SECTION 1 – TRUTH IN LENDING AND REGULATION Z
The Importance of Knowing Applicable Laws and Regulations

Prior to the 1960s there were few federal laws regulating the relationship between lenders and consumer borrowers. There were no requirements regarding the disclosure of loan terms, the taking of a security in a consumer’s property, or the reporting of credit information. Likewise, there were no requirements or limitations regarding related issues such as the prevention of discrimination in the regulated lending industry. Thus in 1968, Congress passed the Consumer Credit Protection Act (CPA). The CPA is a sweeping and extensive law governing virtually every aspect of the relationship between a consumer borrower and regulated lenders.

Various federal regulators have been given authority to interpret and enforce the CPA. In addition there are extensive regulations and official commentaries which provide further instruction that lenders must understand to insure they are “in compliance.”

The primary laws and regulations arising from the CPA are:

- The Fair Credit Reporting Act (15 USC §1681, et al.).

In addition, the following federal laws and regulations also govern the lending process:

- Important NCUA Regulations such as §§701.21, 701.31 and 723.
- The Soldiers’ and Sailors’ Civil Relief Act (50 USC §501, et al.).

State Laws

Generally, federal law preempts contrary state laws. This means the matters described in this book generally govern; and contrary state laws have no affect. However, many states have adopted various laws and/or regulations that place additional disclosure requirements or other burdens on a creditor. Due to the fact that there is no uniformity as to all such laws and regulations, they cannot be addressed in a general work such as this book.

As a general rule, the matters
discussed here will govern credit unions’ relationships with members. Nonetheless, every credit union should consult with local legal counsel in each state in which it does business to insure that it is aware of and complies with any additional “state” requirements.

This book provides a detailed analysis of the regulations addressed; discusses relevant cases; and provides tips to assist your credit union in maintaining compliance. Where appropriate, compliance checklists have been provided to assist you in the process of “self-assessment.”

**Truth In Lending Act and Regulation Z**

**Purpose — full and fair disclosure of credit terms**

The Truth In Lending Act (TILA) is the mother of all consumer protection laws. TILA and Regulation Z were adopted to “promote the informed use of consumer credit by requiring disclosures about its terms and cost” in clear and conspicuous disclosures. Unfortunately, this law has evolved into an extremely complex set of rules that are difficult to understand. Illustrating this is the fact that various regulatory agencies reported in 1994 that 50% of the institutions they examined had significantly violated Regulation Z. In 1974, Congress passed the Fair Credit Billing Act, which among other things, added to Regulation Z a set of error resolution rules that creditors must follow regarding claims of errors on credit card accounts.

**Scope and exemptions**

The Truth In Lending Act and Regulation Z apply to credit offered or extended to a consumer primarily for personal, family or household purposes. It also applies to all creditors who regularly (for example, more than 25 times per year, or more than five times for transactions involving a dwelling) extend credit that is either subject to a finance charge or is payable in more than four installments.

The following types of credit are exempt from Regulation Z:

- Nonconsumer credit (for example, credit extended to other than a natural person, or extended primarily for a business, commercial, or agricultural purpose).

- Credit where the amount financed is more than the threshold as determined by 1026.3(b) of the regulation, although credit secured by real property is subject to the regulation even if the loan is for more than the set threshold.

- Certain student loans that are made, insured, or guaranteed pursuant to a program authorized under the Higher Education Act of 1965.

If exempt, document the exemption well. Maddox v. St. Joe Papermakers Federal Credit Union, 572 So. 2d 961 (Fla. App. 1990). Maddox was a co-maker on a note with five others. When the principal defaulted, the credit union filed a complaint against all makers and co-makers. The credit union did not provide appropriate Truth In Lending disclosures (apparently due to the fact that
the loan was intended as a “business” loan, which is exempt from TILA and Regulation Z). This was not documented in the loan file presented by the credit union; and Maddox claimed the loan was for a consumer purpose. Therefore, the credit union’s failure to provide the disclosures or properly document the nature of the loan resulted in Maddox’s ability to assert a counterclaim against the credit union by way of offset against the amount of the loan.

Payday loans

In March 2000, the Regulation Z Commentary, Section 1026.2 at 2(a) (14), was revised to clarify that transactions commonly known as “payday loans” constitute credit and are covered under TILA. Typically in payday loans, a cash advance is made to a member in exchange for the member’s personal check, or the member’s authorization to debit his or her share account electronically. The member typically pays a fee in connection with the advance. Either the member’s check is not cashed or deposited for collection until a future date, or the share account is not debited until a designated future date. A fee charged in connection with a payday loan may be a finance charge for purposes of Section 1026.4, regardless of how the fee is defined under state law. Where the fee charged constitutes a finance charge under Section 1026.4, the credit union is required to provide Regulation Z disclosures.

Overdraft protection /bounce protection programs

The Interagency Guidance on Overdraft Protection Programs issued in February 2005 by the OCC, FRB, FDIC, and NCUA indicates that fees for paying overdraft items are not considered finance charges if the credit union has not agreed in writing to pay overdrafts. Even where the credit union agrees in writing to pay overdrafts as part of the membership account agreement, fees assessed against a checking account for overdraft protection are finance charges only to the extent the fees exceed the charges imposed for paying or returning overdrafts on a similar account that does not have overdraft or bounce protection.

Closed-end loans offered to members who are unable to repay their overdrafts and bring their accounts to a positive balance within a specified time, will require Regulation Z disclosures, if the loan is payable by written agreement in more than four installments. Regulation Z disclosures will also be required when such closed-end loans are subject to a finance charge.

Liability provisions

The Truth In Lending Act contains a criminal liability provision for willful violations of the Act and provisions that provide for civil liability and restitution.

Criminal liability

Under the Truth In Lending Act, any person who willfully and knowingly does one or more of the following could be fined up to $5,000, imprisoned for up to one year, or both:
• Gives false or inaccurate information, or fails to provide information required to be disclosed under the Act or Regulation Z

• Uses any chart or table in a manner that consistently understates the annual percentage rate (APR).

• Fails to comply with any of the requirements imposed under the Act.

Civil liability and restitution

Creditors that violate the Truth In Lending Act or Regulation Z are subject to penalties, monetary damages, and restitution which are more fully explained in this section.

Civil Liability — Generally. The Truth In Lending Act authorizes a member to commence legal action against your credit union for a failure to comply with the rules for:

• Providing disclosures in connection with a credit transaction.

• Following prescribed procedures when handling billing error claims.

• Establishing an interest rate cap on adjustable-rate mortgage loans.

In an individual action, noncompliance with any of the above will make your credit union liable for the sum of:

• The amount of actual damages sustained by that person as the result of the failure to comply.

• An additional amount equal to twice the amount of any finance charge, in an action involving an open-end consumer credit transaction (not secured by real property) with a $500 minimum and $5,000 maximum.

• If the matter goes to court, the costs of the action plus reasonable attorneys’ fees.

Minor technical violations of TILA are sufficient to allow a consumer to recover statutory damages. The terms “annual percentage rate” and “finance charge” appeared in the same type print and identical boxes as “amount financed” and “total of payments.” As a result the court awarded $1,000, plus attorneys’ fees to a debtor in a bankruptcy case. See, In re: Pittman, No 91-5-717-1-JS (Bkrtcy. MD. 3-17-94).

Supreme Court Rules On Truth In Lending Damage Issue (January 2005)

Much to lenders’ relief, the U.S. Supreme Court has ruled that the $1,000 cap on damages for violations of the Truth In Lending Act (TILA, 15 USC 1601) is still valid. The high court’s decision reversed an earlier ruling by the Fourth Circuit Court of Appeals, which had held that Congress in 1995 had limited the $1,000 cap to apply only in cases involving consumer leases.

The case before the court arose when a used car deal went wrong in a number of ways. The car buyer sued the dealer/lender for TILA violations and numerous other claims. The jury awarded $24,192.80 — double the finance charge — in TILA damages.

The jury verdict was entered despite TILA appearing to impose a cap of $1,000 on such damages. As first enacted, the law (15 USC 1640(a)(2)(A)) generally limited damages to “twice the amount of the finance charge in connection with the transaction, except that the liability under this paragraph shall
not be less than $100 nor greater than $1,000.”

Confusing Statute

The trouble is the paragraph in the law that includes the damage cap has been amended several times. These amendments set a $2,000 ceiling for damages in real estate loans, created separate rules for damages in class-action lawsuits, and extended TILA’s coverage to include consumer leases. With all due respect to Congress, these amendments were clumsily drafted.

By the time Congress was done, one reading the statute might conclude that the damage cap applied only to the clause dealing with leases. That would mean lenders violating TILA’s provisions could be assessed damages up to double the amount of the finance charge, with no limitation — even though comparable lease transactions would be subject to the $1,000 cap.

The Fourth Circuit Court of Appeals upheld the jury’s verdict. That appeals court simply read the statute, declared its meaning to be perfectly clear, and refused to inquire as to what Congress might have intended. The appeals court could find no ambiguity or confusion in what the law said so it could see no reason to look behind the words to find Congress’s true intent.

But the Supreme Court disagreed. In an opinion by Justice Ruth Bader Ginsburg, the court observed that any attempt by Congress to deliberately repeal the $1,000 cap would have been very controversial and would have led to extensive debate. The fact that Congress had not even discussed repealing the damages cap suggested that no such repeal had been intended.

Also, Ginsburg observed, it would be “passing strange” to read the statute as providing a relatively low cap on damages in cases involving mortgages and none at all for consumer loans — especially when Congress said it was raising the damage ceiling for violations involving mortgages to $2,000 to provide greater protection for mortgage borrowers.

The Supreme Court reversed the Fourth Circuit’s ruling, reducing the plaintiff’s TILA damage award to just $1,000. So lenders have successfully dodged a bullet. The TILA limits on damages remain unchanged. (Koons Buick Pontiac GMC v. Bradley Nigh, No. 03-377.)

In a successful action brought on behalf of a class (for example, a “class action” on behalf of all members), the claimants can recover:

- The amount of actual damages.
- An additional amount, with no statutory minimum, but with a maximum of $1,000,000 or an amount equal to 1% of your credit union’s net worth, whichever is less.

Two relatively minor violations = $500,000 + in damages. A court imposed the maximum class action damages for two minor violations of Regulation Z in Jones v. Goodyear Tire & Rubber Co., 442 F. Supp. 1157 (ED La. 1977). In this case, the plaintiff purchased a television set pursuant to a retail installment sales contract. The defendant failed to disclose the type of security interest it retained in the television; and it did not disclose the finance charge and APR more conspicuously than other terms.
• If the matter goes to court, the costs of the action plus reasonable attorneys’ fees.

Exceptions to liability provisions

The Truth In Lending Act relieves a credit union from liability where a violation results from a bona fide error that occurs despite the maintenance of procedures adopted to avoid such an error. This does not include an error in legal judgment.

A credit union has no liability if it acts in reliance on any rule, regulation, or interpretation of the Consumer Financial Protection Bureau (CFPB), or acts in conformity with an interpretation or approval of an CFPB official or employee who is authorized to issue an interpretation or give an approval. This provision does not protect you, however, when you rely on an opinion given by a general staff member of the CFPB.

Unintentional Error — Good Faith. A court noted numerous contacts by the defendant with the FTC and Federal Reserve Board in a sincere effort to comply with the TILA. Taking these circumstances into account, the court disallowed any damages. See, Welmaker v. WT Grant Co., 365 F. Supp. 533 (N.D. Ga. 1972).

Sample Notice
A sample notice is shown in figure 1.1.

Corrective action
You also have no liability when you discover an error, notify the affected member, and make appropriate adjustments within 60 days after the discovery before any legal action is commenced against you and before any member gives written notice of the error.

