Consumer Mortgage Coalition

GUIDANCE REQUESTS for
RESPA / TILA INTEGRATED ORIGINATION DISCLOSURES
to the BUREAU OF CONSUMER FINANCIAL PROTECTION

Updated November 6, 2014

RESPA / TILA Integrated Disclosures
Guidance Requests
November 6, 2014 Draft

Citation	Topic	Question & Analysis
1. §1026.19(e)(3)(i)	Lender Credits/ Principal Curtailments	On pages 349-350, the Preamble states, "[u]nder current Regulation X, the loan originator may only apply the amount of the excess lender credits to the additional closing costs previously not anticipated to be included in the loan, apply the excess to a principal reduction to the outstanding balance of the loan, pay the consumer the excess in cash, or reduce the interest rate and the credit accordingly. Creditors will be able to take the same actions with respect to lender creditors [sic] in streamlined refinancing programs under this final rule." 1. Where in the rule or commentary is the permissible treatment of excess lender credits reflected? 2. Applying the amount of excess lender credits to the principal balance of the loan does not reduce the amount of funds available to the borrower. However, in some instances not involving lender credits, a lender may determine at closing that, due to a reduction in closing costs, the amount of the lien being refinanced, or some other reason, the final settlement of the loan may result in cash back to the borrower that exceeds an investor's "limited or no-cash out" program restrictions. In such cases it is common industry practice for lenders to require a principal curtailment at closing so as not to exceed those restrictions. In these situations the curtailment is made out of loan proceeds and would affect how the loan is repaid. Would the impact of such a 'closing curtailment' (not resulting from a lender credit) have to be reflected in the Loan Amount, Projected Payments, APR, TIP, Total of Payments, Finance Charge and Amount Financed disclosures in the Closing Disclosure documents?
2. §1026.19(e)(3)(iii); §1026.37(f)(2)	Loan Estimate; Tolerances Applicable to Homeowner's Insurance, HOA and Similar Fees	On page 364, the Preamble states, "[t]he final rule also mirrors current Regulation X in that property insurance premiums, property taxes, homeowner's association dues, condominium fees, and cooperative fees are subject to tolerances whether or not they are placed into an escrow, impound, reserve, or similar account." 1. What tolerances now apply to property insurance? The reference with regard to property insurance premiums does not accurately reflect the current Regulation X requirements. Page 3 of the GFE clearly states that charges for "homeowner's insurance" can change. The preamble statement also appears to contradict the Rule itself at Section

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		1026.19(e)(3)(iii)(B). 2. The preamble does not indicate the applicable tolerance for HOA and similar fees. Are these fees now subject to a 10% tolerance or a 0% tolerance? The Preamble at pages 829-830 indicates that such services would be considered "not shoppable." We note that the rationale for applying a 0% tolerance to third party fees that the creditor does not permit the consumer to shop for does not logically apply to HOA, Condominium or Co-op fees, or to fees to subordinate an existing lien when that existing lien is not held by the creditor or an affiliate. The creditor does not select the provider of these services and has no ability, whatsoever, to control these fees.
3. §1026.19(e)(3)(iii)(E)	Does the 10% Tolerance Apply to Owner's Title	Is owner's title insurance, which is not required by the creditor, subject to the 10% tolerance? On pages 362-363 and 365 there are statements that owner's title insurance is subject to the 10% tolerance. However, this provision of the regulation states that variations are permitted for "charges paid for third-party services not required by the creditor" and Comment 37(f)(2)-4 indicates that owner's title that is not required by the creditor is disclosed as an "Other" charge.
4. §1026.19(e)(3)(iv)(A)	Redisclosure for Changes to 10% Tolerance Charges Due to Changed Circumstances	For charges subject to the 10% tolerance: 1. Is it correct that whether changes are disclosed before reaching the 10% threshold will have no effect on how subsequent changes are disclosed and their tolerances? 2. Beginning with the change that exceeds the threshold, must that change and every subsequent change be timely disclosed in order to increase the threshold to the extent justified by each of those changes? 3. The example in Comment 19(e)(3)(iv)(A)-1.ii makes clear that changed circumstances that increase fees by 10% or less do not cause the 10% tolerance to be recalculated. However, if changed circumstances increase fees by more than 10% and a timely redisclosure is provided, is the 10% recalculated based on the aggregate amount of fees on the revised Loan Estimate?

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5. §1026.19(e)(3)(iv)(C)	Redisclosure for Changes to 10% Tolerance Charges Due to Borrower Requested Changes	While §19(e)(3)(iv)(A) states that the revised Loan Estimate may be used when changed circumstances cause fees to increase by more than 10%, §19(e)(3)(iv)(C) on borrower requested changes, does not refer to the 10% tolerance. If a borrower requested change causes fees subject to the 10% tolerance to increase by less than 10% then: 1. Does the revised Loan Estimate have to be provided within 3 business days of that borrower requested change, or is redisclosure still timely if it is provided within 3 business days after changes cause the tolerance to be exceeded? 2. If a revised Loan Estimate is provided for this change, is the 10% tolerance recalculated based on the revised Loan Estimate?

6. §1026.19(e)(4(ii); §1026.19(e)(4)(iii)(B); §1026.19(f)(1)(ii); §1026.19(f)(1)(iii)	Ability to Rely Upon the Closing Disclosure for Tolerance Comparisons	When should a lender stop providing revised Loan Estimates and start providing the Closing Disclosure in order to meet the rule's waiting period requirements without losing its ability to increase fees due to triggering changes?
		
		The following provisions of the Rule are relevant to this issue:
		
		• <u>3 Business Day Waiting Period After Closing Disclosure Received</u>
		  ○ §1026.19(f)(1)(ii) requires that the Closing Disclosure be received by the consumer three business days before consummation.
		  ○ §1026.19(f)(1)(iii) provides that if the Closing Disclosure is not provided in person, the consumer is considered to have received it three business days after it is delivered or placed in the mail. Comment 19(f)(1)(iii)-2 states that when a disclosure is not provided in person, the creditor may rely upon evidence that the consumer received the disclosure earlier.
		    ▪ As a practical matter, creditors cannot assume that they will be able to provide the Closing Disclosure to the consumer by personal delivery, or if the disclosures are delivered by another method that they will be able to obtain proof that the disclosures were delivered on the same day that they were provided. Under §1026.19(f)(1)(ii)&(iii), creditors will need to mail the Closing Disclosures 6 business days before consummation so that the consumer will be considered to have received them in time to meet the 3 business day waiting period requirement. Per Comment 19(f)(1)(ii)-2, this would be one week before the scheduled consummation date assuming that each weekday is a business day and there are no holidays.
		
