pointed out above, the proposed exemption of recording taxes and fees from the § 1026.3(h) requirements has a potential of improving access to housing assistance loans for consumers. In addition, a reduction in ambiguity regarding compliance with the law generally may improve access to credit for all consumers. The Bureau does not believe that any of the proposed changes are likely to have an adverse impact on access to credit.

*E. Impact on Rural Areas*

The Bureau believes that none of the proposed changes is likely to have an adverse impact on consumers in rural areas. To the extent that cooperative units are mostly located in urban areas, consumers in rural areas may receive little or no benefit from the proposed change regarding loans secured by cooperative units.

## **VII. Regulatory Flexibility Act Analysis**

The Regulatory Flexibility Act (the RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires each agency to consider the potential impact of its regulations on small entities, including small businesses, small governmental units, and small nonprofit organizations. The RFA defines a “small business” as a business that meets the size standard developed by the Small Business Administration pursuant to the Small Business Act.

The RFA generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.

As discussed above, the Bureau believes that none of the proposed changes would create a significant impact on covered persons, including small entities. Therefore, an IRFA is not required for this proposal.

## **VIII. Paperwork Reduction Act**

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies are generally required to seek the Office of Management and Budget (OMB) approval for information collection requirements prior to implementation. Under the PRA, the Bureau may not conduct or sponsor and, notwithstanding any other provision of law, a person is not required to respond to an information collection unless the information collection displays a valid control number assigned by OMB. The collections of information related to Regulations Z

and X have been previously reviewed and approved by OMB in accordance with the PRA and assigned OMB Control Number 3170-0015 (Regulation Z) and 3170-0016 (Regulation X).

As part of its continuing effort to reduce paperwork and respondent burden, the Bureau conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on new or revised information collection requirements in accordance with the PRA (See 44 U.S.C. 3506(c)(2)(A)). This helps ensure that the public understands the Bureau's requirements or instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, information collection requirements are clearly understood, and the Bureau can properly assess the impact of collection requirements on respondents.

The Bureau has determined that this proposed rule will not impose any significant change in the paperwork burden on covered persons. There will be a modest increase in PRA burden on servicers in connection with the requirement to provide post-consummation disclosures for loans with application dates prior to October 3, 2015. The Bureau currently does not have data to quantify this cost and is seeking input on this issue. Furthermore, the proposed inclusion of cooperative units in the coverage of the TILA-RESPA Rule would mean that for some transactions some creditors would now produce the integrated disclosure in lieu of the RESPA disclosure. This change represents a replacement of one information collection with another and is unlikely to result in a substantial increase in PRA burden.

A complete description of the information collection requirements, including the burden estimate methods, is provided in the information collection request (ICR) that the Bureau has submitted to OMB under the requirements of the PRA. Please send your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Bureau of

Consumer Financial Protection. Send these comments by e-mail to [oir\\_submission@omb.eop.gov](mailto:oir_submission@omb.eop.gov) or by fax to (202) 395-6974. If you wish to share your comments with the Bureau, please send a copy of these comments to the docket for this proposed rule at [www.regulations.gov](http://www.regulations.gov). The ICR submitted to OMB requesting approval under the PRA for the information collection requirements contained herein is available at [www.regulations.gov](http://www.regulations.gov), as well as OMB's public-facing docket at [www.reginfo.gov](http://www.reginfo.gov).

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record.

If applicable, the final rule will inform the public of OMB's approval of the revised information collection requirements proposed herein and adopted in the final rule. If OMB has not approved the revised information collection requirements prior to publication of the final rule in the Federal Register, the Bureau will publish a separate notice in the Federal Register announcing OMB's approval prior to the effective date of the final rule.



## **IX. List of Subjects in 12 CFR part 1026**

Advertising, Appraisal, Appraiser, Banking, Banks, Consumer protection, Credit, Credit unions, Mortgages, National banks, Reporting and recordkeeping requirements, Savings associations, Truth in lending.

### **Authority and Issuance**

For the reasons set forth above, the Bureau proposes to amend Regulation Z, 12 CFR part 1026, as set forth below:

### **PART 1026—TRUTH IN LENDING (REGULATION Z)**

1. The authority citation for part 1026 continues to read as follows:

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

### **Subpart A—General**

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

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

\* \* \* \* \*

(d) \* \* \*

(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).

\* \* \* \* \*

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

**§ 1026.3 Exempt transactions.**

\* \* \* \* \*

(h) \* \* \*

(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 creditor complies with all other applicable requirements of this part in connection with the transaction, including without limitation providing the disclosures required by

§ 1026.18.

**Subpart C—Closed-End Credit**

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

**§ 1026.19 Certain mortgage and variable-rate transactions.**

\* \* \* \* \*

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

\* \* \* \* \*

(3) \* \* \*

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

- (A) Prepaid interest;
- (B) Property insurance premiums;
- (C) Amounts placed into an escrow, impound, reserve, or similar account;

(D) Charges paid to third-party service providers selected by the consumer consistent with paragraph (e)(1)(vi)(A) of this section that are not on the list provided 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) \* \* \*

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

(F) *Delayed settlement date on a construction loan.* In transactions involving new construction, where the creditor reasonably expects that settlement will occur more than 60 days after the disclosures required under paragraph (e)(1)(i) of this section are provided pursuant to paragraph (e)(1)(iii) of this section, the creditor may provide revised disclosures to the consumer if the original disclosures required under paragraph (e)(1)(i) of this section state clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures. If no such statement is provided, the creditor may not issue revised disclosures, except as otherwise provided in paragraph (e)(3)(iv) of this section.

\* \* \* \* \*

(f) *Mortgage loans—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.

\* \* \* \* \*

(4) *Transactions involving a seller—(i) Provision to seller.* In a transaction subject to paragraph (e)(1)(i) of this section, the settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller’s transaction reflecting the actual terms of the seller’s transaction.

\* \* \* \* \*

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

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

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

(iii) The creditor or mortgage broker need not provide the booklet to the consumer for a 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.

\* \* \* \* \*

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

**§ 1026.23 Right of rescission.**

\* \* \* \* \*

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

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

- (A) Is understated by no more than  $\frac{1}{2}$  of 1 percent of the face amount of the note or \$100, whichever is greater; or
- (B) Is greater than the amount required to be disclosed.

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

- (A) Is understated by no more than  $\frac{1}{2}$  of 1 percent of the face amount of the note or \$100, whichever is greater; or
- (B) Is greater than the amount required to be disclosed.

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

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

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

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

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

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

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

(h) \* \* \*

(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.

#### **Subpart D—Miscellaneous**

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

##### **§ 1026.25 Record retention.**

\* \* \* \* \*

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

\* \* \* \* \*

#### **Subpart E—Special Rules for Certain Home Mortgage Transactions**

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

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

\* \* \* \* \*

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

(1) *Loan amount.* The total amount the consumer will borrow, as reflected by the face amount of the note, labeled “Loan Amount.”

\* \* \* \* \*

(c) \* \* \*



(5) \* \* \*

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

\* \* \* \* \*

(d) \* \* \*

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

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

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

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

\* \* \* \* \*

(h) \* \* \*

(1) \* \* \*

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

(A)(I) 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) of this section, except as required by paragraph (h)(1)(iii)(A)(2) of this section;

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

(B) In all transactions not subject to paragraph (h)(1)(iii)(A) of this section, the estimated funds from the consumer as determined in accordance with paragraph (h)(1)(v) of this section;

\* \* \* \* \*

(v) *Funds for borrower.* The amount of funds for the consumer, labeled “Funds for Borrower.” The amount of funds from the consumer disclosed under paragraph (h)(1)(iii)(A)(2) or (h)(1)(iii)(B) of this section, as applicable, and of funds for the consumer disclosed under this paragraph (h)(1)(v), 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) (less any amount 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);

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

(o) \* \* \*

(4) *Rounding—(i) Nearest dollar.* (A) The dollar amounts required to be disclosed by paragraphs (b)(6) and (7), (c)(1)(iii), (c)(2)(ii) and (iii), (c)(4)(ii), (f), (g), (h), (i), and (l) of this section shall be rounded to the nearest whole dollar, except that the per diem amount required to be disclosed by paragraph (g)(2)(iii) of this section and the monthly amounts required to be disclosed by paragraphs (g)(3)(i) through (iii) and (g)(3)(v) of this section shall be rounded to the nearest cent and disclosed to two decimal points.

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

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

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b)(2) and (6), (f)(1)(i), (g)(2)(iii), (j), (l)(2), and (l)(3) of this section shall 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.

\* \* \* \* \*

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

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

\* \* \* \* \*

(a) \* \* \*

(3) \* \* \*

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

\* \* \* \* \*

(d) \* \* \*

(2) *Alternative table for transactions without a seller and simultaneous loans for subordinate financing.* For transactions that do not involve a seller and simultaneous loans for subordinate financing, 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 under paragraph (e) of this section for details.

(e) *Alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing.* For transactions that do not involve a seller and simultaneous loans for subordinate financing, 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”:

\* \* \* \* \*

(2) \* \* \*

(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) \* \* \*

(A) \* \* \*

(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 disclosure of the reduction in principal balance (principal curtailment) disclosed under paragraph (g)(4) or (t)(5)(vii)(B) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs

under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

\* \* \* \* \*

(4) \* \* \*

(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 amount disclosed under paragraph (t)(5)(vii)(B) of this section is a positive number and disclosed as a positive number if the amount disclosed under paragraph (t)(5)(vii)(B) of this section is a negative number;

\* \* \* \* \*

(g) \* \* \*

(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.

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(iii) \* \* \*

(A) \* \* \*

(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 reduction in principal balance (principal curtailment) is used to provide the refund, a statement directing the consumer to the disclosure required under paragraph (g)(4), (j)(4)(i), or (t)(5)(ix) of this section. Such dollar amount shall equal the sum total of all excesses of the limitations on increases in closing costs under § 1026.19(e)(3), taking into account the different methods of calculating excesses of the limitations on increases in closing costs under § 1026.19(e)(3)(i) and (ii).

\* \* \* \* \*

(4) \* \* \*

(ii) Under the subheading “Final”:

(A)(I) 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 disclosed under paragraph (j)(2)(iv) of this



section from the sale price of the property disclosed under paragraph (j)(1)(ii) of this section, labeled “Down Payment/Funds from Borrower,” except as required by paragraph (i)(4)(ii)(A)(2) of this section;

(2) In a purchase transaction as defined in § 1026.37(a)(9)(i), when the sum of the loan amount disclosed under paragraph (b) of this section, and any amount of existing loans assumed or taken subject to disclosed under paragraph (j)(2)(iv) of this section exceeds the sale price disclosed under paragraph (j)(1)(ii) of this section, the amount of funds from the consumer as determined in accordance with paragraph (i)(6)(iv) of this section labeled “Down Payment/Funds from Borrower;” or

(B) In all transactions not subject to paragraph (i)(4)(ii)(A) of this section, the “Funds from Borrower” as determined in accordance with paragraph (i)(6)(iv) of this section, labeled “Down Payment/Funds from Borrower.”

\* \* \* \* \*

(6) \* \* \*

(iv) The “Funds from Borrower” to be disclosed under paragraph (i)(4)(ii)(A)(2) or (i)(4)(ii)(B) of this section, as applicable, and “Funds for Borrower” to be disclosed under paragraph (i)(6)(ii) of this section are determined by subtracting the sum of the loan amount disclosed under paragraph (b) of this section and any amount for existing loans assumed or taken subject to disclosed under paragraph (j)(2)(iv) of this section (less any closing costs financed disclosed under paragraph (i)(3)(ii) of this section) from the total amount of all existing debt being satisfied in the real estate closing 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 (i)(4)(ii)(B) of this section, as applicable, and \$0.00 shall be disclosed under paragraph (i)(6)(ii) of this section.