Note: Ensure that you notify your bond or insurance provider within the time periods required by your contract (usually within 20 days of discovery of the error).

Limitation of actions

Weston v. Ameribank, 265 F.3d 366 (6th Cir. 2001).

Overview: Plaintiff alleged that a $350 document preparation fee violated the TILA because it was not properly disclosed. The court found that the claim was barred by the TILA’s one-year statute of limitations.

Title 15 U.S.C. §1640(e) states that, “Any action under this section may be brought in any United States district court or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation...”

No Liability under TILA Where Consumer Did Not Read Disclosures: Turner v. Beneficial Corp., 242 F. 3d 1023 (11th Cir. 2001)

Overview: Prompted by a newspaper ad, plaintiff bought a satellite dish system what was to be financed by defendant bank through a credit card agreement. When the dish was delivered, the invoice reflected a higher monthly bill than the newspaper ad had reflected, and the credit card had an additional balance. The credit card came with a disclosure statement, but plaintiff alleged defendant failed to provide a disclosure statement that complied with the requirements of the law under the Truth In Lending Act (TILA). On review,
the circuit court held that detrimental reliance is an element of a TILA claim for actual damages and that plaintiff failed to present evidence to establish a causal link between the bank’s noncompliance and her damages. It found that plaintiff conceded that she did not read defendant’s disclosure statements at the time of receipt and, therefore, did not rely on them.

The court held that plaintiffs must demonstrate detrimental reliance in order to be entitled to actual damages under TILA. The legislative history behind the 1995 amendments to TILA supports this reading of the actual damages provision. It states:

Section 130(a) of TILA allows a consumer to recover both actual and statutory damages in connection with TILA violations. Congress provided for statutory damages because actual damages in most cases would be nonexistent or extremely difficult to prove. To recover actual damages, consumers must show that they suffered a loss because they relied on an inaccurate or incomplete disclosure.

**Figure 1.1**

**Sample Notice**

Dear ____________________:

Date: _________________

On _________________, a loan was made to you in the principal amount of $________________. At that time, the ANNUAL PERCENTAGE RATE was erroneously disclosed to you as ______ percent.

Given the complexities of the Consumer Credit Protection Act and the disclosures required thereby, we just discovered this typographical error. We thus are advising you, herewith, that the correct figure is _______ percent. That this is the correct ANNUAL PERCENTAGE RATE is borne out by the rest of the disclosure terms, as disclosed to you prior to consummation of the loan transaction.

We maintain procedures calculated to avoid errors of this sort. However, unintentional errors are inevitable. Please accept our apologies and this notification of the error, which is corrected hereby.

Very truly yours,

(Signature)

**Regulatory restitution policy**

The Act requires federal regulatory agencies to enforce compliance with the requirements of the TILA and Regulation Z, particularly those requiring accurate disclosure of an APR and finance charge. If a credit union has inaccurately disclosed these, restitution to ensure that the affected members will not be required to pay a finance charge in excess of the one actually disclosed or the dollar equivalent of the APR disclosed (whichever is lower) after consideration of the tolerance for accuracy provided in the Truth In Lending Act, may be required.

**Key definitions**

The terms defined below are fundamental to numerous provisions and are key to understanding the Truth In Lending Act and Regulation Z.

**Business Day**

A business day is any day the creditor’s offices are open to the public for carrying on substantially all of its business functions. However, for purposes of right of rescission, under Sections 1026.15 and 1026.23, and for purposes of Sections 1026.19(a)(1)(ii), 1026.19(a)(2), 1026.19(e)(1)(iii)(B), 1026.19(e)(1)(iv), 1026.19(e)(2)(i)(A), 1026.19(e)(4)(ii), 1026.19(f)(1)(ii), 1026.19(f)(1)(iii), 1026.20(e)(5), 1026.31 and 1026.46(d)(4), a business day is every calendar day except Sunday and the legal public holidays, such as New Year’s Day, the birthday of Martin Luther King Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. *(Emphasis Added – Keep in mind the distinction for the Right of Rescission, which is often confused)*.

**Closed-end credit**

Closed-end credit is defined simply to encompass all credit that is not open-end credit. Most closed-end loans involve a one-time advance of funds with a fixed repayment schedule. This type of credit traditionally is extended at a fixed rate, although there are closed-end credit products with adjustable rates, reverse mortgages, and other variations.

**Credit**

The term is defined as the right to defer payment of debt or to incur debt and defer its payment. In March 2000 the Reg. Z Commentary, Section 1026.2 at 2(a)(14), was revised to clarify that transactions commonly known as “payday loans” constitute credit and are covered under TILA.

**Open-end credit**

Open-end credit is consumer credit extended under a plan that includes the following three criteria:

1. The creditor reasonably contemplates
there will be repeated transactions.

2. The creditor has the right to impose a finance charge from time to time on the outstanding unpaid balance.

3. The limit on the amount of credit that may be extended to the consumer during the term of the plan is generally made available to the extent the outstanding balance is repaid.

**Electronic Communication**

Electronic communication is defined as a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

**Finance charge**

Regulation Z states that the finance charge is the cost of consumer credit as a dollar amount. This includes any charge that is payable either directly or indirectly by the member, if the charge is imposed either directly or indirectly by the credit union as an incident to or a condition of the extension of credit.

The finance charge includes any amounts that are charged by someone other than the credit union, if the credit union:

- Requires the use of a third party as a condition of or incident to an extension of credit, even if the member can choose the third party.
- Retains a portion of the third-party charge, to the extent of the amount retained by the credit union.

**Special Rules for Charges by Third Parties.** The CFPB’s definition of “finance charge” provides two special rules regarding charges by third parties, one for charges by a person who conducts the loan closing (for example, for real property mortgage transactions) and another for fees charged by mortgage brokers.

**Closing agent charges.** Fees charged by a person who conducts a loan closing are considered finance charges if any of the following apply:

- The credit union requires the particular services for which the member is charged.
- The credit union requires the imposition of the charge.
- The credit union retains a portion of the closing party’s charge but only to the extent of the amount retained by the credit union.

**Mortgage broker fees.** Fees that are charged by a mortgage broker are finance charges even if the credit union does not require the member to use a mortgage broker and even if the credit union does not retain any portion of the mortgage broker’s fee. This rule applies regardless of whether the member pays the fee directly to the broker or to the credit union for delivery to the broker.

**Charges Included in the Finance Charge.** Regulation Z provides a list of the types of charges you must consider as components of a finance charge. This list includes the following for open-end credit:

- Interest, any time/price differential, or any amount payable under an add-on or discount system of additional charges.
- Service fees, transaction fees, activity charges, and carrying charges.
Any charge imposed on a checking or other type of transaction account must be included in the finance charge if and to the extent that the charge exceeds the charge imposed on similar accounts that do not include a credit feature.

- Points, loan fees, assumption fees, finder’s fees, and similar charges. This category of charges is the subject of frequent violations of Regulation Z and warrants a further description:
  
  **Points.** The fee customarily referred to in the financing industry as “points” is an interest charge that is a percentage of a loan amount. One point is an amount equal to 1% of the amount of the loan. The member customarily pays points before or at loan closing so they are included as a prepaid finance charge in your itemization of the amount financed.

  **Loan fees.** Some credit unions charge applicants a fee for processing a loan application. Whether you call this fee a “loan fee,” “application fee,” or anything else it is part of the finance charge if you charge the fee only to applicants to whom you actually extend credit. But if you charge the fee to all applicants regardless of whether credit is extended, it is not considered a component and can be excluded from the finance charge.

  **Assumption fees.** An assumption fee is one that arises only when an assumption occurs (for example, when a new buyer assumes the debt of the original borrower). If you allow assumptions but charge the new borrower a fee, you must include the amount of that fee as a part of the finance charge in your disclosure to him or her. Do not include an assumption fee in a finance charge unless the fee is charged (for example, to the new borrower when the assumption takes place).

  **Finder’s fees.** If you charge a fee to applicants who are referred by a third party, you must include the fee amount in the finance charge regardless of whether you pay all or a portion of the fee to the third party. Under the Real Estate Settlement Procedures Act (RESPA), you are prohibited from paying a referral or finder’s fee to anyone who refers a mortgage loan to the credit union. No similar rule applies to other types of loans.

- Appraisal fees, investigation fees, and credit report fees.

  **Note:** An appraisal fee and credit report fee are listed in Section 1026.4(c) as excludable for real property secured transactions.

- Premiums or other charges for any guarantee or insurance that protects your credit union against a borrower’s default or other credit loss.

- Charges that your credit union pays to another person for purchasing or accepting a loan, if a member is obligated to pay the charges either in cash, as an additional amount on the obligation, or as a deduction from the loan proceeds.

- Premiums or other charges for credit life, health, accident, or loss-of-income insurance obtained in connection with a credit transaction. But you may sometimes exclude amounts paid for personal insurance or for debt cancella-
tion contracts from the finance charge under Section 1026.4(d).

- Premiums or other charges for loss of or damage to property, or against liability that arises out of the ownership or use of property (for example, automobile liability insurance). But you may sometimes exclude amounts paid for property insurance from the finance charge under Section 1026.4(d).

New Interpretation of Finance Charges from Federal Reserve Board — A word of Caution in Reading the following Exclusions:

As explained in this resource, Section 1026.4 of Regulation Z defines what is and is not a finance charge. As explained in the following Section, Subsection (c)(7) excludes certain fees and charges from the finance charge in transactions secured by real property or in residential mortgage transactions. Under Subsection (c) (7), there are further subsections, (i) through (v), defining the various fees and charges that are excluded. Subsection (iv) excludes “Property appraisal fees or fees for inspections to assess the value or condition of the property if the service is performed prior to closing, including fees related to pest-infestation or flood-hazard determinations.” (emphasis added).

The other four subsections under (c) (7) do not contain the limiting condition that the service be performed prior to closing. For example (i) excludes “Fees for title examination, abstract of title, title insurance, property survey, and similar purposes.” The exclusion for services under (i), (ii), (iii) and (v) in the regulation, is absolute. It does not depend on when the service is performed.

Now consider Consumer Financial Protection Bureau Comment 3 to 1026.4(c) (7), which states that the exclusion for all of subsections (i) – (v) is limited to services performed “in connection with the initial decision to grant credit.” The “prior to closing” limiting condition, which appears only in (iv), applies to all of exclusions listed, says the commentary. What happened is that the staff of the Federal Reserve made a mistake. When they wrote that comment they should have noted that it applied only to 1026.4(c) (7) (iv), rather than to the entire section. But they didn’t and now rather than correcting their mistake, they are saying that the commentary overrides the regulation and those lenders who read the regulation’s clear language and relied upon it are in error.

Where a problem with this interpretation will most frequently arise is with construction loans. For example, many lenders require an “as built” survey after the slab is poured. Because that is a service done after loan closing, the charge for the as built survey is now interpreted to be a finance charge. In many states lenders obtain updated title policies during the course of construction as bills are paid and a final title policy after the completion of construction and the payment of all bills. The charges for any title work or title insurance done after the closing of the loan is by the Fed’s interpretation a finance charge.

Recently the FDIC imposed this interpretation on all of a bank’s construction loans and forced the bank to make restitution to the borrowers who paid for either post-closing surveys or title charges. The examiner told the bank that the
FDIC had noted this violation in 40% of the banks that it had examined since it determined this new interpretation of the rule.

Whether the agencies’ interpretation is correct or incorrect is not an issue. From a compliance standpoint you can’t argue with city hall. Until they correct their interpretation it is the gospel and banks should assure that they are including all charges for any services performed after a loan closing as finance charges regardless of the nature of the charge.