		• <u>Revised Loan Estimate May Not Be Provided on or After Date of Closing Disclosure</u>
		§1026.19(e)(4)(ii) states that a creditor may not "provide" a revised Loan Estimate on or after the date

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		the creditor "provides" the Closing Disclosure. Comment 19(e)(4)(ii)-1 indicates that "provide" includes delivery methods other than delivery in person, including electronic delivery. • <u>Revised Loan Estimate Must be Received 4 Business Days Before Consummation</u> §1026.19(e)(4)(ii) requires that the consumer must receive the revised Loan Estimate four business days before consummation, and if the revised Loan Estimate is not provided in person, the consumer is considered to have received it three business days after it is delivered or placed in the mail. o Again, creditors cannot assume that they will be able to provide the revised Loan Estimate to the consumer by personal delivery, or if the disclosures are delivered by another method that they will be able to obtain proof that the disclosures were delivered on the same day that they were provided. Creditors will need to mail a revised Loan Estimate 7 business days before consummation to meet both the 7 business day from mailing or delivery waiting period under §1026.19(e)(1)(iii)(B) and the receipt within 4 business day requirement under §1026.19(e)(4)(ii) (adding the 3 days required for presumption of receipt). • <u>If a Triggering Change Occurs and the Time Period Between When the Revised Loan Estimate Is Required to be Provided and Consummation is Less than 4 Business Days, the Closing Disclosure May Reflect Revised Fees and the Creditor May Rely Upon Closing Disclosure for Tolerances</u> Comment 19(e)(4)(ii)-1 states that if there are "less than four business days between the time the revised version of the disclosures [Loan Estimate] is required to be provided pursuant to §1026.19(e)(4)(i) and consummation," the revised fees may be reflected in the Closing Disclosure. A revised Loan Estimate is not required to be provided until three business days after the triggering change. The word "between" indicates that neither the day that the revised Loan Estimate would be required to be provided, nor the day of consummation should be counted when determining if there are less than four business days between those two dates. This would be consistent with example (ii) in the Comment. In that example, the Closing Disclosure is scheduled to be delivered by e-mail on Wednesday. Because e-mail is not in person delivery, the Closing Disclosure would be considered received on Saturday and would be timely for consummation on Wednesday, assuming all weekdays are business days and there are no holidays. The example states that a triggering change occurs on Tuesday, and the creditor will be compliant by providing a Closing Disclosure reflecting the triggering change on Wednesday. In this example the deadline for providing the revised Loan Estimate would be Friday (three business days after the Tuesday triggering change) and "between" the Friday deadline and the Wednesday consummation there would only be three business days (Saturday, Monday and Tuesday). o <u>Small Entity Compliance Guide</u> - The Small Entity Compliance Guide discusses when a triggering change occurs "between the fourth and third business day before consummation," which could occur if the fourth and third business day were separated by a Sunday and/or

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		holiday. However, the Comment's example (ii) reflects a triggering change that occurs on a business day and that business day is at least seven business days prior to consummation. If the Guide reflects an interpretation by the CFPB that a triggering change may only be reflected on the Closing Disclosure if the change occurs within four business days of consummation, then there would appear to be no way that a creditor could protect itself from fee increases due to a triggering change occurring on the 5th or 6th business day before consummation.
7. §1026.19(e)(4)(ii)	Ability to Rely Upon the Closing Disclosure for Tolerance Comparisons if Closing Delayed	If a creditor has timely issued a Closing Disclosure that includes revised fees due to changed circumstances, and then the closing is delayed, may the creditor rely upon the Closing Disclosure for tolerances comparisons for subsequently issued Closing Disclosures?
8. §1026.37(a)(7); §1026.17(d)	Applicants	If there are multiple applicants and the Loan Estimate is provided to one of the applicants who is primarily liable, should the names and addresses of all applicants be listed on the Loan Estimate or only the applicant to whom the Loan Estimate is provided? Would it be permissible to list the name and/or address of applicants to whom the Loan Estimate is not delivered? Comment 17(d)-2 indicates that where there are multiple applicants the disclosures required by §1026.19(e) (the Loan Estimate) may be provided to one of the applicants who is primarily liable. Comment 37(a)(5)-1 states that if there is more than one consumer "the name and address of each consumer to whom the Loan Estimate will be delivered" must be disclosed. However the "Guide to the Loan Estimate and Closing Disclosure forms" in section 2.2.1 on page 13 states "Applicants includes the name and mailing address of the consumer(s) applying for the loan. Use each Applicant's name and mailing address if there are multiple applicants." There is a conflict between the Commentary and this guidance as to whether the names and addresses of consumers to whom the Loan Estimate is not delivered should be listed.
9. §1026.37(a)(7)	Sales Price or Est. Prop. Value if Contract Sales Price is Not Known	Is Comment 37(a)(7)-1 only addressing the amount disclosed when the Sales Price is not known, or is it also directing that the "Sales Price" label should be changed to "Est. Prop. Value"? Section 1026.37(a)(7)(i) appears to indicate that "Sales Price" should always be used if a transaction involves a seller. However, Comment 37(a)(7)-1 recognizes that at the time of the Loan Estimate the sales price may not be known, and the creditor will be in compliance if it discloses the "estimated value of

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		the property" used as a basis for the Loan Estimate disclosure.
10. §1026.37(a)(10)	Loan With Step Rate and Adjustable Rate Features	If a loan product consists of a combination of two product types – e.g. a step rate for a set period of time, followed by an adjustable rate for the remaining term of the loan – how is the product to be described? Should it be described as an Adjustable Rate loan or as a Step Rate loan? While §1026.37(a)(10)(iii) provides that if a loan has more than one loan feature, e.g. negative amortization, interest only, step payment, balloon payment, seasonable payment, only the "first applicable feature in the order they are listed in the regulation" is to be disclosed, there is no comparable provision for when a loan is a combination of product types. In the AIR Table, §1026.37(j)(1)&(2) indicates that for such a combination products the Index + Margin disclosures for ARM loans should be provided rather than the "Interest Rate Adjustments" disclosure for Sep Rate loans.
11. §1026.37(b)(2)	Interest Rate	Will a comment be added for §1026.37(b)(2) to clarify that the initial interest rate, rather than the fully-indexed rate, should be disclosed when the initial interest rate is not set using the same formula that is not used for subsequent adjustments? While the Preamble at page 706 indicates that the estimated initial interest rate should be disclosed as the interest rate when the initial interest rate is not set using the same formula that is used for subsequent adjustments, neither the Regulation nor the Commentary indicate that fact. Furthermore, the "Guide to the Loan Estimate and Closing Disclosure forms" in section 2.2.2 on page 18 again repeats the confusing statement that "if the initial Interest Rate is not known at consummation, the fully indexed rate is disclosed; a fully-indexed rate is the interest rate calculated using the index and margin at the time of consummation."
12. §1026.37(b)(8)	Timing in Loan Terms Disclosure	In disclosing the year in which a rate adjustment occurs, for a loan where per diem interest is collected at closing for a partial month, e.g., closing on August 15th, interest accrued between August 15th and August 31st collected at closing, and the first scheduled payment is not due until more than one month after closing, e.g. October 1st, and includes only the interest accrued during the one-month period immediately preceding the first scheduled payment, e.g. September 1st through September 30th, does the counting of years include or disregard the period of time for which the per diem interest is collected at closing?
13. §1026.37(c)(1)(ii)	Mortgage	If an escrow account will be established and amounts for mortgage insurance will be included in the initial