(B) If the calculation under this paragraph (i)(6)(iv) yields an amount that is a negative number, such amount shall be disclosed under paragraph (i)(6)(ii) of this section, stated as a negative number, and \$0.00 shall be disclosed under paragraph (i)(4)(ii)(A)(2) or (i)(4)(ii)(B) of this section, as applicable.

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

(7) \* \* \*

(iii) Under the subheading “Did this change?,” disclosed more prominently than the other disclosures under this paragraph (i)(7):

(A) If the amount disclosed under paragraph (i)(7)(ii) of this section is different than the amount disclosed under paragraph (i)(7)(i) of this section (unless the difference is due to rounding), a statement of that fact, along with a statement that the consumer should see the details disclosed under paragraph (j)(2)(v) of this section and, as applicable, in the seller-paid column under paragraphs (f) and (g) of this section; or

(B) If the amount disclosed under paragraph (i)(7)(ii) of this section is equal to the amount disclosed under paragraph (i)(7)(i) of this section, a statement of that fact.

(8) *Adjustments and other credits.* (i) Under the subheading “Loan Estimate,” the amount disclosed on the Loan Estimate under § 1026.37(h)(1)(vii), 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.

\* \* \* \* \*

(j) \* \* \*

(2) *Itemization of amounts already paid by or on behalf of borrower.* (i) The sum of the amounts disclosed in paragraphs (j)(2)(ii) through (xi) of this section, excluding items paid from funds other than closing funds as described in paragraph (j)(4)(i) of this section, labeled “Paid Already by or on Behalf of Borrower at Closing”;

\* \* \* \* \*

(vi) 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”;

\* \* \* \* \*

(1) \* \* \*

(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 paragraph (1)(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 this paragraph (1)(7)(i)(A)(1) through (4);

(1) The total amount the consumer will be required to pay into an escrow account over the first year after consummation, labeled “Escrowed Property Costs over Year 1,” together with a descriptive name of each charge to be paid (in whole or in part) from the escrow account, calculated as the amount disclosed under paragraph (1)(7)(i)(A)(4) of this section multiplied by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation;

(2) The estimated amount the consumer is likely to pay during the first year after consummation for 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 (l)(7)(i)(A)(4) of this section if the creditor bases the numerical disclosures required by those paragraphs on amounts derived from the escrow account analysis required under Regulation X, 12 CFR 1024.17.

(B) A statement of whether the consumer will not have an escrow account, the reason why an escrow account will not be established, a statement that the consumer must pay all property costs, such as taxes and homeowner’s insurance, directly, a statement that the consumer may contact the creditor to inquire about the availability of an escrow account, and a table, titled “No Escrow,” that contains, if an escrow account will not be established, an itemization of the following:

(1) The estimated total amount the consumer will pay directly for the mortgage-related obligations described in § 1026.43(b)(8) during the first year after consummation that are known to the creditor and a statement that, without an escrow account, the consumer must pay the identified costs, possibly in one or two large payments, labeled “Property Costs over Year 1”; and

(2) The amount of any fee the creditor imposes on the consumer for not establishing an escrow account in connection with the transaction, labeled “Escrow Waiver Fee.”

\* \* \* \* \*

(o) \* \* \*

(1) *Total of payments.* The “Total of Payments,” using that term and expressed as a dollar amount, and a statement that the disclosure is the total the consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.

The disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments:

- (i) Is understated by no more than \$100; or
- (ii) Is greater than the amount required to be disclosed.

\* \* \* \* \*

(t) \* \* \*

(4) \* \* \*

(ii) *Percentages.* The percentage amounts required to be disclosed under paragraphs (b), (f)(1), (n), (o)(4), and (o)(5) of this section shall be disclosed by rounding to three decimal places and then dropping any trailing zeros to the right of the decimal point.

\* \* \* \* \*

(5) \* \* \*

(vii) *Transaction without a seller and simultaneous loans for subordinate financing.* The following modifications to form H-25 of appendix H to this part may be made for a transaction that does not involve a seller, or for simultaneous loans for subordinate financing, and for which

the alternative tables are disclosed 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.

\* \* \* \* \*

## **Subpart G—Special Rules Applicable to Credit Card Accounts and Open End Credit Offered to College Students**

9. In *Supplement I to Part 1026—Official Interpretations*:

a. Under *Section 1026.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability*:

i. Under *1(d)—Organization*:

A. Under *Paragraph 1(d)(5)*, paragraph 1 is revised.

b. Under *Section 1026.2—Definitions and Rules of Construction*:

i. Under *2(a)(11)—Consumer*, paragraph 3 is revised.

c. Under *Section 1026.3—Exempt Transactions*:

i. Under 3(h)—*Partial exemption for certain mortgage loans*, paragraph 2 is revised and paragraphs 3 and 4 are added.

d. Under Section 1026.17—*General Disclosure Requirements*:

i. Under 17(c)—*Basics of Disclosures and Use of Estimates*:

A. Under Paragraph 17(c)(6), paragraph 5 is revised and paragraph 6 is added.

ii. Under 17(f)—*Early Disclosures*, paragraphs 1 and 2 are revised.

e. Under Section 1026.18—*Content of Disclosures*:

i. Paragraph 3 is revised.

ii. Under 18(g)—*Payment Schedule*, paragraph 6 is revised.

iii. Under 18(s)—*Interest Rate and Payment Summary for Mortgage Transactions*, paragraphs 1 and 4 are revised.

f. Under Section 1026.19—*Certain Mortgage and Variable-Rate Transactions*:

i. Under 19(e)—*Mortgage loans secured by real property—Early disclosures*:

A. The heading is revised.

B. Under 19(e)(1)(i)—*Creditor*, paragraph 1 is revised and paragraph 2 is added.

C. Under 19(e)(1)(iii)—*Timing*, paragraph 5 is added.

D. Under 19(e)(1)(vi)—*Shopping for settlement service providers*, paragraphs 2 through 4 are revised.

E. Under 19(e)(3)(i)—*General rule*, paragraph 1 is revised and paragraph 8 is added.

F. Under 19(e)(3)(ii)—*Limited increases permitted for certain charges*, paragraph 2 is revised.

G. Under 19(e)(3)(iii)—*Variations permitted for certain charges*, paragraphs 2 and 3 are revised and paragraph 4 is added.



H. Under *19(e)(3)(iv)*—*Revised estimates*, paragraph 2 is revised and paragraphs 4 and 5 are added.

I. Under *19(e)(3)(iv)(D)*—*Interest rate dependent charges*, paragraph 1 is revised and paragraph 2 is added.

J. Under *19(e)(3)(iv)(E)*—*Expiration*, paragraph 1 is revised and paragraph 2 is added.

K. Under *19(e)(4)(ii)*—*Relationship to disclosures required under § 1026.19(f)(1)(i)*, the heading is revised and paragraph 2 is added.

ii. Under *19(f)*—*Mortgage loans secured by real property—Final disclosures*:

A. The heading is revised.

B. Under *19(f)(1)(i)*—*Scope*, paragraph 1 is revised.

C. Under *19(f)(2)(iii)*—*Changes due to events occurring after consummation*, paragraph 2 is added.

D. Under *19(f)(2)(v)*—*Refunds related to the good faith analysis*, paragraph 1 is revised.

E. Under *19(f)(3)(ii)*—*Average charge*, paragraph 3 is revised.

F. Under *19(f)(4)(i)*—*Provision to seller*, paragraph 1 is revised and paragraph 2 is added.

g. Under *Section 1026.23—Right of Rescission*:

i. Under *23(g)*—*Tolerances for Accuracy*, paragraph 1 is added.

ii. Under *23(h)*—*Special Rules for Foreclosure*:

A. Under *23(h)(2)*—*Tolerance for Disclosures*, paragraph 1 is revised and paragraph 2 is added.

h. Under *Section 1026.25—Record Retention*:

i. Under *25(c)*—*Records Related to Certain Requirements for Mortgage Loans*:

A. Under 25(c)(1)—*Records related to requirements for loans secured by real property*, the heading is revised.

i. Under Section 1026.37—*Content of Disclosures for Certain Mortgage Transactions (Loan Estimate)*:

i. Under 37(a)—*General information*:

A. Under 37(a)(7)—*Sale price*, paragraphs 1 and 2 are revised.

B. Under 37(a)(8)—*Loan term*, paragraph 3 is added.

C. Under 37(a)(9)—*Purpose*, paragraph 1 is revised.

D. Under 37(a)(10)—*Product*, paragraph 2 is revised.

E. Under 37(a)(13)—*Rate lock*, paragraph 2 is revised and paragraph 4 is added.

ii. Under 37(b)—*Loan terms*:

A. Under 37(b)(2)—*Interest rate*, paragraph 1 is revised.

B. Under 37(b)(3)—*Principal and interest payment*, paragraph 2 is revised.

C. Under 37(b)(6)(iii)—*Increase in periodic payment*, paragraph 1 is revised.

iii. Under 37(c)—*Projected payments*:

A. Paragraph 2 is added.

B. Under *Paragraph 37(c)(1)(iii)(B)*, paragraph 1 is revised.

C. Under *Paragraph 37(c)(4)(iv)*, paragraph 2 is revised.

iv. Under 37(d)—*Costs at closing*:

A. Under 37(d)(2)—*Optional alternative table for transactions without a seller*, the heading is revised and paragraph 1 is revised.

v. Under 37(f)—*Closing cost details; loan costs*:

A. Paragraph 3 is added.

- B. Under 37(f)(6)—*Use of addenda*, paragraph 3 is added.
- vi. Under 37(g)—*Closing cost details; other costs*:
  - A. Under 37(g)(4)—*Other*, paragraph 4 is revised.
  - B. Under *Paragraph 37(g)(6)(ii)*, paragraph 1 is revised.
- vii. Under 37(h)—*Calculating cash to close*:
  - A. Under 37(h)(1)—*For all transactions*, paragraph 2 is added.
  - B. Under 37(h)(1)(ii)—*Closing costs financed*, paragraph 1 is revised and paragraph 2 is added.
  - C. Under 37(h)(1)(iii)—*Downpayment and other funds from borrower*, the heading is revised, paragraph 1 is revised and paragraph 2 is added.
  - D. Under 37(h)(1)(v)—*Funds for borrower*, paragraph 1 is revised and paragraph 2 is added.
  - E. Under 37(h)(1)(vi)—*Seller credits*, paragraphs 1 and 2 are revised.
  - F. Under 37(h)(1)(vii)—*Adjustments and other credits*, paragraphs 1, 5, and 6 are revised.
  - G. Under 37(h)(2)—*Optional alternative calculating cash to close table for transactions without a seller*, the heading is revised and paragraph 1 is revised.
  - H. Under 37(h)(2)(iii)—*Payoffs and payments*, paragraph 1 is revised and paragraph 2 is added.
- viii. Under 37(k)—*Contact information*, paragraph 3 is revised.
- ix. Under 37(l)—*Comparisons*:
  - A. Under *Paragraph 37(l)(1)(i)*, paragraph 1 is revised.
  - B. Under 37(l)(3)—*Total interest percentage*, paragraph 1 is revised.
- x. Under 37(o)—*Form of disclosures*:

A. Under *Paragraph 37(o)(4)(i)(A)*, paragraph 1 is revised.

B. Under *37(o)(4)(ii)—Percentages*, paragraph 1 is revised.

j. Under *Section 1026.38—Content of Disclosures for Certain Mortgage Transactions (Closing Disclosure)*:

i. Paragraph 4 is added.

ii. Under *38(a)—General information*:

A. Following *38(a)(3)(i)—Date issued* and paragraph 1 thereunder, heading *38(a)(3)(iii)—Disbursement date* and paragraph 1 thereunder are added.