If you are a glutton for punishment or a compliance nerd, read on. The normal order of things is that the regulation implements the law and that the commentary explains the regulation. The pecking order is law, regulation, commentary. The law is clear. The Truth In Lending Act exempts from the finance charge:

1. Fees or premiums for title examination, title insurance, or similar purposes.
2. Fees for preparation of loan-related documents.
3. Escrows for future payments of taxes and insurance.
4. Fees for notarizing deeds and other documents.
5. Appraisal fees, including fees related to any pest infestation or flood hazard inspections conducted prior to closing. [Emphasis added.]
6. Credit reports.

It seems clear that if Congress had intended that the “conducted prior to closing” requirement apply to all six items it could easily have done so by changing the placement of the words.

The error in the agencies’ position is most apparent when you read the regulation carefully. Subparagraph (ii) exempts “Fees for preparing loan-related documents, such as deeds, mortgages, and reconveyance or settlement documents.” Reconveyance documents are releases of mortgages and deeds of trust. Obviously those documents are not going to be prepared prior to loan closing. To say that the charge for the preparation of those documents is exempt from the finance charge only if the reconveyance document is prepared prior to closing is an oxymoron (but as most of you know by now—is not beyond the intellectual legal-compliance abilities of most field examiners).

Then the agencies have a real problem when they get to subparagraph (v). It exempts “Amounts required to be paid into escrow or trustee accounts if the amounts would not otherwise be included in the finance charge.” Does the interpretation mean that taxes and insurance paid into escrow after loan closing are finance charges. The agencies say no. But in light of their interpretation of the commentary they can’t say why.

**Charges Excludable from Finance Charge.** Regulation Z also provides the following list of the types of items excluded from the finance charge:

- Application fees, if the fees are charged to all applicants (not just those to whom credit is actually extended).
• Charges for actual and unanticipated late payments, for exceeding a credit line or limit, for delinquency, for default, or for similar occurrences.

• Charges for the payment of items that overdraw an account, unless the payment of such items and the imposition of the charge were aspects of an arrangement previously agreed to in writing.

• Fees charged for participation in a credit plan, whether the fees are charged on an annual basis or some other periodic basis.

• Seller’s points.

• Interest forfeited as the result of an interest rate reduction required by law on a time deposit used as security for the extension of credit. This provision has very limited applicability, now that early withdrawals on time deposits can be permitted without penalty after the first seven days.

• The following types of fees in a transaction secured by real property (including a residential mortgage transaction), if the fees are both bona fide and reasonable in amount:

  ✓ Fees for title examinations, abstracts of title, title insurance, property surveys, and similar purposes.

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

  ✓ Notary and credit report fees (credit report fees are excludable for real property transactions but must be included as part of the finance charge on other types of loans).

  ✓ Property appraisal fees or fees for inspections to assess the value or condition of the property (for example, inspections for termites or other types of pest infestations), if the service is performed before the closing (fees for flood hazard determinations are excluded from the finance charge).

• Discounts offered as an inducement to pay for a purchase by cash, check, or other means.

• If itemized and disclosed, taxes and fees related to a security interest in property that are prescribed by law and actually paid (or to be paid) to public officials for determining the existence of the security interest, perfecting the security interest, releasing the security interest, and satisfying the security interest. This includes taxes that are levied on security instruments or documents that evidence the indebtedness, if payment of the taxes is a requirement for recording the instrument (for example, a tax for filing a mortgage).

**Insurance Premiums and Debt Cancellation Fee — Conditions for Exclusion.** Some loan agreements contain provisions for a member’s payment of personal or property insurance premiums, or fees in connection with debt cancellation contracts. Section 1026.4(b) includes these types of charges in its list of items that must be included in the finance charge, but section 1026.4(d) provides an exception to this rule. It states that premiums a member pays for these types of protection can be excluded if certain specific
conditions are met. Separate rules apply for personal insurance, property insurance and debt cancellation contracts, as described below.

**Personal Insurance Exclusion.**

Premiums paid by a member for personal insurance (for example, credit life, health, accident, and/or loss-of-income insurance) that is purchased through your credit union may be automatically excluded from the finance charge if the policy names the member or a third party as the beneficiary of the insurance and your credit union does not require the insurance as incident to or a condition of the credit. Where the insurance names your credit union as a beneficiary, you can still exclude the premiums from your calculation of the finance charge if you meet all of the following conditions:

- **The insurance must be optional.** The insurance coverage must be optional—not required by your credit union as a condition of granting the credit. If you require personal insurance, you must disclose the premiums as part of the finance charge regardless of whether the insurance is purchased from you or from a third party. But if you require credit life insurance and the member assigns a preexisting life insurance policy, the cost of the insurance can be excluded.

- **You must disclose that the insurance is optional.** Your disclosure must contain a specific statement that the type of insurance being purchased by the member is optional.

- **You must disclose the insurance premium.** You must disclose the premium for the initial insurance term. For open-end transactions, the premium may be disclosed on a unit-cost basis (for example, 50 cents per $100). That disclosure can also be based on a period of less than one year if the member has agreed to pay a premium or fee that is assessed periodically (for example monthly) but is not obligated to continue the coverage.

- **You must base the premium quoted on current rates.** You need not label the premium as an estimate even where premium rates may increase. If you give a member disclosures before consummation and a premium rate changes in the interim, you are not required to redisclose on consummation.

- **You must disclose the insurance term.** You must disclose the period of time that is covered by the premium if it is less than the term of the loan.

- **You must have the member sign a**

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**Question:** Must a member sign the sale of insurance disclosure section of a note if they don’t purchase the insurance?

**Answer:** While it is not mandatory that the member sign saying he/she does not want insurance, having the signature could prevent the member or their estate from later claiming you never offered the insurance, that you should have, that the member would have bought it, and it’s all your fault that no insurance proceeds are forthcoming now that the member has died or become disabled. You should also consult with local counsel to determine if your state may have signature or additional requirements as a matter of state law.
request for insurance. The member must sign or initial a written statement requesting the insurance coverage after receiving the disclosures specified above. If the transaction involves more than one member, this provision is satisfied by the signature or initials of any one of them.

Any insurance coverage that you offer to a member is also subject to applicable state laws for the offering of personal insurance.

Property Insurance Exclusion. For purposes of this exclusion, property insurance provides insurance against the loss of or damage to property or against liability that arises out of the ownership or use of the property (for example, automobile liability insurance). This category includes single-interest insurance if the insurer waives all rights of subrogation against the member.

The rules for offering property insurance in a way that permits its exclusion from the finance charge are similar to those for personal insurance described above—with two significant differences. First, personal insurance must be optional, while property insurance may be excluded from the finance charge even if it is required. If so, the member must have the option of obtaining the required insurance elsewhere. Second, a member must initial or sign a request for personal insurance coverage, but no similar requirement applies to property insurance since it may be made mandatory.

These rules and the conditions for exclusion are given below. If you meet all of the following conditions, you can exclude premiums for property insurance from a finance charge:

- **Give the member a choice.** Your credit union may require property insurance as a condition of a loan, but a member must have the option of obtaining his or her own choice of insurance. This rule does not prohibit you from retaining the option to reject a member’s choice; you can reserve this right if there is reasonable cause.

- **Disclose that the member has an option.** Your disclosure must contain a specific statement indicating that the member has the option of obtaining the insurance elsewhere.

- **Disclose initial premium.** If a member obtains coverage from or through your credit union, you must disclose the premium for the initial insurance term.

- **Base the premium quoted on current rates.** You need not label the premium as an estimate even where premium rates may increase. If you give disclosures before consummation and the premium rates change in the interim, you are not required to redisclose on consummation.

- **Disclose the insurance term.** You must disclose the insurance term covered by the premium if it is less than the term of the loan.

As with personal insurance, any insurance coverage that you offer to a member is also subject to applicable state laws for the offering of property insurance.

**Exclusion for Debt Cancellation Contracts.** A debt cancellation contract is an agreement between the credit union and the member under which the credit
union agrees to release the member from any further liability (or reduce the amount of liability) on a loan in case a particular type of event occurs. These types of contracts are similar to insurance policies, but in many cases they are not insurance and, therefore, are not covered under the personal or property insurance rules discussed above. The CFPB recognizes the similarities between insurance policies and debt cancellation contracts, and incorporates a rule in Regulation Z for debt cancellation contracts that parallels the rules for insurance. In some states debt cancellation coverage is considered insurance, but the CFPB has ruled that the same disclosure rule, as described below, applies in all cases. For the purpose of determining the scope of this rule (for example, what constitutes a debt cancellation contract for purposes of this rule), section 1026.4(d)(3)(ii) clarifies that the rule applies to fees paid for any coverage that provides for cancellation of all or a portion of the member’s liability as follows:

- For amounts exceeding the value of the collateral that secures the obligation; or
- In the event of the loss of life, health, income, or in case of accident.

Debt cancellation fees charged by a credit union are considered part of the finance charge if they are mandatory (for example, the credit union requires the member to pay the fee). If a credit union offers a debt cancellation contract or agreement on a voluntary basis, the credit union may exclude

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**Example:** Flood Disaster Assessment and Monitoring Fees. The credit union must disclose the determination fees pursuant to the requirements of Regulation Z. The Official Staff Commentary from the Federal Reserve Board is quoted as follows:

*Charges Assessed During the Loan Term.* Real estate or residential mortgage transaction charges excluded under Section 226.4(c)(7) are those charges imposed solely in connection with the initial decision to grant credit. This would include, for example, a fee to search for tax liens on the property or to determine if flood insurance is required. The exclusion does not apply to fees for services to be performed periodically during the loan term, regardless of when the fee is collected. For example, a fee for one or more determinations during the loan term of the current tax-lien status or flood-insurance requirements is a finance charge, regardless of whether the fee is imposed at closing, or when the service is performed. If a creditor is uncertain about what portion of a fee to be paid at consummation or loan closing is related to the initial decision to grant credit, the entire fee may be treated as a finance charge. 12 CFR §1026.4(c)(7).

Only the flood determination fee related to the initial grant of credit can be excluded from the finance charge. The remainder of the fee considered is a finance charge. If it is not possible to distinguish which part of the fee is for the initial determination and which part is for the life of the loan coverage, the entire fee should be classified as a finance charge.
the amount of the fees for the contract only under the following conditions:

- The credit union does not require the debt cancellation agreement or coverage, and it discloses this to the member in writing.

- The amount of the fee or premium for the initial term is disclosed. The term of the coverage must also be disclosed if it is less than the term of the loan. For open-end credit transactions, the fee or premium may be disclosed on a unit-cost basis. A unit-cost basis disclosure can also be used for closed-end transactions made by mail or telephone or where the total amount of indebted-ness subject to coverage is limited.

- The member initials or signs a written request for the coverage after the above disclosures have been given. Any member in the transaction may sign or initial the request.

  If the credit union charges for a debt cancellation contract but fails to comply with any one of these three conditions, the amount charged to the borrower for the contract must be included in the finance charge (and reflected in the resulting annual percentage rate.

  **Maximum interest rate must be included in loan agreement**

  For all loans secured by a dwelling, credit unions must include in their consumer loan agreements, the maximum interest rate that may be imposed during the term of the loan when:

  - In the case of closed-end credit, the APR may increase after consummation; or

  - In the case of open-end credit, the APR may increase during the life of the plan.

  **Record retention**

  Regulation Z requires credit unions to retain evidence of their compliance with its provisions for a period of two years after the date the disclosures are to be given or action is required to be taken. The advertising requirements are excepted from this record retention requirement.