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	Insurance/Escrowed Premiums	escrow deposit, should those amounts be taken into consideration when calculating when mortgage insurance will automatically terminate? Comment 37(c)(1)(i)(C)-3 is similar to Comment 18(g)-5, but lacks guidance on how to treat the escrowed premiums.
14. §1026.37(c)(1)(ii)	Projected Payments/Mortgage Insurance	If mortgage insurance will automatically terminate in the time period that would be included in the 4th column, would there be no indication that mortgage insurance will terminate before the end of the loan?
15. §1026.37(c)(2)&(j)	ARM Minimum Rate	If a note specifies a minimum interest rate that is less than the margin, can the disclosures reflect that minimum interest rate, or must they instead reflect the margin? Comment 37(j)(4)-1 states that the minimum interest is the minimum rate of interest that may apply under the terms of the legal obligation, but if the terms of the legal obligation do not state a minimum interest rate, the minimum interest rate that applies to the transaction under applicable law must be disclosed. If the terms of the legal obligation do not state a minimum interest rate, and no other minimum interest rate applies to the transaction under applicable law, the amount of the margin is disclosed. Comment 37(c)(2)(i)-1 is similar, but does not refer to applicable law establishing a minimum interest rate. Nonetheless, H-24(C) contains an example of how to complete the Loan Estimate on a loan where, after the first 5 years at an initial interest rate of 4%, the interest rate will equal the Monthly Treasury Average index plus a margin of 4%. The projected minimum principal and interest payment for years 6-30 reflect an interest rate of 3.25%, which is also the minimum interest rate shown in the AIR table. While it is theoretically possible for an index to have a negative value, it is highly unlikely.
16. §1026.37(f)(1)	Origination Fees/ Administrative and Processing Fees	Regulation X currently prohibits creditors from disclosing document preparation fees and other "administrative and processing fees" separately. If a creditor uses a third party to perform such services: 1. May the creditor choose to pay third party administrative and processing fees and not disclose them as separate fees on the Loan Estimate? 2. If the creditor must disclose these fees on the Loan Estimate, should they be listed under "A. Origination Charges," notwithstanding the fact that they are paid to third parties, or should they be listed under "B. Services You Cannot Shop For"? Comment 37(f)(1)-1 appears to limit origination charges to amounts paid to a creditor or loan originator, but Comment 37(f)(1)-3 states that underwriting, processing and verification fees may be

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		included in the origination charge without limiting that to situations where those services are performed by the creditor or loan originator. Comment 37(f)(2)-2, which sets forth examples of "services you cannot shop for" does not include within those examples the types of fees that Regulation X treated as administrative and processing fees.
17. §1026.37(f)(1)	Origination Fees/Points other than Discount Points	If a creditor charges an origination fee that is a percentage of the loan amount, but that point is not a discount point for the purpose of buying down the rate, may the creditor identify it as a point in some way to preserve its tax deductibility for the consumer? The IRS permits a deduction for points in the year paid when certain requirements are met, including that: "The amount is clearly shown on the settlement statement (such as the Settlement Statement, Form HUD-1) as points charged for the mortgage." *See* *IRS Publication 936*, p 7, Deduction Allowed in Year Paid, Item 9.
18. §1026.37(f)(1)	Origination Fees/LLPAs	If a creditor will pay an LLPA to the secondary market purchaser, but offers the borrower a zero or lower point option, and the consumer chooses to pay for discount points in an amount greater than the LLPA to obtain a lower rate, may the creditor disclose the amount paid as discount points rather than as an LLPA? Comment 37(f)(1)-5 states, "the following charges should be itemized separately: … a charge imposed to pay for a loan level pricing adjustment assessed on the creditor, which the creditor passes onto the consumer as a charge at consummation and not as an adjustment to the interest rate." This provision may conflict with the treatment of LLPA and discount points in the determination of the bona fide discount point exclusion for the amounts included in Points and Fees for QM and HOEPA purposes. In the context of those rules, if the lender offered a zero or lower point option to a borrower, which covered the LLPA in the rate, and the borrower subsequently chose to pay additional amounts to lower the rate, those amounts would be considered discount points and potentially eligible for exclusion. Is this still the case, so that there is no need to itemize the LLPA if the borrower has been given the option of paying for the LLPA through a higher, undiscounted rate?
19. §1027.37(f)(1)	Loan Estimate Lender Credits; Closing Disclosure Costs Paid by Others;	1. If a fee is not allowed under an FHA or VA program, should the creditor: (a) not disclose such fees because they are not customarily paid on FHA or VA loans, or (b) if such fees are customarily paid on loans that are not FHA or VA loans, is the creditor required to disclose them on an FHA or VA loan?

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	FHA Upfront Premium; Premium Rate Credit	2. If a creditor is required to disclose fees that are not allowable on FHA or VA loans, where should those fees be disclosed, and where should the lender disclose the offsetting credit? 3. How should any premium rate credit be disclosed? May the creditor add a separate addendum or document, as necessary, to detail each fee offset?
20. §1026.37(g)(4)	Satisfaction of Debt as an Other Cost	The calculation of Down Payment/Funds from Borrower and Funds for Borrower under §1026.37(h)(1)(iii) and (v) and Payoffs and Payments under §1026.37(h)(2)(iii) refers to satisfaction of existing debt disclosed under §1026.37(g), but §1026.37(g) does not state when that is required nor does Comment 37(g)(4)-4 include in its example any repayment of debts. Comment 37(h)(2)(iii)-1 indicates Payoff and Payments includes "unsecured outstanding debts of the consumer, and payments to other third parties for outstanding debts of the consumer (but not for settlement services) as required to be paid as a condition for the extension of credit," which therefore indicates that such debts would not be disclosed under §1026.37(g). 1. When is the satisfaction of an existing debt required to be disclosed under §1026.37(g) as an Other Cost? a. Is it only if it is a debt owed to the creditor? b. Is it only secured debts (and if so do they have to be secured by the property securing the new loan)? c. Is it only debts that are not required to be repaid as a condition of the loan? d. Does it include debts of other parties (such as the seller) that the borrower is repaying?
21. §1026.37(g)(6) §1026.38(h)(2)&(3)	Lender Credits/Specific Credits	1. If the creditor offers both specific and general lender credits, should the amounts disclosed as lender credits in Section J of the Loan Estimate under §1026.37(g) be: (a) the sum of the specific and general credits; or (b) only the amount of the general lender credits? 2. Assuming that a specific lender credit would be included in the aggregate amount of lender credits disclosed under Section J of the Loan Estimate per Comment 19(e)(3)(i)-5 and disclosed in the Paid by Others column of the Closing Cost Details section of the Closing Disclosure per Comment

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		38(h)(3)-1, would the specific lender credit be shown on the line of the this section as a "Lender Credit," and if so, under which column? Would both general lender credits and specific lender credits be shown in the Lender credit row with the general lender credits shown in the Borrower-Paid at Closing column and the specific lender credit in the Paid by Others column? We believe that disclosing the sum of specific and general lender credits is the right interpretation, and the failure to include specific lender credits would cause overstatements in Total Closing Costs and Cash to Close. However, the Regulation provides conflicting information on this question: • Comment 37(g)(6)(ii)-1 provides, "[l]ender credits. Section 1026.19(e)(1)(i) requires disclosure of lender credits as provided in §1026.37(g)(6)(ii). Comment 19(e)(3)(i)-5 describes such lender credits as payments from the creditor to the consumer that <u>do not pay for a particular fee</u> on the disclosures provided under § 1026.37." (Emphasis added.) The discussion of this Comment in the Preamble on pages 863 and 864 discusses specific lender credits without clearly indicating whether or not they should be included in the amount of lender credits disclosed in Section J of the Loan Estimate. • Comment 19(e)(3)(i)-5 states "[t]he disclosure of 'lender credits,' as identified in §1026.37(g)(6)(ii), is required by §1026.19(e)(1)(i). 'Lender credits,' as identified in §1026.37(g)(6)(ii), represents <u>the sum of non-specific lender credits and specific lender credits.</u>" (Emphasis added). Furthermore, Comment 19(e)(3)(i)-5 provides an example where the disclosed lender credit was a specific lender credit to pay an appraisal fee. The Preamble's discussion of this Comment on pages 347-349 supports including specific credits in the amount of lender credits disclosed in Section J of the Loan Estimate because it notes that "lender credits and specific credits are not separately disclosed on the RESPA GFE" and that the final rule maintains the "status quo". The same uncertainty applies to how specific lender credits are disclosed in the subtotals and totals on page 2 of the Closing Disclosure. If a specific lender credit is included in the amount disclosed on the Loan Estimate per Comment 19(e)(3)(i)-5, then §1026.38(h)(3), by stating that the amount disclosed as lender credits should be the same as the amounts disclosed under §1026.37(g)(6)(ii), would include specific credits within Lender credits. Comment 38(h)(3)-1 makes clear that the specific lender credit should be shown in the Paid by Others column, but it does not clearly address how this affects the totals and subtotals.
22. §1026.37(h)(1)(ii)	Closing Costs Financed	Comment 37(h)(1)(ii)-1, as proposed to be revised, states that the amount of closing costs financed is determined by subtracting the estimated total amount of payments to third parties not otherwise disclosed pursuant to §1026.37(f) and §1026.37(g) from the total loan amount. 1. What types of "third party" payments are subtracted?