B. Under *38(a)(3)(vii)—Sale price*, paragraph 1 is revised.

C. Under *38(a)(4)—Transaction information*, paragraph 2 is revised and paragraph 4 is added.

iii. Under *38(d)—Costs at closing*:

A. Under *38(d)(2)—Alternative table for transactions without a seller*, the heading is revised and paragraph 1 is revised.

iv. Under *38(e)—Alternative calculating cash to close table for transactions without a seller*:

A. The heading is revised, paragraph 1 is revised and paragraph 6 is added.

B. Under *Paragraph 38(e)(2)(iii)(A)*, paragraph 3 is revised.

C. Under *Paragraph 38(e)(3)(iii)(B)*, paragraph 1 is revised.

v. Under *38(f)—Closing cost details; loan costs*, paragraph 2 is added.

vi. Under *38(g)—Closing costs details; other costs*:

A. Under *38(g)(1)—Taxes and other government fees*, paragraph 3 is added.

B. Under *38(g)(2)—Prepays*, paragraph 3 is revised.

- C. Under 38(g)(4)—*Other*, paragraph 1 is revised.
- vii. Under 38(i)—*Calculating cash to close*:
  - A. Paragraphs 2 and 3 are revised and paragraph 5 is added.
  - B. Under *Paragraph 38(i)(1)(iii)(A)*, paragraph 3 is revised.
  - C. Under *Paragraph 38(i)(2)(iii)(B)*, paragraph 1 is revised.
  - D. Following *Paragraph 38(i)(2)(iii)(B)* and paragraph 1 thereunder, heading 38(i)(3)—*Closing costs financed* and paragraphs 1 and 2 thereunder are added.
  - E. Under *Paragraph 38(i)(4)(ii)(A)*, paragraph 1 is revised and paragraph 2 is added.
  - F. Under *Paragraph 38(i)(4)(ii)(B)*, paragraph 1 is revised.
  - G. Under *Paragraph 38(i)(4)(iii)(A)*, paragraph 1 is revised.
  - H. Under 38(i)(5)—*Deposit*, paragraph 1 is revised.
  - I. Under *Paragraph 38(i)(6)(ii)*, paragraph 1 is revised and paragraph 2 is added.
  - J. Following *Paragraph 38(i)(7)(ii)* and paragraph 1 thereunder, *Paragraph 38(i)(7)(iii)(A)* heading and paragraph 1 thereunder are added.
  - K. Under *Paragraph 38(i)(8)(ii)*, paragraph 1 is revised.
- viii. Under 38(j)—*Summary of borrower's transaction*:
  - A. Paragraph 3 is revised.
  - B. Under *Paragraph 38(j)(1)(ii)*, paragraph 1 is revised.
  - C. Under *Paragraph 38(j)(1)(v)*, paragraphs 1 and 2 are revised.
  - D. Under *Paragraph 38(j)(2)(vi)*, paragraphs 2 and 5 are revised and paragraph 6 is added.
  - E. Under *Paragraph 38(j)(2)(xi)*, paragraph 1 is revised.
  - F. Under *Paragraph 38(j)(4)(i)*, paragraph 1 is revised.

- ix. Under 38(k)—*Summary of seller’s transaction*:
  - A. Paragraph 1 is revised.
- x. Under 38(l)—*Loan disclosures*:
  - A. Under 38(l)(7)—*Escrow account*, paragraph 1 is added.
  - B. Under *Paragraph 38(l)(7)(i)(A)(2)*, paragraph 1 is revised and paragraph 2 is added.
  - C. Under *Paragraph 38(l)(7)(i)(A)(4)*, paragraph 1 is revised.
  - D. Following heading *Paragraph 38(l)(7)(i)(A)(4)* and paragraph 1 thereunder, *Paragraph 38(l)(7)(i)(A)(5)* heading and paragraph 1 thereunder are added.
  - E. Under *Paragraph 38(l)(7)(i)(B)(1)*, paragraph 1 is revised.
- xi. Under 38(o)—*Loan calculations*:
  - A. Paragraph 1 is added.
  - B. Under 38(o)(1)—*Total of payments*, paragraph 1 is revised.
- xii. Under 38(t)—*Form of disclosures*:
  - A. Under 38(t)(3)—*Form*, paragraph 1 is revised.
  - B. Following heading *Paragraph 38(t)(5)(iv)* and paragraph 3 thereunder, *Paragraph 38(t)(5)(v)* heading and paragraphs 1 through 3 thereunder are added.
  - C. Following heading *Paragraph 38(t)(5)(v)* and paragraph 3 thereunder, *Paragraph 38(t)(5)(vi)* heading and paragraph 1 thereunder are added.
  - D. Under 38(t)(5)(vii)—*Transactions without a seller*, the heading is revised, and paragraph 2 is revised.
  - E. Following heading 38(t)(5)(vii)—*Transactions without a seller and simultaneous loans for subordinate financing*, as revised, and paragraph 2 thereunder, *Paragraph 38(t)(5)(vii)(B)* heading and paragraphs 1 through 3 are added.

F. Under 38(t)(5)(ix)—*Customary recitals and information*, paragraph 1 is revised.

k. Under *Appendix D—Multiple-Advance Construction Loans*, paragraph 7 is revised.

l. Under *Appendix H—Closed-End Forms and Clauses*, paragraph 30 is revised.

### **Supplement I to Part 1026—Official Interpretations**

\* \* \* \* \*

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

\* \* \* \* \*

##### *1(d) Organization.*

##### *Paragraph 1(d)(5).*

1. *Effective date.* i. *General.* The Bureau's revisions to Regulation X and Regulation Z published on December 31, 2013, (the TILA-RESPA Final Rule) apply to covered loans (closed-end credit transactions, other than reverse mortgages, that are secured by real property or a cooperative unit, whether or not treated as real property under State or other applicable law) for which the creditor or mortgage broker receives an application on or after October 3, 2015 (the effective date), except that § 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, 2017, 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, 2017, regardless of when the corresponding applications were received. For transactions in which such conditions exist on or after October 3, 2015, through September 30, 2017, a creditor, servicer, or covered person, as applicable, complies with §§ 1026.20(e) and 1026.39(d)(5) if it provides the mandated disclosures in all cases or if it provides them only in cases where the corresponding applications were received on or after October 3, 2015.

v. *Examples.* For purposes of the following examples, an application received before or after the effective date is any submission for the purpose of obtaining an extension of credit that satisfies the definition in § 1026.2(a)(3), as adopted by the TILA-RESPA Final Rule, even if that



definition was not yet in effect on the date in question. Cross-references in the following examples to provisions of Regulation Z refer to those provisions as adopted or amended by the TILA-RESPA Final Rule, together with any subsequent amendments, unless noted otherwise.

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

*Section 1026.2—Definitions and Rules of Construction*

\* \* \* \* \*

*2(a)(11) Consumer*

\* \* \* \* \*

3. *Trusts.* Credit extended to trusts established for taxation 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.

\* \* \* \* \*

*Section 1026.3—Exempt Transactions*

\* \* \* \* \*

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

\* \* \* \* \*

2. *Requirements of exemption.* The conditions that the transaction not require the payment of interest under § 1026.3(h)(3) and that repayment of the amount of credit extended be forgiven or deferred in accordance with § 1026.3(h)(4) are determined by the terms of the credit contract. The other requirements of § 1026.3(h) need not be reflected in the credit contract, but the creditor must retain evidence of compliance with those provisions, as required by § 1026.25(a). In particular, because the exemption from § 1026.19(e), (f), and (g) means the consumer will not receive the disclosures of closing costs under § 1026.37 or § 1026.38, the creditor must retain evidence reflecting that the costs payable by the consumer in connection with the transaction at consummation are limited to recording fees, transfer taxes, application fees, and housing counseling fees, and that the total of application and housing counseling fees is less than 1 percent of the amount of credit extended, in accordance with § 1026.3(h)(5). Unless

the itemization of the amount financed provided to the consumer sufficiently details this requirement, the creditor must establish compliance with § 1026.3(h)(5) by some other written document and retain it in accordance with § 1026.25(a).

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

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

\* \* \* \* \*

*Section 1026.17—General Disclosure Requirements*

\* \* \* \* \*

*17(c) Basis of Disclosures and Use of Estimates*

\* \* \* \* \*

*Paragraph 17(c)(6)*

\* \* \* \* \*

5. *Allocation of costs.* When a creditor utilizes the special rule in § 1026.17(c)(6) to disclose credit extensions as multiple transactions, all costs of the transactions must be allocated for purposes of calculating disclosures. If a creditor chooses to disclose the credit as multiple transactions, the creditor must allocate to the construction phase all amounts that would not be imposed but for the construction financing. All other amounts must be allocated to the permanent financing. For example, inspection and handling fees for the staged disbursement of construction loan proceeds must be included in the disclosures for the construction phase and may not be included in the disclosures for the permanent phase. If a creditor charges separate application or origination fees for the construction phase and the permanent phase, such fees

must be allocated to the phase for which they are charged. If a creditor charges an application or origination fee for construction financing only but charges a greater application or origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent phase.

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

\* \* \* \* \*

*17(f) Early Disclosures*

1. *Change in rate or other terms.* 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 1/8 of 1 percentage point from the disclosed annual percentage rate, the creditor must either redisclose the changed terms or furnish a complete set of new disclosures

before consummation. Redislosure is required even if the disclosures made on July 1 are based on estimates and marked as such.

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

C. If disclosures for transactions not secured by real property or a cooperative unit are made on July 1, the transaction is consummated on July 15, and the finance charge increased by \$35 but the disclosed annual percentage rate is within the permitted tolerance, the creditor must at least redisclose the changed terms that were not marked as estimates. *See* § 1026.18(d)(2).

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

iii. *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.

\* \* \* \* \*

*Section 1026.18—Content of Disclosures*

\* \* \* \* \*

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

- A. Unsecured;
- B. Secured by personal property that is not a dwelling;
- C. Secured by personal property (other than a cooperative unit) that is a dwelling and 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(g) Payment Schedule*

\* \* \* \* \*

6. *Mortgage transactions.* Section 1026.18(g) applies to closed-end transactions, other than transactions that are subject to § 1026.18(s) or § 1026.19(e) and (f). Section 1026.18(s) applies to closed-end transactions secured by real property or a dwelling, unless they are subject to § 1026.19(e) and (f). Section 1026.19(e) and (f) applies to closed-end transactions secured by real property or a cooperative unit, other than reverse mortgages. Thus, if a closed-end consumer credit transaction is secured by real property, a cooperative unit, or a dwelling and the transaction is a reverse mortgage or the dwelling is personal property but not a cooperative unit, then the creditor discloses an interest rate and payment summary table in accordance with § 1026.18(s). See comment 18(s)-4. If a closed-end consumer credit transaction is secured by real property or a cooperative unit and is not a reverse mortgage, the creditor discloses a



projected payments table in accordance with §§ 1026.37(c) and 1026.38(c), as required by § 1026.19(e) and (f). In all such cases, the creditor is not subject to the requirements of § 1026.18(g). On the other hand, if a closed-end consumer credit transaction is not secured by real property or a dwelling (for example, if it is unsecured or secured by an automobile), the creditor discloses a payment schedule in accordance with § 1026.18(g) and is not subject to the requirements of § 1026.18(s) or §§ 1026.37(c) and 1026.38(c).