  For loans secured by real property, a credit union must adhere to the following record retention requirements:

  - Application disclosures – 3 years from the later of the date of consummation, the date the disclosures were required to be made or the date action was required to be taken

  - Closing Disclosure – 5 years from the date of consummation

  - Other closing disclosures – 3 years from the later of the date of consummation, the date the disclosures were required to be made or the date action was required to be taken

  Applicable state or federal (NCUA) regulatory agencies may require credit unions under their jurisdiction to retain records for a longer period of time if they deem necessary. The credit union should consult with local counsel regarding any more extensive “state” requirements that may apply.
Open-End Credit Operations and Procedures

Properly determine Annual Percentage Rate (APR)

The rate charged on an account is the single most important item that Regulation Z addresses. The main purpose of the regulation is to maintain uniformity in how credit unions and other creditors describe credit costs to consumers. This is to enable consumers both to make an informed choice and to know the cost of credit. The APR, a concept that did not exist before the enactment of the Truth In Lending Act, is the key disclosure item. Using this number, a consumer can more easily compare offerings of different creditors and choose the type of credit (and creditor) best suited to his or her needs.

• What is the APR? Generally, the APR is a measure of the cost of credit expressed as a yearly rate.

SIMPLE APR CALCULATIONS

When the finance charge is based solely on the application of one or more periodic rates to a balance, a credit union can determine the APR by either the periodic rate method or the quotient method.

“Periodic rate method” permits determination of the historical annual percentage rate by multiplying (1) each periodic rate, times (2) the number of periods in the year. 12 CFR §1026.14(c)(1)(i); Comment §1026.14(c)-2.

“Quotient method” involves determining the historical annual percentage rate by:

• Dividing (1) the total finance charge for the billing cycle, by (2) the sum of the balances the periodic rates were applied to, and then

• Multiplying (3) the quotient (expressed as a percentage), times (4) the number of billing cycles in the year.

The quotient method can be used when different periodic rates apply to different balances.

Example: An open-end credit plan involves a monthly periodic rate of 1½ percent on balances up to $500 and 1% on balances over $500. A member has a total balance of $800.

The finance charge is $7.50 on the first $500 (.015 × $500) and $3 on the remaining $300 (.01 × $300), totaling $10.50.

The historical annual percentage rate can be disclosed as “18% on $500 and 12% on $300” under the periodic rate method (1½ % × 12 = 18%, and 1% × 12 = 12%). Alternatively, the historical annual percentage rate can be disclosed as “15.75% on $800” under the quotient method ($10.50 ÷ $800 = .013125, 1.3125% × 12 = 15.75%). See comment §1026.14(c)-2.
It is determined by multiplying (1) the periodic rate that can be used to compute the finance charge, times (2) the number of periods in the year. Each separate periodic rate that can be used to determine the finance charge must be multiplied by the number of periods in the year to determine the corresponding APR for that periodic rate.

Various alternative methods of determining the APR apply to periodic statements. The credit union should refer to Section 1026.14(c) of Regulation Z for guidance.

• **APR for periodic statements.** Sections 1026.14(c) and 1026.14(d) together provide a series of rules to be used in calculating the APR disclosed on periodic statements. Section 1026.14(c) provides different rules depending on whether you apply one or more periodic rates to determine a finance charge, whether you impose or include a minimum, fixed, or other charge unrelated to the periodic rate, and whether the finance charge includes a charge relating to a specific transaction. Section 1026.14(d) offers two alternative methods for calculating an APR when using a daily periodic rate to compute all or a portion of the finance charge.

• **Accuracy requirement.** An APR disclosed by a credit union or other creditor is considered accurate if the disclosed rate is not more than one-eighth of a percentage point above or below the APR as determined in accordance with section 1026.14 rules.

• **Respond properly to oral requests for rate information.** When orally responding to member inquiries concerning the cost of credit, the only rate that may be stated is the “Annual Percentage Rate” or “APR.” However, there are two exceptions to this rule. First, the credit union may answer inquiries about open-end credit by stating the periodic rate, or rates, along with the annual percentage rate. Second, if the annual percentage rate cannot be determined in advance, the rate for a sample transaction must be given with other cost information for the member’s specific transaction.

**Comply with special rules for home equity lines of credit (HELOCs) plans**

Section 1026.40 provides special rules for HELOCs offered by credit unions. The rules include a separate disclosure requirement, described in the disclosure section, as well as the following procedural rules:

1. **Limits on changes to the plan.** A credit union may not, by contract or otherwise, change the APR on a HELOC unless the change is based on an index the credit union does not control and that is available to the general public. Also, you cannot terminate a plan and demand repayment of the outstanding balance, except under one of the following circumstances:
   - There is fraud or material misrepresentation by a member in connection with a plan.
   - A member defaults in repayment under the terms of an agreement.
   - An action or inaction by a member adversely affects your credit union’s
security or rights in the security.

- Federal law dealing with credit extended to one of your executive officers requires as a condition of the plan that the credit will become due and payable on demand, and a clause in the initial credit agreement provides for this.

A credit union also cannot change any term with respect to a plan the member has agreed to. There are exceptions to this general rule. For example, you can change the APR if the rate is based on an index that is not under the credit union’s control and is available to the general public. You should refer to Section 1026.40(f) for additional guidance.

2. Refund of fees. You must refund any fees a member pays to others in connection with an application for a HELOC if any term required to be disclosed changes before the plan is opened and, as a result, the member elects not to open the plan. A change based on a fluctuation in the index with respect to a variable-rate plan is not a type of change that triggers this rule.

3. Imposing nonrefundable fees. A HELOC applicant must be given HELOC disclosures and the brochure entitled “What You Should Know About Home Equity Lines of Credit.”

   Neither a credit union nor any third party is permitted to charge a nonrefundable fee in connection with a HELOC application until three business days after the applicant receives the disclosures and brochure. If you mail these items to the applicant, the time period for this prohibition is extended by three additional business days.

Comply with billing error resolution procedures

The billing error resolution provisions in Regulation Z were not part of the original regulation. They were added after Congress enacted the Fair Credit Billing Act in 1974 and apply only to member claims. The act mandates specific procedures when members claim a billing error. Although originally enacted principally for credit card claims, the provisions also apply to all other forms of open-end credit available.

Overview: Plaintiff attorney brought a pro se action against defendant bank, alleging that it failed to comply with the requirements of the Truth In Lending Act (TILA), 15 USC §1601 et seq., in responding to his notice that he was improperly billed for charges made on his son’s credit card account. Both parties moved for summary judgment. The court denied defendant’s motion and granted plaintiff’s cross-motion for summary judgment because defendant violated the provisions of 15. USC. §§1666, 1666a, by failing to properly respond to plaintiff’s timely notice of billing error and then making adverse credit reports while the billing dispute was unresolved. Plaintiff’s request for an award of costs was granted to the maximum amount allowed by statute, but his request for attorney’s fees was denied because TILA’s attorney’s fee provision did not extend the attorneys who brought claims as pro se litigants.
Liability where creditor does not strictly follow the rules:


**Billing error defined.** For purposes of the error resolution procedures, Regulation Z defines billing error to include the following types of claims as reflected on a periodic statement:

- A credit extension not made to the member or the person authorized by the member to use the card or account.
- A credit extension not identified on the statement in accordance with the requirements set forth in Sections 1026.7(b) and 1026.8 of Regulation Z. (§1026.7(b) deals with 1) a multifeatured plans and 2) ATM charges by other institutions in shared or interchange systems.) (§1026.8 deals with the identification of transactions.)
- A credit extension either not accepted or not delivered to the member or designee as agreed.
- A credit union’s failure to properly credit a payment of other credit.
- A computational or similar error that appears on the statement.
- An extension of credit for which a member requests additional clarification or documentation.
- A credit union’s failure to deliver a periodic statement to a member at his or her last known address. This procedure does not apply where a cardholder moves and you are provided the new address less than 20 days before the end of the billing cycle for which a statement is required.

**Member’s commencement of a claim.** A member triggers the error resolution procedures in Regulation Z when he or she notifies your credit union of a perceived error. **This notification must be in writing.** A verbal claim does not trigger the billing error rules.

The claim must be received within 60 days after sending the first statement that reflects the claimed billing error. The member’s notice to the credit union for credit card billing errors must include (or enable your credit union to identify) all of the following:

- Member’s name and account number.
- Type, date, and amount of the error.
- Member’s claim.
- Reasons why the member believes there is an error.

**Note:** You may require your members not to write billing error claims on a statement, bill, or check sent with a bill. Be sure that you disclose this policy in your billing error notice as it appears in the initial disclosures and on the statement or in the annual mailing.

**Credit union’s response to receipt of claim.** Once your credit union receives a billing error notice, it must take the following steps:

1. **Send a written acknowledgment of receipt.** Send the member a written notice acknowledging receipt of the claim. This notice must be sent within 30 calendar days after receiving the claim. But this requirement does not apply if you reach a determination
regarding the claim and take appropriate steps (for example, credit the member’s account) within the 30-day period.

2. Resolve the claim within the time limit. After you complete your investigation and based on your determination, you must comply with the appropriate regulatory procedures within two billing cycles after receiving the claim (but not more than 90 days).

3. Avoid certain actions until the claim is resolved. After receipt of an error claim and until you determine whether an error has occurred, you cannot:
   - Try to collect any portion of a disputed amount.
   - Impose a finance charge on a disputed amount.
   - Make or threaten to make an adverse report to a credit reporting agency based on a member’s failure to pay any portion of a disputed amount.
   - Restrict or close an account solely because a member has exercised his or her right to dispute an amount charged on the account.

   **When a billing error exists.** After your credit union completes its investigation, the next steps depend on whether you conclude that a billing error did in fact occur. If you determine there was an error, you must, within the two-billing cycle limit noted above:

   ✔ Correct the error.
   ✔ Credit the member’s account for the disputed amount plus any finance charges or other charges billed to the member.

   ✔ Mail or deliver a correction notice to the member.

   **When there is no billing error or a different error.** If, at the end of an investigation, you determine there is no error (for example, the member was properly charged) or that a different error occurred, you must send an explanation giving the reasons why you believe the claim is incorrect, wholly or in part. If a member requests it, you must also include copies of any documentary evidence supporting your conclusion.

   If you determine a different error occurred (for example, that a member is entitled to a credit, but in a lesser amount than claimed), in addition to the items described in the previous paragraph, you must correct the error to the extent determined and credit the member’s account with any charges relative to that amount.

   Again, this process must be completed within the two-billing-cycle limit described above.

   **Billing after the investigation.** If your credit union determines the member is responsible for a portion of the disputed amount, you must notify him or her as to when the amount must be paid, allowing the same payment time stated in the account contract. If there is a grace period, apply the grace period rules to the disputed amount.

   The same rules apply if you determine that no error occurred and the member is responsible for the disputed amount.

   If the member fails to pay the billed amount and does not reassert the claim within the time period allowed for payment, your credit union can
report the account as delinquent.

- **When a member reasserts the same claim.** When a member reasserts the same claim, a credit union is not required to repeat the procedures described above. But if you have reported the account to a credit reporting agency as delinquent, you must:
  - ✔ Inform the agency that the amount is in dispute.
  - ✔ Mail a notice to the member stating the name and address of any reporting agencies to which you made a report.
  - ✔ Promptly report any subsequent resolution of the dispute to all such agencies.

**Credit payments on open-end accounts promptly**

Regulation Z provides a general rule for crediting payments made on open-end credit accounts. It permits one exception to the rule and also requires adjustments whenever a credit union fails to promptly credit a payment.

- **Credit as of day of receipt.** Credit unions must credit an open-end credit account with the amount of a payment on the day the payment is received. You may credit a payment at a later date only if the delay does not result in a finance charge.