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		a. For example, what if the outstanding mortgage being paid off will be paid to the creditor or an affiliate? Are they third parties for this purpose? b. Is the Deposit or Down Payment subtracted? c. Are payments of amounts other than debts subtracted? 2. If a portion of Total Closing Costs will be paid by a seller credit, does that have any impact on the calculation of Closing Costs Financed? There is no mention of seller credits affecting this disclosure, but how can the same closing costs be both paid by the seller and paid from loan proceeds?
23. §1026.37(h)(1)(v)	Funds from Borrower	The amount of funds from the consumer disclosed as "Down Payment/Funds from Borrower" and of funds for the consumer disclosed as "Funds for Borrower" are determined by subtracting the principal amount of the credit extended (excluding any amount disclosed as Closing Costs Financed) 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 paragraph (g) of this section). 1. Does the "existing debt" being satisfied include any type of debt, other than debts disclosed under §1026.37(g), whether or not the creditor required it to be repaid? 2. Are the same payments of debts owed to third parties that were included in the Closing Costs Financed calculation included again in this calculation? (Note also the question above asking when the satisfaction of an existing debt should be disclosed as a loan cost under §1026.37(g).) It appears that the equivalent provisions for the Closing Disclosure under §1026.38(g) & (i)(6)(iv) also provide no information. 3. How does this relate to the amounts disclosed as payoffs and payments under §1026.37(h)(2) when the optional calculating cash to close table for transactions without a seller is used? Should the amount shown as "Cash from Borrower" be the same whether or not the optional disclosure is used? (See H-25(G) at page 1539 for a Closing Disclosure example). The explanation of this provision on pages 872-873 states that the amount of credit extended was considered under proposed § 1026.37(h)(2), but that provision related to closing costs to be financed. 4. Why does this calculation result in disclosing $0 as Funds for Borrower in a purchase transaction? If no existing debt is being satisfied as is the usual case in a purchase transaction, subtracting the

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		principal amount of the loan will result in a negative number, not a positive number.
24. §1026.37(h)(2)(iii)	Payoffs and Payments	Payoffs and payments includes payments to third parties not disclosed pursuant to §1026.37(f) and (g). 1. What debt is disclosed under § 1026.37(g) instead of here? 2. Does the payoff of any outstanding debt of the consumer get listed here or only those debts of the consumer that are required to be paid as a condition of the extension of credit?
25. §1026.37(i)	AP Table/Maximum Payment	Should the maximum possible payment on an amortizing ARM or an Interest Only ARM be considered "scheduled" and the described using the "starting at" phrase rather than the "as early as" phrase? The concern is that on ARM loans the maximum payment may never be reached and Comment 37(j)(5)-4 indicates that a "potential" maximum payment should be described using the phrase "as early as." Comment 37(i)(5)-4 states that the maximum payment is described as "starting at" if it is scheduled, and "as early as" if it is a potential payment. The Comment's example of a "potential" payment is on a loan with optional payments and negative amortization. The interest only example in H-24(C) on page 1491 indicates that the maximum payment is "$2,068 starting at 169th payment". The interest only ARM in this example is scheduled for an adjustment at that time, but that maximum payment is not "scheduled" because the loan might never reach the 12% ceiling rate and maximum payment.
26. §1026.37(j)(1)	AIR Table/Index	1. How does a creditor determine whether an index's abbreviation or acronym is a "commonly used public method" of identifying the index, allowing the use of that abbreviation or acronym in the disclosures? Comment 37(j)(1)-1 offers LIBOR as an example and form H-24(c) show MTA as an example. Are there any others that could be used? 2. What does a creditor do when there is no commonly used abbreviation for an index, but the full name of the index is too long for the space provided in the AIR Table? 3. For indices that have multiple maturities, is a creditor required to disclose the maturity of the index, or is it sufficient to simply disclose the index without specifying the maturity?
27. §1026.37(k)	Contact Information	1. In a loan with a mortgage broker, must both a creditor's loan officer and a mortgage broker's loan officer be listed?

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		2. If it is acceptable to list only one, may the one listed be either the creditor's employee or the mortgage broker's employee, or must a determination be made of whose loan officer is the primary contact?
28. §1026.37(l)(1)	In 5 Years	It would appear that the In 5 Years calculation includes the amounts paid to and including the 60th monthly payment and would not include the interest that accrues during the 60th month but is not paid until the 61st payment. Is that correct?
29. §1026.37(m)(2)	Assumptions	Would a successor-in-interest be considered a "subsequent purchaser" for the purpose of the Assumption disclosure? Under the Garn-St. Germaine Act, a servicer may not exercise due-on-sale provisions under certain situations, including certain transfers related to death or divorce. The successor-in-interest in these cases is often permitted to assume the loan in order to modify it to affordable terms or to buy out the interests of others in the property. However, the same loan would not be assumable by an ordinary purchaser. How should the assumption disclosure be completed?
30. §1026.37(m)(6)	Servicing	1. Should the creditor check the box that it intends to transfer servicing if the transfer will occur at a later date? In some cases a creditor may intend to service the loan for a short period of time before transferring servicing. Section 6(a) of RESPA refers to a transfer at any time while the loan is outstanding, but the language in the model forms does not provide any information to the consumer about whether the creditor intends to transfer servicing immediately or at some later point while the loan is still outstanding. 2. If a creditor intends to transfer servicing to its subsidiary or an affiliate, should the creditor check the box that intends to transfer servicing?
31. §1026.37(o)(4)	Rounding	1. If a range of principal and interest payments is not disclosed under §1026.37(c)(1)(iii), such as when a loan is a fixed rate equal payment loan, then should the principal and interest payment not be

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		rounded even if the loan has mortgage insurance? If that principal and interest payment happens to be a whole number, should it not be truncated? H-24(B) on page 1486 reflects that treatment. On a loan with mortgage insurance, this is not clear because §1026.37(c)(1)(iii) refers back to §1026.37(c)(1), whose discussion of when a range must be disclosed includes termination of mortgage insurance. 2. Because the mortgage insurance and escrow components of the Estimated Total Monthly Payment must be rounded, is the only time when the Estimated Total Monthly Payment should not be rounded is on a loan that requires neither mortgage insurance nor escrow and the principal and interest payment is a fixed amount that will not change? 3. Comment 37(o)(4)-1 states that any amount required to be disclosed under §1026.37 is not permitted to be rounded and is disclosed using decimal points where applicable, unless otherwise provided. There are a number of disclosures in the model forms that are not the disclosures listed in §1026.37(o)(4)(i), which nonetheless, show whole dollars with no cents. Does the reference to using decimal points "where applicable" mean that if the amount is a whole number, then it should be truncated at the decimal point? If so, then why does §1026.37(o)(4)(i)(B) specify this treatment only for the disclosure of the Loan Amount. 4. The rounding rules do not cover all dollar amounts shown on the Loan Estimate and the examples in the model forms do not treat all of the disclosures listed below in the same way. What do we do for these other dollar amounts: a. Is the "Sales Price" or "Prop. Value" required by (a)(7) and disclosed on page 1 rounded and/or truncated? b. Is the initial principal and interest payment required by (b)(3) and shown under Loan Terms and by (c)(1)(i) in the first column of Projected Payments always the unrounded, untruncated amount? c. Would disclosures of the amount of late fees required by (m)(4) and disclosed on page 3 not be rounded and/or truncated? 5. For the "Additional Details for Services You Can Shop For" list required by §1026.19(e)(1)(vi)(C), there is no guidance as to whether the amounts shown should be rounded or listed as whole dollars with cents truncated, but the example of the list in H-27(B) shows whole dollars. Were these amounts rounded, or were they truncated, and is a creditor required to round or truncate those amounts?