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*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).

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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).

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*Section 1026.19—Certain Mortgage and Variable-Rate Transactions*

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*19(e) Mortgage loans—Early disclosures.*

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*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.

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

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5. *Multiple-advance construction loans.* Section 1026.19(e)(1)(iii) generally requires a creditor to deliver the Loan Estimate or place it in the mail not later than the third business day after the creditor receives the consumer’s application and not later than the seventh business day before consummation. When a multiple-advance loan to finance the construction of a dwelling may be permanently financed by the same creditor, § 1026.17(c)(6)(ii) and comment 17(c)(6)-2 permit creditors to treat the construction phase and the permanent phase as either one transaction, with one combined disclosure, or more than one transaction, with a separate disclosure for each transaction. Comment 17(c)(6)-6 explains that a loan to finance the construction of a dwelling meets the condition that it “may be permanently financed by the same creditor” if the creditor generally makes both construction and permanent financing available to qualifying consumers, unless the consumer expressly states that the consumer will not obtain permanent financing from the creditor. Therefore, a creditor that generally makes both construction and permanent financing available, upon receiving a consumer’s application for either construction

financing only without the consumer expressly stating that the consumer will not obtain permanent financing from the creditor or combined construction-permanent financing, complies with § 1026.19(e)(1)(iii) by delivering or placing in the mail the disclosures required by § 1026.19(e)(1)(i) for both the construction financing and the permanent financing, disclosed as either one or more than one transaction, not later than the third business day after the creditor receives the application and not later than the seventh business day before consummation. To illustrate:

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

ii. Assume a creditor receives a consumer's application for construction financing only on Monday, June 1. Assume further that the creditor generally makes only construction financing available to qualifying consumers. In these circumstances, the construction loan for which the consumer applied is not a loan to finance construction of a dwelling that may

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

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

iv. Assume the same facts as in comment 19(e)(1)(iii)-5.i, under which the creditor provides the disclosures required by § 1026.19(e)(1)(i) for both construction financing and permanent financing. If the creditor generally conducts separate closings for the construction financing and the permanent financing or expects that the construction financing and the permanent financing may have separate closings, providing separate Loan Estimates for the construction financing and for the permanent financing allows the creditor to deliver separate Closing Disclosures for the separate phases. For example, assume further that the consumer has requested permanent financing after receiving separate Loan

Estimates for the construction financing and for the permanent financing, that consummation of the construction financing is scheduled for July 1, and that consummation of the permanent financing is scheduled on or about June 1 of the following year. The creditor may provide the construction financing Closing Disclosure at least three business days before consummation of that transaction on July 1 and delay providing the permanent financing Closing Disclosure until three business days before consummation of that transaction on or about June 1 of the following year, in accordance with § 1026.19(f)(1)(ii). The creditor may also issue a revised Loan Estimate for the permanent financing at any time prior to 60 days before consummation, following the procedures under § 1026.19(e)(3)(iv)(F).

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

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

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2. *Disclosure of services for which the consumer may shop.* Section 1026.19(e)(1)(vi)(B) requires the creditor to identify the services for which the consumer is permitted to shop in the disclosures provided under § 1026.19(e)(1)(i). If the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor must specifically identify that service unless, based on the best information reasonably available to the creditor when the

disclosure is provided, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Specific identification of each service in such a package is not required provided all such services are services for which the consumer is permitted to shop. See § 1026.37(f)(3) regarding the content and format for disclosure of services for which the consumer may shop.

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

4. *Identification of available providers.* Section 1026.19(e)(1)(vi)(C) provides that the creditor must identify settlement service providers that are available to the consumer. A creditor does not comply with the identification requirement in § 1026.19(e)(1)(vi)(C) unless it provides sufficient information to allow the consumer to contact the provider, such as the name under which the provider does business and the provider's address and telephone number. Similarly, a creditor does not comply with the availability requirement in § 1026.19(e)(1)(vi)(C) if it provides a written list consisting of only settlement service providers that are no longer in business or that do not provide services where the consumer or property is located. If the charge for a particular service for which the consumer is permitted to shop is payable by the consumer, the creditor

must specifically identify that service and an available provider of that service on the written list of providers unless, based on the best information reasonably available to the creditor at the time the disclosure is provided, the creditor knows that the service is provided as part of a package (or combination of settlement services) offered by a single service provider. Specific identification of each service in such a package is not required provided they all are services for which the consumer is permitted to shop.

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*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.

\* \* \* \* \*



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

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

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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 estimates entirely and then imposed at consummation. In all cases, however, the creditor must also comply with the requirements in § 1026.19(e)(3)(ii)(B) and (C) to satisfy the good faith standard under § 1026.19(e)(3)(ii). If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) instead of § 1026.19(e)(3)(ii) or (iii) regardless of the provider selected by the consumer. The following examples illustrate this principle (and also assume the requirements in § 1026.19(e)(3)(ii)(B) and (C) are satisfied):

i. 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).

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

\* \* \* \* \*

2. *Good faith requirement for required services chosen by the consumer.* If a service is required by the creditor, the creditor permits the consumer to shop for that service consistent with § 1026.19(e)(1)(vi)(A), the creditor provides the list required by § 1026.19(e)(1)(vi)(C), and the consumer chooses a service provider that is not on that list to perform that service, then the actual amounts of such fees need not be compared to the original estimates for such fees to perform the good faith analysis required by § 1026.19(e)(3)(i) or (ii). Differences between the amounts of such charges disclosed 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 subsequently discloses an unreasonably low estimated settlement agent fee, then the under-disclosure does not comply with § 1026.19(e)(3)(iii) and good faith is determined under § 1026.19(e)(3)(i). If the creditor permits the consumer to shop consistent with § 1026.19(e)(1)(vi)(A) but fails to provide the list required by § 1026.19(e)(1)(vi)(C) or the list does not comply with the requirements of § 1026.19(e)(1)(vi)(B) and (C), good faith is determined under § 1026.19(e)(3)(i) instead of § 1026.19(e)(3)(iii) regardless of the provider selected by the consumer.

*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).

4. *Bona fide charges.* In covered transactions, § 1026.19(e)(1)(i) requires the creditor to provide the consumer with good faith estimates of the disclosures in § 1026.37.

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

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

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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).

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

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

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*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 a revised version of the Loan Estimate as required by § 1026.19(e)(1)(i) to the consumer.

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

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

1. *Requirements.* If the consumer indicates an intent to proceed with the transaction more than 10 business days after the disclosures were originally provided 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.

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

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*19(e)(4)(ii) Relationship to disclosures required under § 1026.19(f).*

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



purpose of determining good faith under § 1026.19(e)(3)(i) and (ii) if the revised disclosures are reflected in the corrected disclosures provided under § 1026.19(f)(2)(i) or (2)(ii), subject to the other requirements of § 1026.19(e)(4)(i).

*19(f) Mortgage loans—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).

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*19(f)(2) Subsequent changes.*

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

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2. *Per-diem interest.* Under § 1026.19(f)(2)(iii), if during, the 30-day period following consummation, an event in connection with the settlement of the transaction occurs that causes the disclosures to become inaccurate, and such inaccuracy results in a change to an amount actually paid by the consumer from that amount disclosed under § 1026.19(f)(1)(i), the creditor must provide the consumer corrected disclosures. Under § 1026.17(c)(2)(ii), for a transaction in which a portion of the interest is determined on a per-diem basis and collected at consummation, any disclosure affected by the per-diem interest is considered accurate if the disclosure is based on the information known to the creditor at the time that the disclosure documents are prepared for consummation of the transaction. A creditor is not required to provide to the consumer corrected disclosures under § 1026.19(f)(2)(iii) for any disclosure affected by the per-diem interest that is considered accurate under § 1026.17(c)(2)(ii), even if the amount actually paid by the consumer differs from the amount disclosed under § 1026.38(g)(2) and (o). See also comment 17(c)(2)(ii)-1.

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*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)(ii) Average charge.*

\* \* \* \* \*

3. *Uniform use.* If a creditor chooses to use an average charge for a settlement service for a particular loan within a class, § 1026.19(f)(3)(ii)(C) requires the creditor to use that average charge for that service on all loans within the class. For example:

i. Assume a creditor elects to use an average charge for appraisal fees. The creditor defines a class of transactions as all fixed rate loans originated between January 1 and April 30 secured by real property or a cooperative unit located within a particular metropolitan statistical area. The creditor must then charge the average appraisal charge to all consumers obtaining fixed rate loans originated between May 1 and August 30 secured by real property or a cooperative unit located within the same metropolitan statistical area.

ii. The example in paragraph i of this comment assumes that a consumer would not be required to pay the average appraisal charge unless an appraisal was required on that particular loan. Using the example above, if a consumer applies for a loan within the defined class, but already has an appraisal report acceptable to the creditor from a prior loan application, the creditor may not charge the consumer the average appraisal fee because an acceptable appraisal report has already been obtained for the consumer's application. Similarly, although the creditor defined the class broadly to include all fixed rate loans, the creditor may not require the consumer to pay the average appraisal charge if the particular fixed rate loan program the consumer applied for does not require an appraisal.

\* \* \* \* \*

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

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

1. *Requirement.* Section 1026.19(f)(4)(i) 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 loans for subordinate financing.* In a purchase transaction with a simultaneous loan for subordinate financing, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with only the Closing Disclosure on the first-lien transaction if that Closing Disclosure records the entirety of the seller’s transaction. If the first-lien Closing Disclosure does not record the entirety of the seller’s transaction, the Closing Disclosure for the simultaneous loan for subordinate financing must be provided to the seller and reflect the seller’s transaction as applicable to the subordinate financing. In this case, the settlement agent complies with § 1026.19(f)(4)(i) by providing the seller with a copy of the Closing Disclosure for both the first lien and the simultaneous loan for subordinate financing, if they also contain the information under § 1026.38 relating to the seller’s transaction, or by providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.

\* \* \* \* \*

*Section 1026.23—Right of Rescission*

\* \* \* \* \*

*23(g) Tolerances for Accuracy*

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

\* \* \* \* \*

*23(h) Special Rules for Foreclosures*

\* \* \* \* \*

*23(h)(2) Tolerance for Disclosures*

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

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

\* \* \* \* \*

*Section 1026.25—Record Retention*

\* \* \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

*37(a) General information.*

\* \* \* \* \*

*37(a)(7) Sale price.*

1. *Estimated property value.* In transactions where there is no seller, such as in a refinancing, § 1026.37(a)(7)(ii) requires the creditor to disclose the estimated value of the property identified in § 1026.37(a)(6) at the time the disclosure is issued to the consumer. The creditor may use the estimate provided by the consumer at application unless it has performed its

own estimate of the property value by the time the disclosure is provided to the consumer, in which case it must use its own estimate. If the creditor has obtained any appraisals or valuations of the property for the application at the time the disclosure is issued to the consumer, the value determined by the appraisal or valuation to be used during underwriting for the application is disclosed as the estimated property value. If the creditor has obtained multiple appraisals or valuations and has not yet determined which one will be used during underwriting, it may disclose the value from any appraisal or valuation it reasonably believes it may use in underwriting the transaction. In a transaction that involves a seller, if the sale price is not yet known, the creditor complies with § 1026.37(a)(7) if it discloses the estimated value of the property that it used as the basis for the disclosures in the Loan Estimate.