- **Provide payment specifications on or with the periodic statement.** If your periodic statement includes specifications on how the member is to make payments and the member sends a payment in a way that does not conform to those specifications, you are in compliance with the regulation if you accept the payment and then credit it within five days of receipt.

- **Adjust for failure to credit the payment timely.** If your credit union fails to give same-day credit on a payment (or five-day credit on a nonconforming payment) and the failure results in a finance charge or other charges, you must adjust the account so that the wrongly imposed charges are recredited during the next billing cycle.

- **Handle credit balances as required.** For any credit balance of more than $1 on an account (for example, by an overpayment made by the member), you must take the following actions:
  - ✔ Credit the amount of the credit balance to the member’s account.
  - ✔ Refund the credit balance, or any part of the credit balance remaining, within seven days of receipt of a written request for refund by the member.
  - ✔ Make a good faith effort to refund any part of a credit balance remaining in the account for more than six months. No further action is required if you do not know the member’s current address and he or she cannot be traced through the last known address or telephone number.

**Open-end disclosures and notices**

The term “open-end credit” is consumer credit extended under a plan in which (1) the parties expect that there will be repeated transactions, (2) the credit union has the right to impose a finance charge from time to time on the
Timing of Open-End Disclosures

When an application form is given to the member, disclose:

- Table of credit card terms.
- HELOC disclosures and booklet.

Before the first transaction or at consummation (time the contract is “created”), disclose:

- Initial disclosure statement.
- Rescission notices for nonpurchase loans secured by the member’s principal dwelling.

After consummation, you must provide:

- Periodic statement.
- Billing rights notice.
- Change in terms notice.
- Credit card renewal notice.
- Change of credit card insurance provider notice.

State law must be considered in making accurate TILA/Regulation Z disclosures.

Revere Employee’s Federal Credit Union v. La Pointe, 439 N.Y. S.2d 600 (1981). The credit union brought an action to collect a debt. The defendants counterclaimed, based on a disclosure regarding the right of the credit union to collect attorneys’ fees and/or collection charges. The loan agreement provided that the credit union was entitled to a sum equal to 25% of the balance of the loan. However, New York state law is contrary to this disclosure. Therefore, the court ruled that the provision violated Section 226.6 of Regulation Z, holding that the disclosure is misleading or confusing to the member. See also, Anderson v. Farmer’s Bank of Clatonia, U.S. Dist. Ct. Neb., CV 79-L-79 (1980).

Timing for electronic disclosures

In every case involving credit card applications or solicitations as well as applications for home equity lines of credit (HELOCs) and other open-end loans, a consumer must be able to access the disclosures at the time the blank application or reply form is provided by electronic communication. Credit unions may provide a link to their electronic disclosures on or with the application (or reply form) as long as members cannot bypass those disclosures before submitting the application or reply form. However, if a link is not used, the application or reply form must clearly
and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Another option would be to have the disclosures automatically appear on the screen with the application or reply form. Confirmation that the member has read the disclosures is not required.

**General disclosure rules**

Under Section 1026.5(a), all disclosures for open-end credit must be made:

- Clearly and conspicuously.
- In writing.
- In a form the member may keep.

**Drafting Tip:** A well-drafted contract will insure that required disclosures (TILA/Regulation Z) are separated from other contractual terms (where segregation is not an issue). Further, the credit union should draft such provisions with a disclaimer such as “except where prohibited by applicable law.” This may be particularly useful when the credit union seeks to collect a loan made in its “home” state or in a “foreign state” (for example, a New York credit union makes a loan to a resident of New York who now resides in Florida, where legal action will need to be brought).

**Exceptions**

There are exceptions to the general requirements. Another footnote to Section 1026.5(a) states the requirement that disclosures must be in a form members can keep does not apply to:

- The disclosures for credit card and charge card applications and solicitations.
- The disclosures required under Section 1026.40(d) for HELOCs.
- The alternative summary billing rights statement in Section 1026.9(a)(2).
- The credit card and charge card renewal disclosures required under Section 1026.9(e).
- The disclosures regarding payment requirements as provided in Section 1026.10(b).

Section 1026.5(a) further provides that in all cases where a disclosure is required to reflect the amount or rate of a finance charge and APR (respectively), the terms and numbers must be more conspicuous than any other required disclosures. But another footnote lists exceptions to this rule—the “more prominent” requirement does not apply to:

- Credit and charge card solicitations.
- Periodic statements.
- Credit and charge card renewal disclosures.
- Advertisements.

**Required information unknown at the time disclosures are given**

All disclosures must reflect the terms of the legal obligation between the parties. Where any information necessary for accurate disclosure is unknown to your credit union at the time the disclosures are made, you must make the required disclosure based on the best information available at the time, and state clearly that the disclosure is an estimate.

If events that occur subsequent to the
time the disclosures are given cause a disclosure to become inaccurate, you are not liable for the inaccuracy.

More than one member applicant

If there is more than one member, your credit union satisfies the disclosure requirement by providing the disclosure to any of the individuals who are primarily liable on the account. But where a notice of the right of rescission is required, you must give the notice to each member who has a right to rescind. See the “Compliance with right of rescission rules—open-end loans” discussion that follows.

Types of open-end credit disclosures

In connection with open-end credit, Regulation Z requires credit unions to provide the following types of disclosures:

• Initial disclosures before or at the time an open-end account or plan is established.
• Periodic statements at regular intervals.
• Notice of change whenever certain terms regarding an account are being changed.
• A statement of billing rights with each periodic statement or annually.
• Disclosure of additional credit devices and features.
• Advance notice on renewal of a credit card subject to an annual fee or similar charge.
• Notice of change of credit card insurance provider.
• HELOCs disclosures.

The events that trigger these disclosure requirements, as well as their content and timing provisions, are discussed in the following paragraphs.

Initial disclosures

Credit unions must provide an initial disclosure statement to all members who establish an open-end credit account. This disclosure must be given before the first transaction is made under the plan or account and must contain the following items, using terminology that is consistent with the content of the periodic statement.

• Finance charge. You must disclose the circumstances under which your credit union will impose a finance charge, including the amount of charge, and explain how you determine this charge. This means you must disclose:
  ✓ When finance charges begin to accrue and explain the grace period, if there is one.
  ✓ Each periodic rate that may be used to compute the finance charge.
  ✓ The range of balances each rate applies to and the corresponding APR.
  ✓ Explanation of how you determine the balance on which the finance charge is computed.
  ✓ An explanation of how you determine the amount of the finance charge.
  ✓ A description of how you determine any finance charge other than the periodic rate.
  ✓ The type of transaction to which
the rate applies, if different rates apply to different types of transactions.

☑ An explanation of the method used to determine the balance to which the rate is applied.

☑ For variable rate accounts, the fact that the APR may increase, how the rate is determined including the margin, circumstances under which the rate may increase, the frequency with which the rate may increase, any limitation on the amount the rate may change, the effects of an increase. A rate is considered accurate if it was in effect within 30 days before the disclosures are provided.

• Other charges. The disclosure must include the amounts of any other charges, or an explanation of how any other charges are determined.

The commentary to Reg Z clarifies that any fee or charge for expediting a loan payment (as an alternative to mailing a payment that might not reach the card issuer by the due date) is neither a finance charge or “other” charge and therefore is not required to be disclosed under TILA and Regulation Z. However, consumers should be informed by the creditor of the amount of the charge at the time the service is requested. In addition, when the fee is charged to the credit account, creditors must include the cost on the periodic statement for that billing cycle.

• Voluntary Credit Insurance, Debt Cancellation or Debt Suspension Premiums. If applicable, the disclosure must state that the particular insurance or coverage is not required by the credit union and the premium or fee for the initial term of coverage must be disclosed. For debt suspension coverage, the fact that the obligation to pay loan principal and interest is only suspended, and that interest will continue to accrue during the period of suspension.

• Security interests. If applicable, the disclosure must state that your credit union has or will acquire a security interest in the property purchased under the plan or in other property, identified by item or type.

Note: This disclosure applies to cross-collateralization interests and the member’s pledge of shares. See the closed-end credit section for a discussion of cross-collateralization.

• Statement of billing rights. The disclosure must include a statement that outlines the member’s billing rights. This statement must be substantially similar to the statement set forth in Appendix G to the Regulation.

• Additional disclosures for HELOCs. Disclosures for HELOCs must also contain the following seven additional items, which are described more fully in the discussion of the HELOC disclosure requirements later in this section:

1. A statement of the conditions under which your credit union can terminate the plan or change the terms.

2. The payment information for both the draw period and the repayment period.

3. A statement that negative amortization may occur.
4. A statement of any transaction requirements.
5. A statement regarding the tax implications.
6. A statement that the APR imposed under the plan does not include costs other than interest.
7. The variable-rate disclosures and an example of the repayment schedule based on a $10,000 outstanding balance.

Compliance with the right of rescission rules — open-end loans

Regulation Z provides two separate sections that give members the right to rescind a loan transaction. Section 1026.15 sets forth the rules that apply to open-end credit concerning:

1. Applicable transactions. The right of rescission is available with respect to any open-end credit plan in which your credit union will retain or acquire a security interest (usually in the form of a mortgage) in a member’s principal dwelling. Regulation Z defines a dwelling as a residential structure containing one to four units, even if the structure is not attached to real property. Individual condominium units, cooperative units, mobile homes, and trailers all can be considered a dwelling if used as a residence. A dwelling is, of course, a principal dwelling if the person resides there. The term “principal dwelling” excludes second homes, vacation homes, and other dwellings at which the owner resides only on a temporary basis. Purchase loans are also excluded under this section.

   Note: A dwelling may include a motor home, house or other boats, recreation vehicle, etc., if used as a member’s “principal dwelling.”

2. Procedures for right of rescission.
   The first step in offering credit that is subject to the right of rescission is to give the member all of the required disclosures and a notice of the right to rescind. The second is to delay performance during the right of rescission period (three business days). This means that for a transaction involving a new open-end credit plan, you must withhold the member’s access to the line of credit during the rescission period. Third, after the rescission period expires, you must give the member access to the line of credit.

3. Notice of the right of rescission.
   Each member who is entitled to rescind a transaction must receive notice of that right. The person who is entitled to rescind is the member whose principal residence is or will be subject to the security interest. Where a property is owned by more than one person, each owner must receive the notice. If the borrower is not the owner of the residence, and a nonborrower (for example, a guarantor) pledges his or her principal residence as collateral security for the line of credit, then notice must be given to the nonborrower; a borrower has no right to rescind in this case, and you need not give him or her a notice. Each person entitled to rescind must get two copies of the notice.

   The rule provides five separate model forms of notice of the right of rescission for open-end credit in Appendix G to Regulation Z, one for each circumstance that gives rise to this right.

   NOTE:
   If a member mails a notice of rescission, you will likely not receive it until after the rescission period has expired. This can create a period of exposure where a member can draw down on the credit plan before the exercise of the rescission. Consider delaying for an additional period of time to provide for mailing, or have members submit notice that the period has passed and they have chosen not to exercise the right to rescind, which can be signed and faxed to the credit union.
4. Rescission notice delivered by electronic communication. If the notice of right to rescind is delivered by electronic communication per section 1026.36 (b) requirements for electronic disclosures, only one copy of the notice must be given to each person with an ownership interest in the property subject to the security interest. If e-mail is used, only one notice must be sent to each co-owner. However, each co-owner must consent to receive electronic disclosures and each must designate an electronic address for receiving the disclosure.

5. Length of period for a member to exercise the right to rescind. Under Section 1026.15(a)(3), a member's right to rescind begins on the day of the occurrence that gave rise to the right (for example, when a credit plan is opened), and it expires at midnight on the third business day after (1) the occurrence, (2) delivery of the notice(s) of right of rescission, or (3) delivery of all material disclosures, whichever is later. For this purpose, the term “business day” means any day other than Sunday and federal legal holidays (for example, New Year’s Day, Martin Luther King Day, Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans’ Day, Thanksgiving Day, and Christmas Day).