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32. §1026.38(a)(4)	Non-Applicant Co-Owners	A non-applicant co-owner who has the right to rescind must receive a copy of the Closing Disclosure, but should that person's name and mailing address be shown here notwithstanding the fact that the person is not a "borrower"? Comment 38(a)(4)-1 is ambiguous because it refers to "each consumer …in the transaction," which could include a non-applicant co-owner with the right to rescind, but it also refers to Comment 37(a)(5)-1, which is clearly limited to consumers who have applied for credit.
33. §1026.38(f); §1026.38(g); §1026.38(h)	Closing Disclosure; Tolerance Violation Disclosures	Should any tolerance violation tied to a specific fee be disclosed generally in Section J or specifically tied to each such fee in the Paid by Others column?
34. §1026.38(h)(3)	Correcting Tolerance Violation With Lender Credit	Is the example shown on form H-25(F) the only way in which a tolerance violation may be corrected? May a creditor correct or avoid a tolerance violation by providing a lender credit in the Paid by Other column for a specific fee?
35. §1026.38(i)	Calculating Cash to Close/Explanations of Changes	The Regulation provides some examples of the explanations that must be provided when the final amounts are different than the amounts on the Loan Estimate, but it does not provide examples of all explanations: 1. Total Closing Costs - The Regulation and Commentary only address changes in total closing costs due to a change in total loan costs (D) and/or total other costs (I). However, total closing costs could decrease as a result of the Lender providing an additional general credit that would be disclosed in section J. Should the following explanation be provided: " **YES** • See **Lender Credits (J)**"? 2. Closing Costs Financed - If closing costs financed have changed, would the following explanation be sufficient whether the amount of closing costs financed increased or decreased from the Loan Estimate: "**YES** • You included Closing Costs in the Loan Amount, which **increased** the Loan Amount"? 3. Down Payment - If the purchase price of the property deceased, would this cause a decrease in the Down Payment? If so would the following explanation be sufficient:

Citation	Topic	Question & Analysis
		"**YES** • You **decreased** this payment. See details in **Section K**"? 4. Funds From Borrower - Does a change in the loan amount always result in a change in Funds from Borrower? If the amount of the loan increases is the following explanation sufficient: "**YES** • You **decreased** this payment. See details in **Section L**"? 5. Funds For Borrower - Would the following explanations of increases or decreases in Funds for Borrower be sufficient: "**YES** • Your available funds from the loan amount have **increased**"; or "**YES** • Your available funds from the loan amount have **decreased**"? 6. Adjustments and Other Credits - H-25(B) on page 1525 shows "**YES** • See details in **Sections K and L**". Please confirm that an explanation referring to both Sections K and L is sufficient, and that unlike a change in Total Closing Costs, it is not necessary to specify which particular section caused the change.
36. §1026.38(l)(5)	Partial Payment Policy	Section 1026.38(l)(5) refers to whether the "creditor" accepts partial payments, but the Preamble on page 1096 states that "[w]ith respect to the concern that the disclosure could be misleading in situations where creditors transfer the servicing of a consumer's loan shortly after consummation, and the servicer has a different policy, the Bureau believes that this concern suggests that the creditor and the servicer to whom the creditor intends to transfer the servicing of the loan must effectively communicate regarding the partial payment policy that will apply to the transaction." In a correspondent execution, it is not unusual for an originating creditor to accept one or more monthly payments before the loan is sold due to closed loan sale contingencies (financial/process/other), which may not be predictable when the originating creditor's closing processor prepares the Closing Disclosure. For example, many correspondent sellers have a processing shop that prepares disclosures and closes the loan, a separate post-close process to review/deem the loan ready for sale, and a separate "capital markets"/financial function that selects the investor when the loan is ready to be sold. Further contingencies are typical due to varying investor pre-purchase review/suspense processes, which vary by investor and/or loan characteristics. 1. Does the statement on page 1096 mean that the commenter's' "concern" was misplaced, and the original creditor may disclose its own policy and need not determine whether any subsequent servicer will have a different policy? 2. Does the statement mean that the original creditor must determine and disclose the servicer's policy

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		if the creditor intends to sell the loan shortly after consummation, without taking into account: (a) the reasonable likelihood that the original creditor may have to accept some payments before the loan sale/servicing transfer because of unpredictable loan sale contingencies that might delay the sale; or (b) the strong possibility that the next servicer cannot/will not be identified until after the loan closes? Disclosing the policy of the original creditor in these situations would be consistent with the language of the disclosure itself, which refers to the policy of the "lender," and would be consistent with the expectations of the consumer as set by this disclosure. Additionally, if servicing is transferred after closing (even shortly after closing) to a servicer with a different partial payment policy, the consumer would receive a disclosure of that policy as part of the mortgage transfer disclosures required by §1026.39.
37. §1026.38(l)(7)	Property Costs Over Year 1	1. Escrowed Property Costs Over Year 1 - How is the number of escrow payments during the first year being calculated? The total amount the consumer will be required to pay into an escrow account over the first year after consummation for payment of property costs is calculated by taking the "Monthly Escrow Payment" and multiplying it by the number of periodic payments scheduled to be made to the escrow account during the first year after consummation. H-25(E) on pages 1530-1535 shows a loan closing on 4/15/13 with interim interest charged through 5/1/13, which would indicate that the first monthly payment would be due on 6/1/13. This would result in 11 monthly payments through 4/15/14, the one year anniversary of consummation. The amount disclosed as the Monthly Escrow Payment is $206.13. That amount multiplied by 11 is $2,267.43. However the amount shown on H-25(E) for Escrowed Property Costs over Year 1 is $2,473.56, which is equal to the Monthly Escrow Payment of $206.13 time 12. 2. Non-Escrowed Property Costs Over Year 1 - How is the first year after consummation calculated? Comment 38(l)(7)(i)(A)(2)-1 states that non-escrowed property costs over year 1 are such amounts scheduled to be paid during the first year after consummation. For non-escrowed items, are the number of escrow payments ignored and the determination made solely based upon whether they will be paid during the first year after consummation?
38. §1026.38(l)(7)	Descriptive Names for Escrowed and Non-Escrowed Items	Is there any difference between the descriptions used on the Closing Disclosure as compared to the descriptions used on the Loan Estimate under §1026.37(c)(4)? Does a description have to be provided for each item without the ability to use the "and additional costs" phrase? What does the creditor do if there is insufficient space?