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

37(a)(8) *Loan term.*

\* \* \* \* \*

3. *Loan term start date.* See comment app. D-7.i for an explanation of how a creditor discloses the loan term of a multiple-advance loan to finance the construction of a dwelling that may be permanently financed by the same creditor.

*37(a)(9) Purpose.*

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

i. *Purchase.* The consumer intends to use the proceeds from the transaction to purchase the property that will secure the extension of credit. In a purchase transaction with a simultaneous loan for subordinate financing, the simultaneous loan is also disclosed with the purpose "Purchase."

ii. *Refinance.* The consumer refinances an existing obligation already secured by the consumer's dwelling to change the rate, term, or other loan features and may or may not receive cash from the transaction. For example, in a refinance with no cash provided, the new amount financed does not exceed the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. Conversely, in a refinance with cash provided, the consumer refinances an existing mortgage obligation and receives money from the transaction that is in addition to the funds used to pay the unpaid principal balance, any earned unpaid finance charge on the existing debt, and amounts attributed solely to the costs of the refinancing. In such a transaction, the consumer may, for example, use the newly-extended credit to pay off the balance of the existing mortgage and other consumer debt, such as a credit card balance.

iii. *Construction.* Section 1026.37(a)(9)(iii) requires the creditor to disclose that the loan is for construction in transactions where the creditor extends credit to finance only the cost of



initial construction (construction-only loan), not renovations to existing dwellings, and in transactions where a multiple advance loan may be permanently financed by the same creditor (construction-permanent loan). In a construction-only loan, the borrower may be required to make interest only payments during the loan term with the balance commonly due at the end of the construction project. For additional guidance on disclosing construction-permanent loans, see § 1026.17(c)(6)(ii), comments 17(c)(6)-2 and -3, and appendix D to this part.

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

\* \* \* \* \*

*37(a)(10) Product.*

\* \* \* \* \*

2. *Additional features.* When disclosing a loan product with at least one of the features described in § 1026.37(a)(10)(ii), § 1026.37(a)(10)(iii) and (iv) requires the disclosure of only the first applicable feature in the order of § 1026.37(a)(10)(ii) and that it be preceded by the time period or the length of the introductory period and the frequency of the first adjustment period, as applicable, followed by a description of the loan product and its time period as provided for in § 1026.37(a)(10)(i). For example:

i. *Negative amortization.* Some loan products, such as “payment option” loans, permit the borrower to make payments that are insufficient to cover all of the interest accrued, and the unpaid interest is added to the principal balance. Where the loan product includes a loan feature that may cause the loan balance to increase, the disclosure required

by § 1026.37(a)(10)(ii)(A) is preceded by the time period that the borrower is permitted to make payments that result in negative amortization (*e.g.*, “2 Year Negative Amortization”), followed by the loan product type. Thus, a fixed rate product with a step-payment feature for the first two years of the legal obligation that may negatively amortize is disclosed as “2 Year Negative Amortization, Fixed Rate.”

ii. *Interest only.* When disclosing an “Interest Only” feature, as defined in § 1026.18(s)(7)(iv), the applicable time period must precede the label “Interest Only.” Thus, a fixed rate loan with only interest due for the first five years of the loan term is disclosed as “5 Year Interest Only, Fixed Rate.” If the interest only feature fails to cover the total interest due, then, as required by § 1026.37(a)(10)(iii), the disclosure must reference the negative amortization feature and not the interest only feature (*e.g.*, “5 Year Negative Amortization, Fixed Rate”). See comment app. D-7.ii for an explanation of the disclosure of the time period of an interest only feature for a construction loan or a construction-permanent loan.

iii. *Step payment.* When disclosing a step payment feature (which is sometimes referred to instead as a graduated payment), the period of time at the end of which the scheduled payments will change must precede the label “Step Payment” (*e.g.*, “5 Year Step Payment”) followed by the name of the loan product. Thus, a fixed rate mortgage subject to a 5-year step payment plan is disclosed as a “5 Year Step Payment, Fixed Rate.”

iv. *Balloon payment.* If a loan product includes a “balloon payment,” as that term is defined in § 1026.37(b)(5), the disclosure of the balloon payment feature, including the year the payment is due, precedes the disclosure of the loan product. Thus, if the loan product is a step rate with an introductory rate that lasts for three years and adjusts each year thereafter until the balloon payment is due in the seventh year of the loan term, the disclosure required is “Year 7

Balloon Payment, 3/1 Step Rate.” If the loan product includes more than one balloon payment, only the earliest year that a balloon payment is due shall be disclosed.

v. *Seasonal payment.* If a loan product includes a seasonal payment feature, § 1026.37(a)(10)(ii)(E) requires that the creditor disclose the feature. The feature is not, however, required to be disclosed with any preceding time period. Disclosure of the label “Seasonal Payment” without any preceding number of years satisfies this requirement.

\* \* \* \* \*

*37(a)(13) Rate lock.*

\* \* \* \* \*

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

\* \* \* \* \*

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

which estimated closing costs expire are left blank on subsequent revised disclosures, if any. See comment 19(e)(3)(iv)-5.

*37(b) Loan terms.*

\* \* \* \* \*

*37(b)(2) Interest rate.*

1. *Interest rate at consummation not known.* Where the interest rate that will apply at consummation is not known at the time the creditor must deliver the disclosures required by § 1026.19(e), § 1026.37(b)(2) requires disclosure of the fully-indexed rate, defined as the index plus the margin at consummation. Although § 1026.37(b)(2) refers to the index plus margin “at consummation,” if the index value that will be in effect at consummation is unknown at the time the disclosures are provided 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.*

\* \* \* \* \*

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. See comment app. D-7.iv for an explanation of the disclosure of the initial periodic payment for a construction or construction-permanent loan.

\* \* \* \* \*

*37(b)(6) Adjustments after consummation.*

\* \* \* \* \*

*37(b)(6)(iii) Increase in periodic payment.*

1. *Additional information regarding increase in periodic payment.* A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the scheduled frequency of adjustments to the periodic principal and interest payment by using the phrases “Adjusts every” and “starting in.” A creditor complies with the requirement under § 1026.37(b)(6)(iii) to disclose additional information indicating the maximum possible periodic principal and interest payment, and the date when the periodic principal and interest payment may first equal the maximum principal and interest payment by using the phrase “Can go as high as” and then indicating the date at the end of that phrase or, for a scheduled maximum amount, such as under a step payment loan, “Goes as high as.” A creditor complies with the requirement under § 1026.37(b)(6)(iii) to indicate that there is a period during which only interest is required

to be paid and the due date of the last periodic payment of such period using the phrase “Includes only interest and no principal until.” See form H-24 of appendix H to this part for the required format of such phrases, which is required for federally related mortgage loans under § 1026.37(o)(3). See comment app. D-7.v for an explanation of the disclosure of an increase in the periodic payment for a construction or construction-permanent loan.

\* \* \* \* \*

*37(c) Projected payments.*

\* \* \* \* \*

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

i. Assume a loan with a 30-year term with a payment that adjusts every month for the first 12 months and is fixed thereafter, where mortgage insurance is not required, and where no escrow account would be established for the payment of charges described in § 1026.37(c)(4)(ii). The creditor discloses as a single range of payments the initial periodic payment and the periodic

payment that would apply after each payment adjustment during the first 12 months, 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), the creditor also separately discloses the periodic payment that would apply after the payment adjustment that occurs at 18 months. See comment 37(c)(3)(ii)-1 regarding subheadings that state the years.

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

2. *Amounts paid by the creditor using escrow account funds.* Section 1026.37(c)(4)(iv) requires the creditor to disclose an indication of whether the amounts disclosed 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 and simultaneous loans for subordinate financing.*

1. *Optional use.* The optional alternative disclosure of the estimated cash to close provided for in § 1026.37(d)(2) may be used by a creditor only in a transaction without a seller or for simultaneous loans for subordinate financing. In a purchase transaction the optional alternative disclosure may be used for the simultaneous subordinate financing Loan Estimate only if the first-lien Closing Disclosure will record the entirety of the seller’s transaction.



Creditors may only use this alternative estimated cash to close disclosure in conjunction with the alternative disclosure under § 1026.37(h)(2).

\* \* \* \* \*

*37(f) Closing cost details; loan costs.*

\* \* \* \* \*

3. *Construction loan inspection and handling fees.* Inspection and handling fees for the staged disbursement of construction loan proceeds are loan costs associated with the transaction for purposes of § 1026.37(f). If such fees are collected at or before consummation, they are disclosed in the loan costs table. If such fees will be collected after consummation, they are disclosed in a separate addendum and are not counted for purposes of the calculating cash to close table. See comment 37(f)(6)-3 for an explanation of an addendum used to disclose inspection and handling fees that will be collected after consummation. *See also* comments 38(f)-2 and app. D-7.viii. If the number of inspections and disbursements is not known at the time the disclosures are provided, the creditor discloses the fees that will be collected based on the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)-1. See § 1026.17(e) and its commentary for an explanation of the effect of subsequent events that cause inaccuracies in disclosures.

\* \* \* \* \*

*37(f)(6) Use of addenda.*

\* \* \* \* \*

3. *Addendum for post-consummation inspection and handling fees.* A creditor makes the disclosures required by § 1026.37(f) and comment 37(f)-3 of post-consummation charges for construction loan inspection and handling fees by disclosing the total of such

fees under the heading “Inspection and Handling Fees Collected After Closing” in an addendum. If the amount of such fees is not known at the time the disclosures are provided, the disclosures in the addendum are based upon the best information reasonably available to the creditor at the time the disclosure is provided. *See* comment 19(e)(1)(i)-1. For example, such information could include amounts the creditor has previously charged in similar transactions.

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

\* \* \* \* \*

*37(g)(4) Other.*

\* \* \* \* \*

4. *Examples.* Examples of other items that are disclosed under § 1026.37(g)(4) if the creditor is aware of those items when it issues the Loan Estimate include commissions of real estate brokers or agents, additional payments to the seller to purchase personal property under the real estate purchase and sale contract, homeowner’s association and condominium charges associated with the transfer of ownership, and fees for inspections not required by the creditor but paid by the consumer under the real estate purchase and sale contract. The creditor must also disclose the following amounts under § 1026.37(g)(4) unless the optional alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing is used and such amounts are disclosed under § 1026.37(h)(2)(iii) on that table: construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.37(a)(6), and payoff of unsecured debt. These costs are disclosed under § 1026.37(g) rather than § 1026.37(f) even when they are payable directly or indirectly to the creditor. For example, if a builder is also the

creditor, the bona fide cost of construction is disclosed under § 1026.37(g)(4) and not § 1026.37(f). See comment 19(e)(3)(iii)-3 for a discussion of the good faith requirement for these services chosen by the consumer that are not required by the creditor. See also comment app. D-7.vii for an explanation of the disclosure of construction costs for a construction or construction-permanent loan and comment app. D-7.viii for an explanation of the disclosure of construction loan inspection and handling fees.

*37(g)(6) Total closing costs.*

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

1. *Lender credits.* Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in § 1026.37(g)(6)(ii). Such lender credits include non-specific lender credits as well as specific lender credits. See comment 19(e)(3)(i)-5.

\* \* \* \* \*

*37(h) Calculating cash to close.*

*37(h)(1) For all transactions.*

\* \* \* \* \*

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

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

1. *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 may include the sale

price disclosed under § 1026.37(a)(7), if applicable. If the result of the calculation is a positive number, that amount is disclosed as a negative number under § 1026.37(h)(1)(ii), but only to the extent that the absolute value of the amount disclosed under § 1026.37(h)(1)(ii) does not exceed the total amount of closing costs disclosed under § 1026.37(g)(6). If the result of the calculation is zero or negative, the amount of \$0 is disclosed under § 1026.37(h)(1)(ii).