Example: Credit Plan opened Friday, July 1, 1999. Right to rescind expires on July 6, 1999. Disburse funds on July 7, 1999 (count Saturday, July 2; do not count Sunday, July 3; do not count Monday, July 4, a legal holiday; count Tuesday, July 5; and count Wednesday, July 6).

6. Three-year rescission period. Once a right of rescission period begins, a member can exercise that right and rescind a transaction until midnight of the third business day, as just described. But if your credit union fails to supply the member with the right of rescission notice or the material disclosures as described above, the right of rescission does not expire until three years after the occurrence that gave rise to the right to rescind. Or, it expires when the member sells or transfers the property, if that event occurs before the three-year period has expired.

7. Member's notice of rescission to the credit union. A member exercises his or her right of rescission by notifying your credit union of this decision in writing but not necessarily on the notice supplied by the credit union. The form you include with the notice of right to rescind may be used for this purpose. Notification is deemed given when mailed or filed for telegraphic transmission. If another means for delivery is used, the notice is deemed given when delivered to your credit union's designated place of business.

8. Delayed performance during the rescission period. Credit unions must delay performance under open-end credit plans until the right of rescission period expires. This means you cannot disburse money to a member, except in escrow, until expiration of the rescission period and until you are reasonably satisfied the member has not exercised this right.

9. Completion of performance or cancellation of transaction. After a right of rescission period expires without
being exercised, you can proceed with the transaction (for example, make the credit line available to the member, file the mortgage on the property, and so forth). When a member exercises his or her right within the three-business-day period, your security interest in the property automatically becomes void, and the member is not liable to your credit union for any amount, including any finance charge. Both your credit union and the member must reverse any transactions. Your credit union must take back any money it has provided to anyone and take any steps necessary to reflect termination of your security interest. If you have made any money available to the member, he or she may keep it until reasonably satisfied that you have performed your obligations relating to the rescission.

10. Waiver of the right of rescission.
Section 1026.15(e) permits a member to waive the right of rescission and avoid the delay created by the rescission waiting period when there is a bona fide personal emergency. The member must provide a dated written statement signed by everyone who has the right to rescind, describing the emergency, and specifically waiving the right to rescind. This statement cannot be provided on a preprinted form.

Periodic statements

Section 1026.5(b)(2) requires credit unions to provide a periodic statement to members with open-end credit for each billing cycle during which a finance charge is imposed or an account has a debit or credit balance of more than $1. A “billing cycle” is the interval between the days or dates of regular periodic statements. These intervals must be equal with a maximum interval of one calendar quarter. Intervals are considered equal if the number of days in a cycle does not vary by more than four days from the regular day or date of the periodic statement.

Credit unions are required to mail or deliver each periodic statement at least 21 days before the payment due date for credit card accounts and before the end of a grace period for any open-end loan, or before the date after the credit union can impose an additional finance charge or other charge (for example, for a member’s failure to make a required payment). The 21-day rule also extends to “free ride” ending dates. If you mail a periodic statement later than permitted under this rule, you cannot collect any finance charge or other charge that would otherwise be permitted.

For all other loans (except credit card accounts and open-end loans subject to a grace period), the credit union must mail or deliver each periodic statement at least 14 days before the date on which the minimum payment must be received in order to avoid being treated as late for any purpose. For credit unions that offer no courtesy period, this would be the actual payment due date. For credit unions that offer a courtesy period, this would be the end of the courtesy period (as long as the account isn’t treated as late for any other reason before this date).

A credit union must adopt reasonable procedures for all open-end loans including credit card accounts, general lines of credit, overdraft lines of credit, HELOCs, and open-end loans associated
with multi-featured open-end lending programs to ensure that periodic statements are mailed or delivered at least 21 days before and the end of a grace period. For example, if a credit union mails its periodic statements no later than three days after the closing date of a billing cycle, the payment due date and the end of the grace period must be no earlier than the 24th day after the closing date of the billing cycle.

The actual payment due date, not the end of any courtesy period, is the date that must be used for determining whether the 21-day time requirement has been met. A courtesy period is a period of time, that is either set forth in the account agreement or provided as an informal policy or practice, immediately following the payment due date during which no late fee will be imposed. For example, if a payment due date is the 25th day of the month but, a credit union provides a courtesy period of ten days and will not assess a late fee until the 5th day of the following month (assume the first month has 30 days), the 25th day of the first month is the date used for determining compliance with the 21-day timing requirement.

- A credit union that fails to comply with this 21 day timing requirement may not treat a payment as late for any purpose or collect any finance or other charge imposed as a result of a late payment.

- Treating a payment as late for any purpose includes imposing a penalty rate, reporting the account as delinquent to a credit reporting agency, or imposing a late fee.

Periodic statements can be provided by electronic communication if the member consents in accordance with the requirements outlined in section 1026.36(b). See a discussion of those requirements in the section on Electronic Communication.

**Content of periodic statement**

Section 1026.7 sets forth the content requirements for periodic statements. The periodic statement for a HELOC must include the following to the extent applicable:

1. Previous balance.
2. Identification of transactions.
3. Credits.
4. Periodic rates.
5. Balance on which finance charge computed.
6. Amount of finance charge and other charges.
7. Annual percentage rate.
8. Grace period.
9. Address for notice of billing errors.
10. Closing date of billing cycle and the account balance as of that date.

**Identifying transactions on periodic statements**

Section 1026.8 sets forth the requirements for identifying transactions on periodic statements. Credit unions are required to identify transactions on the first periodic statement that reflects the transaction and provide the following information:

- For each credit transaction involving the sale of property or services, the amount and date of the transaction must be disclosed, and either
• A brief identification of the property or service (when the creditor and seller are the same), or

• The seller’s name, city and state or foreign country where the transaction took place.

• For each credit transaction not involving the sale of property or services, a credit union must provide a brief identification of the transaction, the amount of the transaction, and at least one of the following dates: the date of the transaction, the date the transaction was debited from the member’s account, or the date appearing on the credit document.

Prompt crediting of payments

Generally, a credit union shall credit a payment to the member’s account on the date of receipt of the payment, except when a delay in crediting does not result in a finance charge or other charge such as a late payment fee.

A credit union may specify reasonable requirements for making payments. Reasonable requirements for making payments may include:

• Requiring that payments be accompanied by the account number or payment stub;

• Setting reasonable cut-off times for payments to be received by mail, by electronic means, by telephone, and in person. For example, it would be reasonable to set a cut-off time for payments by mail of 5 p.m. on the payment due date at the location specified for the receipt of payments;

• Specifying that only checks or money orders should be sent by mail;

• Specifying that payment is to be made in U.S. dollars; or

• Specifying one particular address for receiving payments, such as a post office box.

If a credit union specifies on or with the periodic statement requirements for a member to follow in making payments, but accepts a payment that does not conform to its requirements, the credit union must credit the payment within five days of receipt.

If a credit union fails to credit a payment in time to avoid the imposition of finance or other charges, the credit union must adjust the member’s account so that the charges imposed are credited to the member’s account during the next billing cycle.

If a due date for payments is a day on which the credit union does not receive or accept payments by mail, the credit union may not treat a payment received by mail the next business day as late for any purpose.

Notice of change for HELOCs

A credit union must provide a notice of change in terms for home equity lines of credit at least 15 days prior to the effective date of the change, if it changes any term required to be disclosed at account opening. The 15-day timing requirement does not apply if the change has been agreed to by the member, or if a periodic rate or finance charge is increased because of the member’s delinquency or default. In this case, the notice must still be provided before the effective date of the change.
No notice is required at all, when the change involves late payment fees, charges for documentary evidences, over-limit fees, a reduction of a finance or other charge, suspension of future credit privileges, or termination of an account, or when the change results from an agreement involving a court proceeding, or from the member’s default or delinquency (other than an increase in the periodic rate or other finance charge).

**Exception for HELOCs.** If your credit union either prohibits additional extensions of credit or reduces the credit limit applicable to a HELOC you must mail or deliver written notice of that fact to each member affected by the change, not later than three business days after the action is taken. The notice must include a statement of the specific reasons for taking the action. If you require the member to request reinstatement of credit privileges, the notice must state that fact.

**Additional billing rights statements**

In addition to providing a statement of billing rights in the initial disclosure, credit unions must remind members of this right by providing additional notices. Regulation Z requires credit unions to send a billing rights statement (the identical statement the credit union must provide in its initial disclosures) at least once each calendar year. The interval between mailings cannot be less than six nor more than 18 months. A credit union satisfies this requirement if it sends the notice to all members entitled to receive a periodic statement for any one billing period, even if this means that members who have no outstanding balance and have had no activity on their account during the past billing cycle will not receive the billing rights notice.

Regulation Z Section 1026.9(a) (2) offers an alternative to the annual mailing requirement. Credit unions can include a shortened form of billing rights notice, one that is substantially similar to the short notice provided in Appendix G to Regulation Z, either on or with each periodic statement mailed or delivered to the member. Credit unions that do so are relieved of the annual notice obligation.

**Disclosure of additional credit devices and features**

Credit unions sometimes add a credit feature to an open-end account or send a credit device to members relating to their accounts after initial disclosures have been provided. Certain notice provisions apply in these cases.

- If a feature is added or device is sent within 30 days after a disclosure is given and the finance charge terms remain the same, no additional disclosure is required.

- If a feature is added or device is sent more than 30 days after a disclosure is given and the finance charge terms remain the same, you must disclose, before the member uses the device or feature, that it is for use in obtaining credit under the terms previously disclosed.

- If a feature is added or device sent and the finance charge terms differ from the disclosures given, then the initial disclosures that apply to the new feature or device must be given before the feature or device is used.
Disclosure requirements for HELOCs

Regulation Z contains a number of special provisions that apply to HELOCs. The requirements of this section are added to the other requirements of the regulation, not in lieu of them. In addition to the disclosure rules, Section 1026.40 of Regulation Z also contains some operational rules for these plans concerning:

1. **Form of HELOC disclosures.** The required disclosures for HELOCs must be made clearly and conspicuously, must be grouped together, and must be segregated from all other unrelated information. The for HELOC disclosures may be provided on the application form or on a separate form.

2. **Timing provision.** The HELOC disclosures must be provided along with the application for a HELOC. For applications made by telephone, through an intermediary agent or broker, or mailed to the credit union in response to a magazine application, the credit union complies with this requirement by mailing the HELOC disclosures not later than three business days after receiving the application.

3. **Brochure to accompany the application.** Along with the HELOC disclosures, your credit union must give the applicant a copy of the brochure entitled “What You Should Know About Home Equity Lines of Credit.”

4. **Contents and order of the disclosures.** Section 1026.40(d) of Regulation Z provides a list of up to 12 separate items that must be included in a HELOC disclosure.

Initial home equity line of credit plan disclosures

The initial disclosures must include the following, to the extent applicable:

- Statement that the member should retain a copy of the initial disclosures.
- When the application must be submitted to obtain the terms described.
- Terms that are subject to change prior to opening the credit plan.
- Statement of the member’s right to a refund prior to opening the credit plan.
- Statement that the credit union will receive a security interest in the member’s dwelling.
- Possible actions the credit union can take under certain conditions.
- Length of the draw period.
- Payment terms.
- Annual percentage rate.
- Credit union fees.
- Third-party fees.
- Notice of negative amortization that may occur.
- Transaction limitations.
- Reference to tax advisor.
- Variable-rate disclosures.