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39. §1026.38(p)(1)	Appraisal	For the Loan Estimate, Comment 37(m)(1)-1 says that the appraisal disclosure may be "omitted." Some of the variations of page 5 of the Closing Disclosure in H-25(A) omit the appraisal disclosure. However, for the Closing Disclosure, Comment 38(p)(1)-1 says that the disclosure may be left "blank." The appraisal disclosure on the Closing Disclosure is text with no check boxes or blanks to fill in. How can this disclosure be left "blank?"
40. §1026.38(p)(3)	Liability After Foreclosure	On the Loan Estimate, this disclosure is only provided if the purpose of the loan is a refinance. Does that requirement also apply to the Closing Disclosure, or does this disclosure appear whether or not the loan purpose is a refinance?
41. §1026.38(t)(4)	Rounding	This provision provides that the percentage amounts required to be disclosed under paragraphs (b), (f)(1)(i), (g)(2)(iii), (l)(3), (n), and (o)(5) shall not be rounded and shall be disclosed up to two or three decimal places. However, paragraph (f)(1) does not appear to have an "(i)" nor does (g)(2) have an "(iii)". In the Loan Estimate, §1026.37(f)(1)(i) refers to the discount points shown under section A of "Loan Costs" on page 2 of the Loan Estimate and §1026.37(g)(2)(iii) refers to the initial interest rate disclosed under section F of Other Costs for the calculation of prepaid interest (per diem interest). Was this requirement meant to apply to the equivalent disclosures on the Closing Disclosure?
42. §1026.38(t)(5)	Additional Page for Confirm Receipt	When an additional page is needed for signatures, what constitutes an "appropriate reference" to an additional Confirm Receipt signature page?
43. §1026.3(a); §1026.17(d); §1026.23(a)(4)	Coverage of Trusts	1. For a transaction to be subject to Regulation Z, the transaction must involve an extension of credit to a "natural person." The commentary provides that land trusts and trusts that were created for tax or estate planning purposes (or both), are subject to Regulation Z, assuming the transaction is primarily for personal, family, or household purposes because in substance, if not in form, consumer credit is being extended. When the borrower is a trust, what factors should a creditor consider to ensure that the trust is a loan to a "natural person", rather than to an organization? Specifically, what information and evidence can a creditor rely upon to determine that the trust was created for tax or estate planning purposes and primarily for personal, family, or household purposes? 2. Assuming the transaction is subject to Regulation Z, when a trust is an obligor on a mortgage or a natural person is an obligor on a mortgage, but the loan is secured by property owned by a trust, which natural persons – the settlor, the trustee, the beneficiary, or some combination thereof – should receive the

Citation	Topic	Question & Analysis
		disclosures and have the right to rescind? Does the answer change if the trust is not the sole obligor or sole owner?
44. §1026.17(c)(1)	Partial Term Buydown Through Subsidy Account	Is a consumer funded subsidy account, from which a portion of the monthly payment is withdrawn each month to supplement the consumer's out of pocket payment during the early years of the loan, a "consumer buydown"? Comment 17(c)(1)-4 states, "[c]onsumer buydowns must be reflected as an amendment to the contract's interest rate," but a subsidy account does not cause the interest rate and total monthly payment to go down.
45. §1026.17(d)	Timing of Closing Disclosure Provided to Non-Applicant Co-Owners with Right to Rescind	Does the requirement for the consumer to receive the Closing Disclosure three business days before consummation apply to a non-applicant co-owner with the right to rescind? Comment 17(d)-2 clarifies that a non-applicant co-owner with a right to rescind must receive his or her own copy of the Closing Disclosure. However, the comment does not specifically address the timing rules.
46. §1026.19(e)(1)(vi); §1026.19(f)(1)(v)	Reasonable Requirements For Settlement Service Providers	1. What types of requirements, beyond applicable licensing requirements, are considered reasonable for a creditor to impose upon a consumer chosen settlement service provider and still have the service considered shoppable? For example, may a creditor require: (1) that the cost of the provider's service not be unreasonably high; (2) that a title company obtain proper closing protection and errors and omissions insurance; (3) that the service provider be a disinterested third party; (4) that the title company meet applicable requirements issued by investors such as Fannie Mae and Freddie Mac, including not being on their respective "watch" or "exclusionary" lists; (5) that the settlement agent must agree to how the creditor wants to divide disclosure duties; or (6) that the settlement agent must agree to use creditor proscribed communication procedures, including use of such things as software platforms, or other means of electronic communication? 2. Pursuant to §1026.19(f)(1)(v), the creditor is ultimately responsible for ensuring that the disclosures required by §1026.19(f) are provided in accordance thereto. Given that, may the creditor require a consumer chosen services provider to contractually agree to certain terms, including maintaining communications with the creditor about its services and the cost of its services; requiring specified modes of communication between the service provider and the creditor; requiring timely communication of

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		information the service provider has agreed to collect (i.e. seller payoffs, city and county tax information, recording fees, etc.)?
47. §1026.19(e)(3)(iv)(E)	Expiration of Shopping Period on Revised Loan Estimate	If the creditor issues a revised Loan Estimate within the ten business day shopping period and before the consumer has indicated intent to proceed, does the date that the shopping period expires remain the same, or is the ten business day shopping period reset, starting from the date the revised Loan Estimate was provided? Section 1026.19(e)(3)(iv)(E) states that the shopping period expires 10 business days after the Loan Estimate has been provided pursuant to §1026.19(e)(1)(iii). Because §1026.19(e)(1)(iii) states that the disclosures must be provided within 3 business days after the consumer's receipt of the application, the reference appears to be to when the original Loan Estimate is provided. A revised Loan Estimate is provided pursuant to §1026.19(e)(3)(iv). It, therefore, appears that the issuance of a revised Loan Estimate will not extend or reset the shopping period.
48. §1026.19(f)(2)(ii)	Does Decrease in Interest Rate and APR Require Revised Closing Disclosure and New Waiting Period	Does a reduction in the interest rate, which results in the APR disclosed on the Closing Disclosure being higher than the actual APR by more than the tolerances provided for in Regulation Z § 1026.22(a), require a redisclosure and a new waiting period? Assume for the purposes of this question that all finance charges other than interest included on the Closing Disclosure are accurate and that the lower APR is solely due to the lower interest rate. The examples in Comment 19(f)(2)(ii)-1.i on page 1730 reflect an increase in the interest rate and APR. The Preamble on page 534 refers to the need to trigger new disclosures and a new waiting period when a change may involve "higher APRs." The Guide to the Loan Estimate and Closing Disclosure Forms on page 55 provides that a new Closing Disclosure is required and a new three-day waiting period is triggered when there is "an increase to the APR that becomes inaccurate." Section 1026.19(f)(2)(ii)(A) also refers to the disclosed APR becoming inaccurate, as defined in §1026.22. Section 1026.22(a)(2) and (3) state that the disclosed APR shall be considered accurate if not more that 1/8 or 1/4 of a percentage "above or below" the actual APR. Section 1026.22(a)(4) states that the APR will be considered accurate if it results from the disclosed finance charge and the finance charge would be considered accurate under §1026.18(d)(1). Section 1026.18(d)(1)(ii) says that the disclosed finance charge is considered accurate if it "[is] greater than the amount required to be disclosed." It is clear that if disclosed APR is overstated solely due to an overstatement of a prepaid finance charge that the APR would be considered accurate under these provisions. But if the disclosed APR is overstated due to an interest rate that is lower than the disclosed interest rate, is it still considered to be accurate and not trigger a new waiting period?