2. *Loan amount.* The loan amount disclosed under § 1026.37(b)(1), which is a component of the closing costs financed calculation, is the total amount the consumer will borrow, as reflected by the face amount of the note. Financed closing costs, such as mortgage insurance premiums payable at or before consummation, do not reduce the loan amount.

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

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

2. *Funds for borrower.* Section 1026.37(h)(1)(iii)(A)(2) requires that, when the sum of the loan amount disclosed under § 1026.37(b)(1) and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.37(a)(7), the amount of funds from the consumer is determined in accordance with § 1026.37(h)(1)(v). Section 1026.37(h)(1)(iii)(B) requires that, for all non-purchase transactions, the amount of funds from the consumer is determined in accordance with § 1026.37(h)(1)(v).

Under § 1026.37(h)(1)(v), the amount to be disclosed under § 1026.37(h)(1)(iii)(A)(2) or (h)(1)(iii)(B) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to that will be disclosed under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.37(h)(1)(ii)) from the total amount of all existing debt being satisfied in the real estate closing.

\* \* \* \* \*

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

1. *No funds for borrower.* When the down payment is determined in accordance with § 1026.37(h)(1)(iii)(A)(1), the amount disclosed under § 1026.37(h)(1)(v) as funds for the borrower is \$0.

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

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

1. *Non-specific seller credits to be disclosed.* 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.

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

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

\* \* \* \* \*

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

6. *Reduction in amounts for adjustments.* Adjustments that require additional funds from the consumer pursuant to the real estate purchase and sale contract, such as for additional personal property that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(iii) or adjustments that will be disclosed on the Closing Disclosure under § 1026.38(j)(1)(v), may be included in the amount disclosed under § 1026.37(h)(1)(vii), provided such amounts are not included in the calculation under § 1026.37(h)(1)(iii) or (v) as debt being satisfied in the real estate transaction. Additional examples of such adjustments for additional funds from the consumer include prorations for property taxes and homeowner's association dues. The total amount disclosed under § 1026.37(h)(1)(vii) is a sum of adjustments requiring additional funds from the consumer, calculated as positive amounts, and other credits, such as those provided for in comment 37(h)(1)(vii)-1, calculated as negative amounts.

\* \* \* \* \*

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

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

alternative table for transactions without a seller and simultaneous loans for subordinate financing is optional, but 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.* The amounts incorporated in the total amount disclosed under § 1026.37(h)(2)(iii), unless disclosed under § 1026.37(g)(4), include, but are not limited to: payoffs of existing liens secured by the property identified under § 1026.37(a)(6) such as existing mortgages, deeds of trust, judgments that have attached to the real property, mechanics' and materialmen's liens, and local, State and Federal tax liens; payments of unsecured outstanding debts of the consumer; if the loan purpose is construction in accordance with § 1026.37(a)(9)(iii), construction costs the consumer will be obligated to pay; and payments to other third parties for outstanding debts of the consumer, excluding settlement services. Amounts that will be paid with funds provided by the consumer, including partial payments, such as a portion of construction costs, or by third parties and disclosed on the Closing Disclosure under § 1026.38(t)(5)(vii)(B) are calculated as credits, using positive numbers, in the total amount disclosed under § 1026.37(h)(2)(iii).

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



§ 1026.37(h)(2)(iii), in which case the total amount disclosed under § 1026.37(h)(2)(iii) is disclosed as \$0 or a positive number.

\* \* \* \* \*

*37(k) Contact information.*

\* \* \* \* \*

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

\* \* \* \* \*

*37(l) Comparisons.*

*37(l)(1) In five years.*

\* \* \* \* \*

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

1. *Calculation of total payments in five years.* The amount disclosed 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).

\* \* \* \* \*

*37(l)(3) Total interest percentage.*

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

\* \* \* \* \*

*37(o) Form of disclosures.*

\* \* \* \* \*

*37(o)(4) Rounding.*

\* \* \* \* \*

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

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

1. *Rounding of dollar amounts.* Section 1026.37(o)(4)(i)(A) requires that certain dollar amounts be rounded to the nearest whole dollar. For example, 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 payments of \$164.49 are disclosed as \$164. The prepaid per diem amounts disclosed under § 1026.37(g)(2)(iii) and the monthly amounts for the initial escrow payment at closing disclosed pursuant to § 1026.37(g)(3)(i) through (iii) and (v) are rounded to the nearest cent and are disclosed to two decimal places. For example, under § 1026.37(g)(2)(iii), per diem interest

of \$68 is disclosed as \$68.00, with the two zeros disclosed. See form H-24(B) in appendix H to this part for an illustration of per diem amounts for homeowner’s insurance disclosed pursuant to § 1026.37(g)(3)(i).

\* \* \* \* \*

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

1. *Decimal places.* Section 1026.37(o)(4)(ii) requires the percentage amounts disclosed to be exact amounts rounded to three decimal places, but the creditor does not disclose trailing zeros to the right of the decimal point. For example, a 2.4999 percent annual percentage rate, when rounded as an exact amount to three decimal places, becomes 2.500% but 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%.”

\* \* \* \* \*

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

\* \* \* \* \*

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

i. A principal curtailment to provide a tolerance refund under § 1026.19(f)(2)(v) may be disclosed under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(vii)(B) marked with the phrase “Paid Outside of Closing,” or the abbreviation “P.O.C.,” a statement that this amount includes a refund for an

amount that exceeds the limitations on increases in closing costs under § 1026.19(e)(3), and the amount of such refund under § 1026.19(f)(2)(v).

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

*38(a) General information.*

*38(a)(3) Closing information.*

\* \* \* \* \*

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

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

\* \* \* \* \*

*38(a)(3)(vii) Sale price.*

1. *No seller.* In transactions where there is no seller, such as in a refinancing, § 1026.38(a)(3)(vii)(B) requires the creditor to disclose the appraised value of the property. To comply with this requirement, the creditor discloses the value determined by the appraisal or valuation used to determine approval of the credit transaction. If the creditor has not obtained an appraisal, the creditor may disclose the estimated value of the property. Where an estimate is disclosed, rather than an appraisal, the label for the disclosure is changed to “Estimated Prop. Value.” The creditor may use the estimate provided by the consumer at application but, 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.

\* \* \* \* \*

*38(a)(4) Transaction information.*

\* \* \* \* \*

*2. No seller transactions or simultaneous loans for subordinate financing.* In transactions where there is no seller, such as in a refinancing or home equity loan, or for simultaneous loans for subordinate financing in purchase transactions if the first-lien Closing Disclosure will record the entirety of the seller's transaction, the disclosure under § 1026.38(a)(4)(ii) may be left blank. *See also* § 1026.38(t)(5)(vii)(A).

\* \* \* \* \*

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

\* \* \* \* \*

*38(d) Costs at closing.*

*38(d)(2) Alternative table for transactions without a seller and simultaneous loans for subordinate financing.*

1. *Required use.* The disclosure of the alternative cash to close table in § 1026.38(d)(2) may only be provided by a creditor in a transaction without a seller or for a simultaneous loan for subordinate financing. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative table for transactions without a seller and simultaneous loans for subordinate financing is required if the Loan Estimate provided to the consumer disclosed the optional alternative table under § 1026.37(d)(2) and must be used in conjunction with the use of the alternative calculating cash to close disclosure under § 1026.38(e).

\* \* \* \* \*

*38(e) Alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing.*

1. *Required use.* The disclosure of the table in § 1026.38(e) may only be provided by a creditor in a transaction without a seller or for a simultaneous loan for subordinate financing. In a purchase transaction, the optional alternative disclosure may be used for the simultaneous subordinate financing Closing Disclosure only if the first-lien Closing Disclosure records the entirety of the seller's transaction. The use of this alternative calculating cash to close table for transactions without a seller and simultaneous loans for subordinate financing is required for transactions in which the Loan Estimate provided to the consumer disclosed the optional

alternative table pursuant to § 1026.37(h)(2), and must be used in conjunction with the alternative disclosure under § 1026.38(d)(2).

\* \* \* \* \*

6. *Estimated amounts.* The amounts disclosed on the alternative calculating cash to close table under the subheading “Loan Estimate” under § 1026.38(e)(1)(i), (2)(i), (4)(i) and (5)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer under § 1026.19(e).

\* \* \* \* \*

*38(e)(2) Total closing costs.*

\* \* \* \* \*

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

\* \* \* \* \*

3. *Statements regarding excess amount and any credit to the consumer.* Section 1026.38(e)(2)(iii)(A) requires a statement that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3) or a reduction in principal balance (principal curtailment) under § 1026.38(g)(4) or (t)(5)(vii)(B), if provided under § 1026.19(f)(2)(v). See form H-25(F) in appendix H to this part for examples of such statements under § 1026.38(h)(3). *See also* comments 38-4 and 38(h)(3)-2.

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

\* \* \* \* \*

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

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

*38(f) Closing cost details; loan costs.*

\* \* \* \* \*

2. *Construction loan inspection and handling fees.* Construction loan inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.38(f). For information on how to disclose inspection and handling fees for the staged disbursement of construction loan proceeds if the amount or number of such fees or when they will be collected is not known at or before consummation, see comments 37(f)-3, 37(f)(6)-3, and app. D-7.viii. See § 1026.17(e) and its commentary concerning the effect of subsequent events that cause inaccuracies in disclosures.

\* \* \* \* \*

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

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

\* \* \* \* \*

3. *Recording fees.* i. *Fees for recording deeds and security instruments.* Section 1026.38(g)(1)(i)(A) requires, on the first line under the subheading “Taxes and Other Government Fees” and before the columns described in § 1026.38(g), disclosure of the total fees expected to be paid to State and local governments for recording deeds and, separately, the total



fees expected to be paid to State and local governments for recording security instruments. On a line labeled “Recording Fees,” form H-25 of appendix H to this part illustrates such disclosures with the additional labels “Deed” and “Mortgage,” respectively.

ii. *Total of all recording fees.* Section 1026.38(g)(1)(i)(B) requires, on the first line under the subheading “Taxes and Other Government Fees” and in the applicable column described in § 1026.38(g), disclosure of the total amounts paid for recording fees, including but not limited to the amounts subject to § 1026.38(g)(1)(i)(A). The total amount disclosed under § 1026.38(g)(1)(i)(B) also includes recording fees expected to be paid to State and local governments for recording any other instrument or document to preserve marketable title or to perfect the creditor’s security interest in the property. See comments 37(g)(1)-1, -2, and -3 for discussions of the difference between transfer taxes and recording fees.

*38(g)(2) Prepaids.*

\* \* \* \* \*

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

\* \* \* \* \*

*38(g)(4) Other.*

1. *Costs disclosed.* The costs disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner’s or condominium association charges paid at consummation, home warranties, pre-consummation inspection fees, and other fees that are part of the real estate transaction but not required by the creditor or not disclosed elsewhere under § 1026.38. The creditor also must disclose the following amounts under § 1026.38(g)(4) unless the optional

alternative tables for transactions without a seller and simultaneous loans for subordinate financing are used and such amounts are disclosed under § 1026.38(t)(5)(vii)(B): construction costs in connection with the transaction that the consumer will be obligated to pay, payoff of existing liens secured by the property identified under § 1026.38(a)(3)(vi), and payoff of unsecured debt.