As stated, these disclosures must be grouped together. However, it is permissible to provide the following three disclosures separately:

- A statement of the specific conditions under which you may terminate the
plan early (usually before the final payment would be due).

- A good faith itemization of any third-party fees that may be incurred in connection with opening a home equity plan.

- Any variable-rate information required to be disclosed in cases where the APR offered in connection with the plan is variable.

Section 1026.40(a) of Regulation Z requires the first four items to appear before the other required disclosures. The rule includes model clauses for the HELOC disclosure in Appendix G to Regulation Z (model form G-15).

**Marketing and advertising rules for open-end credit**

Regulation Z provides specific rules that apply to all advertisements for open-end credit, as well as additional rules for credit card solicitations and applications. The general rules govern the actual availability of terms offered in an advertisement, trigger terms, and multipage advertisements.

All disclosures required to be made in advertisements must be set forth clearly and conspicuously. To meet this requirement, the disclosures must be legible and reasonably understandable.

**Actual availability of terms**

If an advertisement for any type of open-end credit states specific credit terms, the terms must actually be arranged or offered by the credit union.

**Trigger terms**

There are certain credit terms that, if mentioned or described in an advertisement by themselves, might mislead members as to the “deal” you are offering in comparison to similar credit offered by other credit unions. These terms are known as “trigger terms” because their inclusion in an advertisement triggers the requirement for additional disclosures.

Specifically, if an advertisement for an open-end line of credit contains any credit term required to be disclosed under Section 1026.6 in an initial disclosure statement, you must include additional information in the advertisement.

**What is a trigger term?**

In most cases, a term that is vague is not a trigger term. For example, the phrase “defer your first monthly payment until February” is not considered a trigger term because it does not state or suggest a specific period of repayment. Specific terms, however, are more likely to be trigger terms. The APR is considered a trigger term. That is, if you state an APR, you must provide other disclosures in the advertisement. (But note that the inclusion of the APR is not a trigger term in advertisements for closed-end credit.)

Any term required to be disclosed under Reg. Z Section 1026.6(b)(3) including all finance charges or other charges imposed as part of the open-end plan that are expressed either affirmatively or negatively in an advertisement for open-end credit (not home-secured) will trigger the additional required disclosures.
The following credit terms are considered trigger terms for open-end credit under Regulation Z:

- A description of the circumstances under which a finance charge will be imposed, or how it is to be determined; mention of the APR, periodic rate, or any grace period. The following statements, for example, are triggers: *There’s just a small monthly charge on your outstanding balance; or: Pay only 1% per month on the amount of credit you use.*

- The amounts of any other charges that might be imposed, or an explanation of how they would be determined. For example, *There’s only a 50-cent charge for each check you write.*

**Additional required disclosures**

If an advertisement for open-end credit contains one or more trigger terms, then the advertisement also must disclose the following information:

- Any minimum, fixed, transaction, activity or similar charge your credit union could impose.

- Any periodic rate your credit union may apply, expressed as an annual percentage rate, and, if applicable, that the rate is variable.

- Any membership or participation fee your credit union could impose.

- If an advertisement for credit to finance the purchase of goods or services specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the loan, assuming that the member pays only the payment amount advertised. The total of payments and the time period to repay the loan must be as prominent as the statement of the periodic payment amount.

**NOTE on “Open-end” Lending.** It is strongly recommended that the credit union be more descriptive of the use of “terms” with open-end lending in light of the significant case law that has evolved with regard to this issue. You do not want to allow your open-end loans to be confused with closed-end loan products.

For example, when you use a rate table, we recommend:

**Approximate Term**

<table>
<thead>
<tr>
<th>24 months</th>
</tr>
</thead>
</table>

*The approximate term is provided to disclose the term we use to calculate payments for the credit union’s open-end loan products.*

**Misleading terms**

An advertisement for open-end credit may not refer to an APR as “fixed,” or use a similar term, unless the advertisement also states a time period that the rate will be fixed and the rate will not increase during that period. If no such time period is provided, the rate will not increase at any time while the plan is open.

An advertisement may not refer to a home-equity plan as “free money” or contain a similarly misleading term.

**Advertising HELOCs**

**Special Trigger Term Rules.** An additional trigger term rule is provided for the advertisement of HELOCs. HELOCs are subject to the rules just described; that is,
additional disclosures are required if an advertisement for a HELOC includes any of the terms required to be disclosed under sections 1026.6(a) or 1026.6(b).

A significant difference is that HELOC advertisements also are required to provide additional disclosures if the advertisement sets forth any payment term, positively or negatively. For example, if included, the following statements are trigger terms for home equity plans, but not for other open-end loans:

- **There are no finance charges for the first month.**
- **There’s no finance charge if you pay the full balance within 25 days of the statement date.**

Furthermore, if an advertisement for a home equity plan contains a trigger term, you must disclose the three items listed in section 1026.16(b) as described above, as well as the following:

- Any loan fee that is a percentage of the credit limit under the plan (for example, “points”) and an estimate of any other fees the credit union imposes for opening the plan, stated as a single dollar amount or a reasonable range.
- The periodic rate, if any, used to compute the finance charge, expressed as an annual percentage rate.
- The maximum annual percentage rate that may be charged if it is a variable-rate plan.

**Other Advertising Rules.** Section 1026.16 provides additional rules for advertisements of home equity plans. If an advertisement reflects an initial APR that is not based on an index and margin that will be applied to make later rate adjustments, the advertisement must state the period of time the advertised rate will be in effect and, giving equal prominence to the quoted initial APR, a reasonably current APR that would be in effect had you used the index and margin.

**Balloon Payment.** If an advertisement states anything about a minimum periodic payment, the advertisement must state with equal prominence and in close proximity to the minimum periodic payment statement that a balloon payment may result (if applicable). In addition, the advertisement must state with equal prominence and in close proximity to the minimum payment statement the amount and timing of the balloon payment that will result if the member makes only the minimum payments for the entire time before the balloon payment is required.

**Tax Implications.** If an advertisement indicates that interest expense incurred under a home equity plan is or may be tax deductible, the reference must be made so that it is not misleading in any respect. In addition, a HELOC advertisement distributed in paper form or through the Internet that states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement must state that:

- The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes, and
- The member should consult a tax adviser for further information regarding the deductibility of interest and charges.
**Promotional Rates and Payments.** If any APR that is applied to a plan is a promotional rate, or if any payment applicable to a plan is a promotional payment, the following must be disclosed in any advertisement, other than radio or television advertisements, in a clear and conspicuous manner with equal prominence and in close proximity to each listing of the promotional rate or payment:

- The period of time during which the promotional rate or promotional payment will apply,
- In the case of a promotional rate, any APR that will apply under the plan, and
- In the case of a promotional payment, the amounts and time periods of any payments that will apply under the plan.

These requirements do not apply to an envelope in which an application or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

**Alternative Disclosures for Television or Radio Advertisements.** A television or radio advertisement for a HELOC that states any of the open-end credit triggering terms or any of the triggering terms for HELOCs [1026.16(d)] may comply with this section by stating any periodic rate used to compute the finance charge, expressed as an APR and listing a toll-free telephone number, or any telephone number that allows a member to reverse the phone charges when calling for information along with a reference that the numbers may be used by members to obtain additional cost information.

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**Closed-End Credit Operations and Procedures**

**Determine the Annual Percentage Rate (APR)**

Regulation Z requires the APR on closed-end loans to be calculated in accordance with one of two methods:

1. The actuarial method.
2. The United States Rule method.

Explanations, equations, and instructions for using the actuarial method are provided in Appendix J to the Regulation. The Regulation does not provide a further explanation of the alternative method.

You can also use the Regulation Z Annual Percentage Rate Tables. Any APR determined from those tables in accordance with the accompanying instructions is automatically deemed to be in compliance.

You may use any other computational tool to determine an APR if the rate determined equals the rate that would result using the methods provided in Appendix J, within the degree of accuracy permitted.

The Regulation allows a tolerance for errors. An APR is considered accurate if it is within \( \frac{1}{8} \) of 1% above or below the APR as determined by either of the two permitted methods. A higher tolerance, \( \frac{1}{4} \) of 1%, is permitted for irregular transactions. An irregular transaction is one that includes either multiple advances, irregular payment periods, or irregular payment amounts. An irregular first period, or first or last payment amount, is not an irregular transaction.
for this purpose.

Interest – Can the Credit Union Charge from Closing Date or Disbursement Date?


Overview: On a home equity loan, defendant charged plaintiffs interest that accrued between the time the funds were sent by defendant to the escrow agent and the time the funds were disbursed to plaintiffs. In plaintiff’s class action, the court denied defendant’s summary judgment motion. The Depository Institution deregulation and Monetary Control Act of 1980, 12 U.S.C. §1725-f7 et seq., did not govern the loan, because North Carolina opted out of that statute; the loan was made in North Carolina since defendant was a national bank located in North Carolina with no branch offices outside of that state. Under the National Bank Act, loans made by defendant were governed by North Carolina law. Under North Carolina law, defendant was not entitled to charge interest on the loan until the funds were disbursed to plaintiffs.

Margin of error in calculating the APR

The annual percentage rate for a regular transaction is considered accurate if it varies in either direction by not more than \( \frac{1}{8} \) of 1 percentage point from the actual annual percentage rate. For example, the exact annual percentage rate in a regular transaction is 10 ¼%. Disclosure of any annual percentage rate between 10% and 10 ¼%, or its decimal equivalent, is considered accurate [See comment 1026.22(a)(2)-1].

Tolerances for accuracy

Section 1026.23(f) of Regulation Z provides a rule for the accuracy of disclosures. For purposes of the right of rescission, disclosures are considered accurate if the disclosed finance charge and other disclosures affected by the finance charge (for example, the amount financed and the annual percentage rate) are overstated, or if the disclosed finance charge is understated by no more than \( \frac{1}{2} \) of 1 percent of the face amount of the note, or by $100, whichever is greater.

In the case of a refinancing of a residential mortgage transaction by a new creditor, the tolerance for accuracy is even greater. If there is no new advance of funds and no consolidation of existing loans, the tolerance for understating the finance charge and any other disclosures affected by the finance charge increases to 1 percent of the face amount of the note or by $100, whichever is greater. Again, there is no liability where the finance charge is overstated.

Special rules for foreclosures

Regulation Z, Section 1026.23(h). Special right of rescission rules apply in any case where a credit union has initiated foreclosure proceedings and failed to comply with certain of the regulation’s disclosure requirements. Section 1026.23(h) permits the borrower to rescind the transaction if:

- A mortgage broker fee that should have been included in the finance charge was not included in the disclosure given to the member.
- The right of rescission notice given to the member was not the proper form.
• The right of rescission notice form was improperly completed.

• The finance charge in the disclosures was understated by more than $35.

  Note: This tolerance for accuracy of the finance charge is considerably different than the rule that applies to the member’s right of rescission in other circumstances.

Handle credit balances as required

Where a credit balance of more than $1 is created on a loan account (for example, by an overpayment made by the member), your credit union must credit the amount to the member’s account. On a member’s written request for a refund, you must refund the credit balance or any part remaining within seven days.

For such balances that remain in an account for more than six months, a credit union is required to make a good-faith effort to refund the money to the account holder. No further action is required if you do not know his or her current location and are unable to trace it through the last known address or telephone number.

Closed-end disclosures and notices

Most closed-end credit loans involve a one-time advance of funds, with a schedule for the member to repay the credit union. Traditionally closed-end credit is extended at a fixed rate, with a fixed payment schedule. Now, however, there are adjustable-rate mortgages with a rate that is adjusted from time to time, reverse mortgages where the “borrower” makes no payments, and other variations.