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49. §1026.19(f)(3)(ii)	Average Charge	This provision of the rule states that the creditor or settlement service provider must "define the class of transactions based on an appropriate period of time, geographic area, and type of loan." 1. How is the "type of loan" defined for this purpose? Is the "type of loan" referenced in §1026.19(f)(3)(ii) different than "loan type" as defined under §1026.37(a)(11)? 2. Are there any restrictions on the characteristics a creditor may use to define a type of loan, if those characteristics affect the cost of a service? If not, how can a creditor define a class that does not pool costs between dissimilar populations?
50. §1026.37(a)(9) §1026.37(d)(2)	Loan Purpose; Multiple Consumers; Ability to Use Alternative Cash to Close Table	Assume that Consumer A is an owner of the property and is the sole borrower on an existing loan secured by the property. Consumer A will be obtaining a new loan that will pay off the existing loan. If Consumer A was the only borrower on the loan, it is clear that the loan purpose would be "Refinance." However, assume that on the new loan there will be a second borrower, Consumer B. 1. If Consumer B is purchasing an interest in the property from Consumer A and both will be borrowers on the new loan, then: a. Should the loan purpose be disclosed as Purchase or as Refinance? b. Would this transaction be considered to be a transaction with a seller such that the alternative calculating cash to close table could not be used? c. If Consumer A is considered to be a "seller" should the Closing Disclosure reflect Consumer A as both a borrower and as a seller? 2. If the property is jointly owned by Consumers A and B, but only Consumer A is a borrower on the current loan and both will be borrowers on the new loan, is the new loan disclosed as a Refinance or as a Home Equity Loan? In the Preamble at page 676 the Bureau states that a GSE commenter noted that for a loan to be considered a purchase loan "none of the borrowers" can currently hold an ownership interest. The Bureau's response address the fact that if "the consumer" already has an ownership interest in the property the transaction will not be a purchase, but fails to clearly address multiple borrower situations. The definition of "Refinance" in §1026.37(a)(9)(ii) and comment 37(a)(9)-2 refer to the definition of refinancing in §1026.20(a). That section refers to a new obligation undertaken by "the same consumer." However, neither that section nor the commentary provisions for those sections address the addition of one or more consumers on the new loan. It does not appear that §1026.37(d)(2), or its commentary provisions, address whether a borrower selling an interest in the property to a co-borrower, who had no previous ownership interest, prevents the use of the alternative cash to close table or triggers seller

Citation	Topic	Question & Analysis
		disclosures.
51. §1026.37(a)(10)(i)(B)	Preferred Rates and Third Party Buydowns	1. Should loans with preferred rates or third-party buydowns be treated as step rate loans? The CFPB referred to Comment 17(c)(1)-11.iii for preferred rates, which states that disclosures for a preferred rate loan are to be based upon the preferred rate. The CFPB also referred to Comment 17(c)(1)-3 for third party buydowns, which refers to the rates in the contract. However, the answer is not clear. 2. If a partial term buydown is not reflected in the rate but is instead accomplished by funding a subsidy account from which a portion of the monthly payment is withdrawn each month to supplement the borrower's out of pocket payment, should the loan be considered a step rate or step payment loan even though the interest rate is fixed and the amounts of the total monthly payment (out of pocket plus amount withdrawn from the subsidy account) are equal?
52. §1026.37(g)(1)	Transfer Taxes, Charges Addressed by Property Contract	Comment 37(g)(1)-4 provides that "Only transfer taxes paid by the consumer are disclosed on the Loan Estimate pursuant to § 1026.37(g)(1). State and local government transfer taxes are governed by State or local law, which determines if the seller or consumer is ultimately responsible for paying the transfer taxes. For example, if State law indicates a lien can attach to the consumer's acquired property if the transfer tax is not paid, the transfer tax is disclosed. If State or local law is unclear or does not specifically attribute transfer taxes to the seller or the consumer, the creditor is in compliance with requirements of § 1026.37(g)(1) if the amount of the transfer tax disclosed is not less than the amount apportioned to the consumer using common practice in the locality of the property." This leads to the following questions: 1. Assume that at the time the creditor issues the LE the creditor has a copy of the property contract and the property contract provides that the seller will pay the transfer taxes. May the creditor not disclose the transfer taxes on the Loan Estimate because "only transfer taxes paid by the consumer are disclosed on the Loan Estimate" notwithstanding the fact that the consumer might be liable under the State or local law if the taxes were not paid by the seller or that the common practice in the locality of the property is for the consumer to pay? Comment 37(g)(1)-5 also provides that transfer taxes paid by the seller in a purchase transaction are not disclosed on the Loan Estimate (which presumably would include situations where the seller has agreed to pay them notwithstanding local practice or the provisions of the state or local law). We wish to confirm that the rule effects a change from current RESPA requirements. The RESPA FAQs

Citation	Topic	Question & Analysis
		provided the following Q&A under "GFE – Seller paid items": Q: If at the time a GFE is issued it is known that the seller will pay settlement charges typically paid by the borrower, how are the charges disclosed on the GFE? A: All charges typically paid by the borrower must be disclosed on the GFE regardless of whether the charges will be paid for by the borrower, the seller, or other party. An additional reason for asking for this clarification is that comment 37(g)-2 indicates that if the creditor has a copy of the contract at the time the Loan Estimate has been issued and the contract imposes a charge on the consumer the Loan Estimate should disclose the charge. However, the comment does not address deleting charges that are usually paid by the consumer but which the seller has contractually agreed to pay. 2. If the answer to question 1 is that the transfer taxes do not have to be disclosed on the Loan Estimate if the purchase contract provides that the seller will pay them, does the answer change if the creditor does not have a copy of the purchase contract but the consumer or the realtor confirms that the purchase contract contains that provision? If that confirmation turns out to be incorrect, may the creditor treat that as a changed circumstance? Pursuant to §1026.19(e)(2)(iii), a creditor cannot require the consumer to submit documents, including the property contract, as a condition of issuing the Loan Estimate. Accordingly, the creditor will usually not have the property contract at the time it prepares the Loan Estimate. However, the creditor may know that the seller will pay the transfer taxes if the consumer or realtor provides that information. Comment (f)(1)(i)-2 states that a creditor might look to "realtors for taxes and escrow fees," which would appear to include transfer taxes. 3. If the answer to question 1 is that the transfer taxes do not have to be disclosed on the Loan Estimate if the purchase contract provides that the seller will pay them, does that same principle apply to other charges which the borrower usually pays but the purchase contract provides that the seller will pay, or is this principle limited to transfer taxes such that the charges must be disclosed notwithstanding that the seller will pay them? 4. Assume that the creditor does not know whether the purchase contract addresses which party will pay the transfer taxes and that the State or local law attributes the tax to the seller but further provides that if the seller fails to pay the tax the consumer will be jointly liable for the tax or a lien for the tax will be imposed on the property. Is this a situation in which the law is considered to make the consumer "ultimately" liable for the payment of the tax such that notwithstanding the common