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

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

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

\* \* \* \* \*

*38(i) Calculating cash to close.*

\* \* \* \* \*

2. *Statements of differences.* The dollar amounts disclosed under § 1026.38 generally are shown to two decimal places unless otherwise required. See comment 38(t)(4)-1. Any amount in the Final column of the calculating cash to close table under § 1026.38(i) is shown to two decimal places. 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), (i)(5)(iii)(A), (i)(7)(iii)(A), and (i)(8)(iii)(A) each require a statement that the consumer should see certain details of the closing costs disclosed under § 1026.38(j). Form H-25 of appendix H to this part contains examples of these statements. For example, § 1026.38(i)(7)(iii)(A) requires a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) and, as applicable, in the seller-paid column under § 1026.38(f) and (g). For example, form H-25(B) of appendix H to this part's statement "See Seller Credits in Section L," in which the words "Section L" are in boldface font, complies with this provision. In addition, for example, § 1026.38(i)(5)(iii)(A) requires a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(ii). For example, the following statement, which is similar to that shown on form H-25(B) of appendix H to this part for § 1026.38(i)(7)(iii)(A),

“See Deposit in Section L,” in which the words “Section L” are in boldface font, complies with this provision. In addition, for example, the statement “See details in Sections K and L,” in which the words “Sections K and L” are in boldface font, complies with the requirement under § 1026.38(i)(8)(iii)(A). See form H-25(B) of appendix H to this part for an example of the statement required by § 1026.38(i)(8)(iii)(A).

\* \* \* \* \*

5. *Estimated amounts.* The amounts disclosed in the “Loan Estimate” column of the calculating cash to close table under § 1026.38(i)(1)(i), (3)(i), (4)(i), (5)(i), (6)(i), (7)(i), (8)(i), and (9)(i) are the amounts disclosed on the most recent Loan Estimate provided to the consumer.

*38(i)(1) Total closing costs.*

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

\* \* \* \* \*

3. *Statements regarding excess amount and any credit to the consumer.* Section 1026.38(i)(1)(iii)(A)(3) requires statements that an increase in closing costs exceeds legal limits by the dollar amount of the excess and a statement directing the consumer to the disclosure of lender credits under § 1026.38(h)(3), or a reduction in principal balance (principal curtailment) under § 1026.38(g)(4), (j)(4)(i), or (t)(5)(ix), if provided under § 1026.19(f)(2)(v). See form H-25(F) of appendix H to this part for examples of such statements under § 1026.38(h)(3). *See also* comments 38-4 and 38(h)(3)-2.

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

\* \* \* \* \*

*Paragraph 38(i)(2)(iii)(B).*

1. *Equal amount.* Under § 1026.38(i)(2)(iii)(B), the creditor or closing agent will give a statement that the “Final” amount disclosed under § 1026.38(i)(2)(ii) is equal to the “Loan Estimate” amount disclosed under § 1026.38(i)(2)(i), only if the “Final” amount is \$0.00, because the “Loan Estimate” amount is always disclosed as \$0 under § 1026.38(i)(2)(i). *See* comment 38(i)(2)(i)-1.

*38(i)(3) Closing costs financed.*

1. *Calculation of amount.* The amount of closing costs financed disclosed under § 1026.38(i)(3) is determined by subtracting the total amount of payments to third parties not otherwise disclosed under § 1026.38(f) and (g) from the loan amount disclosed under § 1026.38(b). The total amount of payments to third parties includes the sale price of the property disclosed under § 1026.38(j)(1)(ii). If the result of the calculation is zero or negative, the amount of \$0.00 is disclosed under § 1026.38(i)(3). If the result of the calculation is positive, that amount is disclosed as a negative number under § 1026.38(i)(3), but only to the extent that the absolute value of the amount disclosed under § 1026.38(i)(3) does not exceed the total amount of closing costs disclosed under § 1026.38(h)(1). (The total amount of closing costs disclosed under § 1026.38(h)(1) will never be less than zero because, if the total amount of closing costs disclosed under § 1026.38(h)(1) is a negative number, the amount of \$0.00 is disclosed under § 1026.38(i)(3).)

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

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

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

1. *Down payment.* Under § 1026.38(i)(4)(ii)(A)(1), the down payment is calculated as the difference between the sale price of the property and the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv). Minimum cash investments required of borrowers under some loan programs are not necessarily reflected, and accurate disclosure of the down payment under § 1026.38(i)(4)(ii)(A)(1) does not affect compliance or non-compliance with such loan programs' requirements. The "Final" amount disclosed for "Down Payment/Funds from Borrower" reflects any change, following delivery of the Loan Estimate, in the amount of down payment required of the consumer. This change might result, for example, from an increase in the purchase price of the property.

2. *Funds for borrower.* Section 1026.38(i)(4)(ii)(A)(2) requires that, when the sum of the loan amount disclosed under § 1026.38(b), and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv) exceeds the sale price disclosed under § 1026.38(j)(1)(ii), the amount of funds from the consumer is determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the "Final" amount of "Funds from Borrower" to be disclosed under § 1026.38(i)(4)(ii)(A)(2) is determined by subtracting the sum of the loan amount and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The amount of "Funds from Borrower" under the subheading "Final" is disclosed either as a positive number or \$0.00, depending on the result of the

calculation. An increase in the amount of “Funds from Borrower” under the subheading “Final” relative to the corresponding amount under the subheading “Loan Estimate” might result, for example, from a decrease in the loan amount or an increase in the amount of existing debt being satisfied in the real estate closing. For additional discussion of the determination of the “Down Payment/Funds from Borrower” amount, see comment 38(i)(6)(ii)-1.

*Paragraph 38(i)(4)(ii)(B).*

1. *Funds from borrower.* Section 1026.38(i)(4)(ii)(B) 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 of “Funds from Borrower” determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the “Final” amount of “Funds from Borrower” to be disclosed under § 1026.38(i)(4)(ii)(B) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the real estate closing disclosed under § 1026.38(j)(1)(ii), (iii), and (v). The “Final” amount of “Funds from Borrower” is disclosed either as a positive number or \$0.00, depending on the result of the calculation. An increase in the “Final” amount of “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 real estate closing. For additional discussion of the determination of the “Down Payment/Funds from Borrower” amount, see comment 38(i)(6)(ii)-1.

*Paragraph 38(i)(4)(iii)(A).*

1. *Statement of differences.* Section 1026.38(i)(4)(iii)(A) requires a statement that the consumer has increased or decreased this payment, as applicable, along with a statement that the consumer should see the details disclosed under § 1026.38(j)(1) or (2), as applicable. The creditor makes this disclosure by referencing the corresponding label on the Closing Disclosure under which the information accounting for the increase in the “Down Payment/Funds from Borrower” amount is disclosed. For example, when the calculation is determined in accordance with § 1026.38(i)(4)(ii)(A)(1), if the purchase price of the property has increased and therefore caused the “Down Payment” amount to increase, the statement, “You increased this payment. See details in Section K,” with the words “increased” and “Section K” in boldface, complies with this requirement. In addition, in the event the amount of the credit extended by the creditor has decreased and therefore caused the “Funds from Borrower” amount to increase, the statement, “You increased this payment. See details in Section L,” with the words “increased” and “Section L” in boldface complies with this requirement.

*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) the amount required to be disclosed is \$0, and under § 1026.38(i)(5)(ii) the amount required to be disclosed is \$0.00.



*38(i)(6) Funds for borrower.*

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

1. *Final funds for borrower.* Section 1026.38(i)(6)(ii) provides that the “Final” amount for “Funds for Borrower” is determined in accordance with § 1026.38(i)(6)(iv). Under § 1026.38(i)(6)(iv), the “Final” amount of “Funds for Borrower” to be disclosed under § 1026.38(i)(6)(ii) is determined by subtracting the sum of the loan amount disclosed under § 1026.38(b) and any amount of existing loans assumed or taken subject to disclosed under § 1026.38(j)(2)(iv) (less any closing costs financed disclosed under § 1026.38(i)(3)(ii)) from the total amount of all existing debt being satisfied in the transaction 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 \$0.00, depending on the result of the calculation. The “Final” amount of “Funds for Borrower” disclosed under § 1026.38(i)(6)(ii) is the amount to be disbursed to the consumer or a designee of the consumer at consummation, if any.

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

*38(i)(7) Seller credits.*

\* \* \* \* \*

*Paragraph 38(i)(7)(iii)(A).*

1. *Statement that the consumer should see details.* Under § 1026.38(i)(7)(iii)(A), if the amount disclosed under § 1026.38(i)(7)(ii) in the Final column is not equal to the amount disclosed under § 1026.38(i)(7)(i) in the Loan Estimate column (unless the difference is due to rounding), the creditor must disclose a statement that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table, regardless of whether the difference in the “Seller Credits” in the calculating cash to close table is attributable to general or specific seller credits. However, the creditor may not disclose a statement that the consumer should see the seller-paid column disclosed in the closing cost details table under § 1026.38(f) and (g), unless the difference in the “Seller Credits” in the calculating cash to close table is attributable at least in part to specific seller credits. If, for example, a decrease in the “Seller Credits” is attributable only to a decrease in general (*i.e.*, lump sum) seller credits, then a statement is given under the subheading “Did this change?” in the calculating cash to lose table that the consumer should see the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table. Form H-25(B) in appendix H to this part demonstrates this disclosure where the decrease in seller credits is attributable only to a decrease in general seller credits; form H-25(B)’s statement “See Seller Credits in Section L,” in which the words “Section L” are in boldface font, complies with this requirement. Where the decrease in the “Seller Credits” is attributable in whole or in part to specific seller credits, then a statement is given under the subheading “Did this change?” that the consumer should see both the details disclosed under § 1026.38(j)(2)(v) in the summaries of transactions table and the seller-paid column disclosed in the closing cost details table under § 1026.38(f) or (g). For example, the statement “See Seller-

Paid column on page 2 and Seller Credits in Section L,” in which the words “Seller-Paid” and “Section L” are in boldface font, complies with this requirement.

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

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

1. *Adjustments and other credits.* Under § 1026.38(i)(8)(ii), the “Final” amount for “Adjustments and Other Credits” would include, for example, prorations of taxes or homeowner’s association fees, utilities used but not paid for by the seller, rent collected in advance by the seller from a tenant for a period extending beyond the consummation, and interest on loan assumptions. This category also includes generalized credits toward closing costs given by parties other than the seller. For additional guidance regarding adjustments and other credits, see commentary to §§ 1026.37(h)(1)(vii) and 1026.38(j)(2)(vi) and (xi). If the calculation required by § 1026.38(i)(8)(ii) yields a negative number, the creditor or closing agent discloses the amount as a negative number.

\* \* \* \* \*

*38(j) Summary of borrower’s transaction.*

\* \* \* \* \*

3. *Identical amounts.* The amounts disclosed under the following provisions of § 1026.38(j) are the same as the amounts disclosed under the corresponding provisions of § 1026.38(k): § 1026.38(j)(1)(ii) and (k)(1)(ii); § 1026.38(j)(1)(iii) and (k)(1)(iii); if the amount disclosed under § 1026.38(j)(1)(v) is attributable to contractual adjustments between the consumer and seller, § 1026.38(j)(1)(v) and (k)(1)(iv); § 1026.38(j)(1)(vii) and (k)(1)(vi); § 1026.38(j)(1)(viii) and (k)(1)(vii); § 1026.38(j)(1)(ix) and (k)(1)(viii); § 1026.38(j)(1)(x) and (k)(1)(ix); § 1026.38(j)(2)(iv) and (k)(2)(iv);

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

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

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

1. *Contract sales price and personal property.* Section 1026.38(j)(1)(ii) requires disclosure of the contract sales price of the property being sold, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for such items. On the Closing Disclosure for a simultaneous loan for subordinate financing, no contract sales price is disclosed under § 1026.38(j)(1)(ii). Personal property is defined by State law, but could include such items as carpets, drapes, and appliances. Manufactured homes are not considered personal property under § 1026.38(j)(1)(ii).

*Paragraph 38(j)(1)(v).*

1. *Contractual adjustments.* Section 1026.38(j)(1)(v) requires disclosure of amounts 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, any outstanding real estate property taxes are disclosed under § 1026.38(j)(1)(v) without a corresponding credit in the summary of the seller's transaction under § 1026.38(k)(1)(iv).

\* \* \* \* \*

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

\* \* \* \* \*

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

\* \* \* \* \*

2. *Subordinate financing proceeds on first-lien Closing Disclosure.* Any financing arrangements or other new loans not otherwise disclosed under § 1026.38(j)(2)(iii) or (iv) must 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 second loan is disclosed on the summaries of transactions table for the borrower's transaction either on line 04 under the subheading "L. Paid Already by or on Behalf of Borrower at Closing," or under the subheading "Other Credits." If the net proceeds of the subordinate financing are less than the principal amount of the subordinate financing, the net proceeds 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.

\* \* \* \* \*

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 a description and the amount of any additional amounts, not already disclosed under § 1026.38(f), (g), (h), and (j)(2), that are owed to the consumer but payable to the seller before the real estate closing. For example, rent paid to the seller from a tenant before the real estate closing for a period extending beyond the real estate closing is disclosed under § 1026.38(j)(2)(vi) and under the heading “Adjustments.”

*Paragraph 38(j)(2)(xi).*

1. *Examples.* Section 1026.38(j)(2)(xi) requires the disclosure of any amounts the consumer is expected to pay after the real estate closing that are attributable in part to a period of time prior to the real estate closing. Examples of items that would be disclosed under § 1026.38(j)(2)(xi) include:

- i. Utilities used but not paid for by the seller; and
- ii. Interest on loan assumptions.

\* \* \* \* \*

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

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

1. *Charges not paid with closing funds.* Section 1026.38(j)(4)(i) requires that any charges not paid from closing funds but that otherwise are disclosed 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 reduction in principal balance (principal curtailment) to provide a refund under § 1026.19(f)(2)(v).

\* \* \* \* \*

*38(k) Summary of seller’s transaction.*

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

\* \* \* \* \*

*38(l) Loan disclosures.*

\* \* \* \* \*

*38(l)(7) Escrow account.*

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

1. *Estimated costs not paid by escrow account funds.* Section 1026.38(l)(7)(i)(A)(2)

requires the creditor to estimate the amount the consumer is likely to pay during the first year after consummation for the 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.

\* \* \* \* \*

*38(o) Loan calculations.*

1. *Examples.* Section 1026.38(o)(1) and (2) sets forth the accuracy requirements for the total of payments and the finance charge, respectively. The following examples illustrate the interaction of these provisions:

i. Assume that loan costs that are designated borrower-paid at or before closing and that are part of the finance charge (see § 1026.4 for calculation of the finance charge) are understated by more than \$100. For example, assume that borrower-paid loan origination fees (*see* § 1026.4(a)) are cumulatively understated by \$150, resulting in the amounts disclosed as the total

of payments and the finance charge both being understated by more than \$100. Both the disclosed total of payments and the disclosed finance charge would not be accurate for purposes of § 1026.38(o)(1) and (2), respectively.

ii. Assume that loan costs that are designated borrower-paid at or before closing and that are not part of the finance charge are understated by more than \$100. For example, assume that borrower-paid property appraisal and inspection fees that are excluded from the finance charge under § 1026.4(c)(7)(iv) are cumulatively understated by \$150, resulting in the amount disclosed as the total of payments being understated by more than \$100. The disclosed total of payments would not be accurate for purposes of § 1026.38(o)(1), but the disclosed finance charge would be accurate for purposes of § 1026.38(o)(2).

*38(o)(1) Total of payments.*

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

37(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(t) Form of disclosures.*

\* \* \* \* \*

*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)(5) Exceptions.*

\* \* \* \* \*

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

1. *Permissible form modifications to separate consumer and seller information.* The modifications to the form permitted by § 1026.38(t)(5)(v) may be made by the creditor in any one of the following ways:

i. Leave the applicable disclosure blank concerning the seller or consumer on the form provided to the other party;

ii. Omit the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party; or

iii. Provide to the seller, or assist the settlement agent in providing to the seller, a modified version of the form under § 1026.38(t)(5)(vi), as illustrated by form H-25(I) of appendix H to this part.

2. *Provision of separate disclosure to consumer.* If applicable State law prohibits sharing with the consumer the information disclosed under § 1026.38(k), a creditor may provide a separate form to the consumer. A creditor may also provide a separate form to the consumer in any other situation where the creditor in its discretion chooses to do so, such as based on the seller's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)-1.

3. *Provision of separate disclosure to seller.* To separate the information of the consumer and seller under § 1026.38(t)(5)(v), a creditor may provide (or assist the settlement agent in providing) a separate form to the seller where applicable State law prohibits sharing with the seller the information disclosed under § 1026.38(a)(2), (a)(4)(iii), (a)(5), (b) through (d), (f), or (g), with respect to closing costs paid by the consumer, or § 1026.38(i), (j), (l) through (p), or (r), with respect to closing costs paid by the creditor and mortgage broker. A creditor may also

provide (or assist the settlement agent in providing) a separate form to the seller in any other situation where the creditor in its discretion chooses to do so, such as based on the consumer's request. For the permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)-1.

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

1. For permissible form modifications to separate consumer and seller information, see comment 38(t)(5)(v)-1.

*38(t)(5)(vii) Transaction without a seller and simultaneous loans for subordinate financing.*

\* \* \* \* \*

2. *Appraised property value.* The modifications permitted by § 1026.38(t)(5)(vii) do not specifically refer to the label required by § 1026.38(a)(3)(vii)(B) for transactions that do not involve a seller, because the label is required by that section and therefore is 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 using negative numbers. Some examples of amounts paid by

third parties that may be disclosed as credits on the payoffs and payments table under § 1026.38(t)(5)(vii)(B) include gift funds, grants, and proceeds from loans exempt from the disclosure requirements in § 1026.19(e), (f), and (g) under § 1026.3(h).

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

3. *Other examples.* For additional examples of items disclosed under § 1026.38(t)(5)(vii)(B), see comment 37(h)(2)(iii)-1. See also comment 38-4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under § 1026.38(t)(5)(vii)(B) to provide a refund under § 1026.19(f)(2)(v).

*38(t)(5)(ix) Customary recitals and information.*

1. *Customary recitals and information.* Section 1026.38(t)(5)(ix) permits an additional page to be added to the disclosure for customary recitals and information used locally in real estate settlements. Examples of such information include a breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, check disbursements, a statement indicating receipt of funds, applicable special stipulations between buyer and seller, and the date funds are transferred. See also comment 38-4 for an explanation of how to disclose a reduction in principal balance (principal curtailment) under § 1026.38(t)(5)(ix) to provide a refund under § 1026.19(f)(2)(v).

\* \* \* \* \*

*Appendix D—Multiple-Advance Construction Loans*

\* \* \* \* \*

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

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

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

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

there will be 11 monthly interest payments and a final balloon payment of principal and interest is “11 mo. Interest Only, Fixed Rate.”

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

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

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

v. *Increase in periodic payment.* A. Calculation of the construction financing periodic payments using the assumptions in appendix D produces interest-only periodic payments that are



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

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

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

vi. *Projected payments table.* A creditor must disclose a projected payments table for certain transactions secured by real property or a cooperative unit, pursuant to §§ 1026.37(c) and 1026.38(c), instead of the general payment schedule required by § 1026.18(g) or the interest rate and payments summary table required by § 1026.18(s). Accordingly, some home construction loans that are secured by real property or a cooperative unit are subject to §§ 1026.37(c) and

1026.38(c) and not § 1026.18(g). See comment app. D-6 for a discussion of transactions that are subject to § 1026.18(s). Following are illustrations of the application of appendix D to transactions subject to §§ 1026.37(c) and 1026.38(c), under each of these two alternatives:

A. If a creditor uses appendix D and elects pursuant to § 1026.17(c)(6)(ii) to disclose the construction and permanent phases as separate transactions, the construction phase must be disclosed according to the rules in §§ 1026.37(c) and 1026.38(c). Under §§ 1026.37(c) and 1026.38(c), the creditor must disclose the periodic payments during the construction phase in a projected payments table. The provision in appendix D, part I.A.3, which allows the creditor to omit the number and amounts of any interest payments “in disclosing the payment schedule under § 1026.18(g)” does not apply because the transaction is governed by §§ 1026.37(c) and 1026.38(c) rather than § 1026.18(g). If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part I.A.1. Also, because the construction phase is being disclosed as a separate transaction and its terms do not repay all principal, the creditor must disclose the construction phase transaction as a product with a balloon payment feature, pursuant to §§ 1026.37(a)(10)(ii)(D) and 1026.38(a)(5)(iii), unless the transaction has negative amortization, interest only, or step payment features, consistent with the requirement at § 1026.37(a)(10)(iii). In addition, the creditor must provide the balloon payment disclosures pursuant to §§ 1026.37(b)(5), 1026.37(b)(7)(ii), and 1026.38(b) and disclose the balloon payment in the projected payments table.

B. If the creditor elects to disclose the construction and permanent phases as a single transaction, the repayment schedule must be disclosed pursuant to appendix D, part II.C.2. Under appendix D, part II.C.2, the projected payments table must reflect the interest-only

payments during the construction phase in a first column, which also reflects the amortizing payments for the permanent phase if the term of the construction phase is not a full year, followed by the appropriate column(s) reflecting the amortizing payments for the permanent phase. If interest is payable only on the amount actually advanced for the time it is outstanding, the creditor determines the amount of the interest-only payment to be made during the construction phase using the assumption in appendix D, part II.A.1.

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

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

viii. *Construction loan inspection and handling fees.* Comment 4(a)-1.ii.A provides that inspection and handling fees for the staged disbursement of construction loan proceeds are part

of the finance charge. Comment 37(f)-3 states that such inspection and handling fees are loan costs associated with the transaction for purposes of § 1026.37(f) and, as such, must be disclosed accurately as part of the Loan Estimate. These fees must also be disclosed accurately as part of the Closing Disclosure, and comment 38(f)-2 refers to explanations under comments 37(f)-3 and 37(f)(6)-3 for making these disclosures. Comment 37(f)-3 provides that, if such fees are collected at or before consummation, they are disclosed in the loan costs table. If such fees will be collected after consummation, they are disclosed in a separate addendum and are not counted for purposes of the calculating cash to close table. Comment 37(f)(6)-3 provides an explanation of how to disclose inspection and handling fees that will be collected after consummation in an addendum attached as an additional page after the last page of the Loan Estimate. Under comment 38(f)-2, the same explanation applies to an addendum used for disclosing such fees in the Closing Disclosure.

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*Appendix H—Closed-End Forms and Clauses*

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

[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE TITLED  
“AMENDMENTS TO FEDERAL MORTGAGE DISCLOSURE REQUIREMENTS  
UNDER THE TRUTH IN LENDING ACT (REGULATION Z)”]

Dated: July 28, 2016.



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**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*