Citation	Topic	Question & Analysis
		practice of the locality for the seller to pay the taxes the taxes must be disclosed? Or is this a situation that because taxes are attributed to the seller the taxes would not be disclosed regardless of the common practice of the locality? Or is this a situation that is governed by the common practice of the locality? We note that this is not a hypothetical. For example, New York attributes the transfer tax on the seller but makes the consumer jointly liable if the seller fails to pay the tax. 5. Where the disclosure of transfer taxes is based on the common practice of the locality, unless a creditor has had a substantial number of closings in that locality the creditor is unlikely to have direct knowledge of the local practice regarding whether the buyer or seller pays the transfer taxes. Would a creditor be exercising due diligence and be acting in good faith by relying upon the settlement agent's or realtor's determination of local practice?
53. §1026.38(j)(1)(v); §1026.38(j)(1)(vi)	Disclosure of Debts Owed to Third Parties that a Creditor Requires a Borrower to Repay	In a refinance transaction, if a creditor requires a consumer to pay off certain third-party debts ("Debts") as a condition of providing the loan and such debts are paid at closing, pursuant to §1026.38(t)(5)(vii)(B), those debts are disclosed on the Closing Disclosure in a "Payoffs and Payments" table "that itemizes the amounts of payments made at closing to other parties from the credit extended to the consumer," which would then be reflected in the alternative Calculating Cash to Close table as part of Total Payoffs and Payments. These, and the other provisions of §1026.38(t)(5)(vii), detail what modifications a creditor may make to provide a borrower with a simplified, alternative Closing Disclosure in a refinance transaction. However, if a creditor chooses not to use the alternative Closing Disclosure, the rule does not detail where such Debts would be disclosed in the standard Closing Disclosure. Similarly, if a creditor requires a consumer to pay off Debts in a purchase transaction, the rule does not specify where such Debts would be disclosed. However, such Debts will affect the amount of cash to close and it therefore appears that they must be reflected in the Calculating Cash to Close table and in Summaries of Transactions, Borrower's Transaction. This leads to the following questions: 1. In a refinance transaction, when the creditor chooses to use the standard Closing Disclosure, is a creditor required to disclose such Debts described above, and if so, where? 2. In a purchase transaction, is a creditor required to disclose such Debts, and if so, where? 3. If a creditor is not required to disclose third party debts that it requires a consumer to pay in order to consummate the loan, may a creditor disclose such debts, and if so, where?

Citation	Topic	Question & Analysis
		It appears that these Debts would be disclosed in the Summaries of Transactions, Borrower's Transaction, Due from Borrower at Closing pursuant to section 1026.38(j)(1)(v), which provides for "a description and the amount of any other items owed by the consumer at the real estate closing not otherwise disclosed pursuant to paragraph (f), (g), or (j) of this section." The corresponding Comment 38(j)(1)(v)-2 further states that any such amounts disclosed will not have a corresponding credit in the summary of the seller's transactions under §1026.38k)(1)(iv). The examples given include amounts paid to existing lien holders in a refinance transaction and outstanding property taxes, neither of which is similar to the Debts described above. 1. Would the appropriate place to disclose such Debts be in the standard Closing Disclosure's Summary of Transactions, Borrower's Transaction under the Adjustment section, using lines K.05 through K.07? If not, which lines should be used? 2. If the appropriate place to disclose these Debts in the Summary of Transactions, Borrower's Transaction is lines K.05 through K.07, does this mean that this amount is then reflected on the Adjustments and Other Credits line of the Calculating Cash to Close table for the standard Closing Disclosure? Comment 38(i)(8)(ii)-1 states that this line would include "prorations for taxes or homeowners' association fees, utilities used but not paid for by the seller, rent collects in advance by the seller from a tenant for a period extending beyond the consummation, and interest on loan assumptions." The above-described Debts do not fall in to any of these categories. If the payment of the Debts should not be reflected on the Adjustments and other Credits line, what line of the Calculating Cash to Close table should reflect the payment of the Debts? Furthermore, §1026.38(i)(8)(i) provides that for the Loan Estimate column, the creditor is required to disclose the amount disclosed pursuant to §1026.37(h)(1)(vii). Section 1026.37(h)(1)(vii) specifies that the Adjustments and Other Credits that are disclosed in the standard Calculating Cash to Close Table in the Loan Estimate includes only those items that the consumer is required to pay "pursuant to a purchase and sale contract." Comment 37(h)(1)(vii)-6 list prorations for property taxes and homeowners' association dues as examples of the types of adjustments that would be disclosed pursuant to §1026.37(h)(1)(vii). Here, the consumer is required to pay the Debts by the creditor, not pursuant to the purchase or sale contract, and these Debts are not comparable to the examples provided. Conversely, the alternative Calculating Cash to Close Table that is provided for pursuant to §1026.37(h)(2)(iii) has a Payoffs and Payments line allows for the creditor to account for payoffs and payments "made to third parties not otherwise disclosed pursuant to paragraphs (f) and (g)," including "payments of unsecured outstanding debts of the consumer; and payments to other third parties for outstanding debts of the consumer (but not for settlement service) as required to be paid as a condition for

Citation	Topic	Question & Analysis
		the extension of credit." See Comment 37(h)(2)(iii)-1, page 1808.
54. H-25(A); H-25(I)	Signature Lines for Seller to Confirm Receipt	May a creditor modify forms H-25(A) and H-25(I) to add signature lines for the seller(s) to confirm receipt of the Closing Disclosure or Seller's Disclosure? If necessary, may a creditor use an additional page, similar to what is allowed for consumer signatures by Comment 1026.38(t)(5)-4 to add signature lines for the seller(s)? Section 1026.38(s) allows, and form H-25(A) generally illustrates, signature lines for the consumer to confirm receipt of the Closing Disclosure. However, the rule neither provides for nor prohibits a creditor from including signature lines for the seller(s) under the Confirm Receipt heading. Similarly, §§ 1026.38(t)(5)(v) and (vi) provide that certain pieces of the consumer's information may be left blank on the Closing Disclosure that is provided to the seller or any other third-party and references form H-25(I) as an illustration of such a disclosure after the specified information has been omitted (the "Seller's Disclosure"). Once again, the rule neither provides for nor prohibits and form H-25(I) does not illustrate, signature lines for the seller to confirm receipt of the Seller's Disclosure. Currently, the GSEs require the HUD-1/HUD-1A to be signed by either the seller(s) or the escrow agent in an escrow closing state.
55. §1026.37(a)(5)	Mailing Address of Applicants	Is the "mailing address" required by this provision always the applicant's Post Office mailing address and not, for example, the applicant's e-mail address to which the Loan Estimate is delivered? Section 1026.37(a)(5) requires a mailing address, but it does not appear that there is a definition of the term "mailing address."
56. §1026.19(e)(3)(iv)(D)	Rate Set or Lock	1. If the consumer has a contractual right to set or lock the rate at the current rate by telephoning or otherwise contacting the creditor, but no formal written or electronic "rate lock agreement" is provided at that time, is that considered setting the rate, such that a revised Loan Estimate is not required, or locking it, such that a revised Loan Estimate is required? 2. If the situation in question 1 is considered to be setting the rate, would the rate be set at the time of phone call or other contact to the creditor, or the time by which the creditor must provide the revised Loan Estimate?

Citation	Topic	Question & Analysis
		On page 379 the preamble notes that “if the interest rate is simply set, but there is no rate lock agreement” the requirement to provide a revised Loan Estimate does not apply. The preamble does not define what it means by the terms “rate lock agreement” or “executes”. We would appreciate a clarification as to how the distinction between set and lock affects all of the regulatory provisions that use the APOR at the time the rate is locked or set. These provisions include High Cost Loans, HPML, the QM rebuttable presumption threshold, the threshold used to determine the number of bona fide discount points that may be excluded under the points and fees test and the rate spreads reported under Regulation C. We believe that if the rate is set one day and the same rate is locked shortly thereafter, the date the rate is set is a better measure of market conditions at that time and better indicator of whether the creditor is applying its pricing policies uniformly to similarly situated applicants.