Most of the disclosure requirements in Regulation Z, Subpart C apply to all categories of closed-end credit. The only exceptions are the following provisions that relate exclusively to real property loans:

• Section 1026.19(a), which requires credit unions to provide a good faith estimate of disclosures in connection with a residential mortgage transaction.

• Section 1026.19(b), which requires a special disclosure for adjustable-rate mortgages.

• Section 1026.20(b), which requires a special disclosure when a mortgage loan is assumed.

• Section 1026.32, which requires a special disclosure for Section 32 loans.

• Section 1026.33, which requires a special disclosure (and waiting period) for reverse mortgage loans.

This section covers the disclosure rules that apply to all types of closed-end credit, followed by the separate disclosure provisions in Sections 1026.19, 1026.20, 1026.32, and 1026.33 that apply to mortgage loans under Regulation Z. For a checklist of required mortgage disclosures, see Appendix 1-D.

General disclosure rules and requirements

Section 1026.17(a) requires all disclosures to be made:

• Clearly and conspicuously.

• In writing.
• In a form that the consumer may keep.
• Grouped together.
• Segregated from everything else.

The disclosures may not contain any information that is not directly related to the required disclosures. Further, the itemization of the amount financed is specifically required to be separated from the other required disclosures. The disclosures may include an acknowledgment of receipt, the date of the transaction, and the member’s name, address, and account number.

Disclosures must show the “amount financed” and “annual percentage rate” with their corresponding amount and rate more conspicuous than any other item except the name of your credit union.

When information necessary for an accurate disclosure is unknown at the time you make the disclosures, provide an estimate based on the best information available to you at the time and state clearly that the disclosure is an estimate.

In making calculations and disclosures, the credit union may disregard the effects of the following:
• That payments must be collected in whole cents.
• That dates of scheduled payments may be changed because the scheduled payment date is not a business day.
• That months have a different number of days.
• The occurrence of a leap year.
• Any irregularity in the first period, and any payment schedule irregularity that results from an irregular first period. The permitted irregularity of the first period depends on the term of the loan. Section 1026.17(c)(4) details the permitted deviations based on terms of less than 1 year, 1 to 10 years, and longer terms.

In making calculations for disclosures, an assumed maturity of one year is used for loans that have no fixed term and are repayable on demand. However, if such a loan provides for an alternative maturity date, base the disclosures on that date.

In making a loan that will involve a series of advances, consider the loan as one transaction to make calculations for disclosures. Similarly, if you will make multiple advances to finance the construction of a dwelling and will provide permanent financing, treat the construction and permanent phases as one for purposes of disclosures.

Where events occur subsequent to the giving of disclosures that cause a disclosure to become inaccurate, you are not liable for the inaccuracy. Certain changes do trigger a notice requirement, however, as discussed later in this section. But where disclosures are given before consummation and a subsequent event makes the disclosed APR inaccurate by more than ¼ of 1% (or ¼ of 1% in an irregular transaction), you must disclose all the changed terms no later than consummation or settlement.

Language of Disclosures. Disclosures can be made in a language other than English, provided the English version is available upon request. This requirement for providing English disclosures on request does not apply to advertisements for open-end or closed-end loans subject
to Regulation Z sections 1026.16 and 1026.24 dealing with advertisements. See the RegTraC Regulation Z sections “Marketing and advertising rules for open-end credit” and “Marketing and advertising rules for closed-end credit.”

**Timing Provisions.** Closed-end credit disclosures must generally be provided before consummation of a loan. Consummation as defined in section 1026.2(a)(13) means when the member becomes contractually liable with respect to the loan transaction. When a member legally becomes contractually liable, whether consummation occurs when a contractual document such as a promissory note is signed or when the proceeds of the loan are provided to the borrower, is an issue of state law.

Frequently, the disclosures are placed on the same document with the promissory note. In this case, creditors are not required to give the borrower two separate copies of the document before consummation of the loan. The disclosure requirement is satisfied if the borrower is given ample time to review the unexecuted credit contract and disclosures before signing and then receives a copy of the signed document to keep.

For closed-end mortgages, creditors generally must provide a good faith estimate of the loan costs, including a schedule of payments.

Creditors must mail or deliver the good faith estimates no later than three business days after receiving a consumer’s application for a dwelling-secured closed-end loan. Consummation may occur on or after the seventh business day after the delivery or mailing of these disclosures. If the annual percentage rate provided in the Closing Disclosures changes beyond a specified tolerance (by more than 1/8 of one percentage point in a regular transaction or more than 1/4 of one percentage point in an irregular transaction) for accuracy, creditors must provide corrected disclosures, which the consumer must receive on or before the third business day before consummation of the transaction. The final rule allows consumers to expedite consummation to meet a bona fide personal financial emergency.

Consumers cannot be charged any fee until after they receive the early disclosures, except a reasonable fee for obtaining the consumer’s credit history. More information is provided about these mortgage timing requirements in this book under the section related to the Mortgage Disclosure Improvement Act.

**Specific guidance on when/how to provide disclosures to your member.**

The commentary to the rule provides that creditors that place Truth In Lending Act disclosures on the same document with the credit contract may satisfy the requirement for providing the disclosures, in a form the consumer may keep, before consummation. Generally, if the consumer receives and reviews the unsigned contract and disclosures, the requirement is met. Consumers who sign the contract may then be given a separate copy of the contract and disclosures to keep. The rule gives the following example:

*The disclosure requirement is satisfied if the creditor gives a copy of the document containing the unexecuted credit contract and disclosures to the consumer to read and sign; and the consumer receives a copy to keep at the time the consumer becomes obligated. It is not sufficient for the creditor merely to show the consumer the document.*

NOTE: There are exceptions to this timing requirement for certain types of transactions, and each exception will be discussed.
containing the disclosures before the consumer signs and becomes obligated. The consumer must be free to take possession of and review the document in its entirety before signing.

Timing of disclosures for electronic applications.

In every case involving variable-rate residential mortgage transactions secured by a members dwelling with a term greater that one year (section 1026.19), members must be able to access the disclosures (including the Consumer Handbook brochure) at the time the blank application form is provided by electronic communication. Credit unions can provide a link to the disclosures on or with the application form as long as members cannot bypass the disclosures before submitting the application form. If a link is not provided, the application form must clearly and conspicuously refer to the fact that rate, fee, and other cost information either precedes or follows the application or reply form. Another option is to have the disclosures automatically appear on the screen when the application form appears. Confirmation that the member has read the disclosures is not required.

When your credit union receives a request for credit by mail, telephone, or any other method that does not involve face-to-face contact, you are in compliance with the timing requirements if you give the disclosures no later than the due date of the first payment. But you must be sure that information regarding the amounts or ranges or credit as listed in section 1026.17(g) is available to members before your receipt of an actual request.

This information includes:

- The cash price or principal loan amount
- The total sale price
- The finance charge
- The annual percentage rate. If this rate will increase after consummation also provide information about:
  - The circumstances that will cause the rate increase
  - Any limitations on the increase
  - The effect of an increase
- The terms of repayment

Circumstances giving rise to disclosure requirements

Regulation Z requires credit unions to provide disclosures for closed-end credit transactions as follows:

- For a new loan transaction, a disclosure statement before or at consummation.
- For a refinancing, a new disclosure statement.
- For a loan being assumed by a new buyer, a new disclosure, but with fewer details than the original one.
- For adjustable-rate loans, disclosures regarding adjustments to the interest rate.
- For reverse mortgages, special additional disclosures.
- For Section 32 loans, special additional disclosures.
- For RESPA-related mortgage loans, a Loan Estimate at application and a Closing Disclosure at closing.
The events that trigger disclosures, the content requirements, and the timing provisions for each are discussed in the following paragraphs.

**Disclosure Statements for New Loans.** Before or at consummation of every closed-end loan transaction, a credit union must provide a disclosure statement to the member that includes the items described below. Some of the provisions are complex.

**Identity of the creditor.** Every disclosure must bear the identity of your credit union.

**The amount financed.** You must disclose the “amount financed,” using this term, and give a brief description of the term. There are three components to this requirement: (1) you must calculate the amount financed, (2) you must disclose the amount financed as a dollar amount, and 3) you must provide a brief description of the amount financed.

Calculating the amount financed is itself a three-step process:

- **First**, determine the principal loan amount. In the case of a purchase, this is the cash price minus any down payment.

- **Second**, add to that figure any other amounts financed by your credit union that are not part of the finance charge.

- **Third**, subtract any prepaid finance charge.

While this formula may seem simple, creditors often either forget to subtract any prepaid finance charge, or they supply the wrong figure. Any component of a finance charge that is paid in cash or by check must be subtracted from the amount of the loan proceeds to determine the amount financed.

For any portion of a finance charge your credit union deducts from loan proceeds, you have two options: (1) You can include the amount of the prepaid finance charge in the amount of the loan proceeds and then deduct that same amount as a prepaid finance charge. Or, (2) You can exclude the amount of the prepaid finance charge from the amount of the loan proceeds. The promissory note will then show an amount that is different from that given in the disclosure statement. In this case, you should not list the amount as a prepaid finance charge, and should not deduct the amount from the amount of the loan proceeds to determine the amount financed.

**Itemization of the Amount Financed.**

This itemization must be separate from the other disclosures required under Regulation Z. This means you cannot incorporate this itemization within the body of the disclosure even though it relates to other terms required to be disclosed under Regulation Z.

In lieu of this, the regulation allows credit unions to provide the member with a statement that he or she has the right to receive an itemization of the amount financed. Credit unions that choose this alternative must place the notice among the Regulation Z disclosures and provide a place on the statement for members to indicate whether they want an itemization. If no itemization is desired, the member must indicate this on the form. In all other cases, you must provide the itemization.

**Caution:** An itemization is required for all closed-end loans. If you allow an election, insure that it is the member that makes this
decision. The credit union should never use a preprinted form that has been completed by the credit union to indicate that no itemization is requested.

While an itemization of the amount financed is to be provided separately, this does not mean that it cannot be on the same piece of paper. As long as the required disclosures are grouped together and are clear and conspicuous, you can place the itemization of the amount financed either preceding or following the disclosures or on a separate paper. You may also include other information on the same form as the Regulation Z disclosures as long as it is separate from the Regulation Z grouping.

Four categories of information must be included in the itemization of amount financed:
1. Proceeds distributed directly to the member.
2. Amount credited to the member’s account.
3. Any amounts paid to other persons on behalf of the member.
4. Prepaid finance charge.

This list does not coincide with the list of items considered in calculating the amount financed. It is a minimum standard; a credit union can provide additional information in the itemization if it so chooses. For example, you can add categories that are not among the required ones, such as the down payment and the cash price in a credit sale, and you can break down any category into separate components.

Any of the four required categories that are not applicable to the transaction can be deleted or left blank. Each category is described below:

1. **Proceeds distributed to the member.** This amount represents the dollar amount actually distributed to the member, whether in cash, by check, or by credit to an asset account of the member. If the member is making a purchase with the proceeds of the loan (for example, an automobile loan), a check issued jointly to the member and the automobile dealer is listed in this category. If you require the maintenance of a deposit account with a required minimum balance using a portion of the loan proceeds, the amount credited to the deposit account is to be included in this category.

2. **Amounts credited to the member’s account.** This reference to account means a loan account, not a deposit account. It includes amounts paid for a purchased item on a credit sale and amounts paid to the credit union to reduce or satisfy other loans owed to the credit union.

3. **Amounts paid to others.** This category includes any amounts your credit union has actually paid to others for registration fees and similar items, security interest fees, insurance premiums, amounts paid to credit bureaus, and so forth. You can also list items the member has paid for that are not deducted from the amount of the loan, but this is not required. If a member makes several payments for the same type of item (for example, premiums for more than one type of insurance), you can combine them and list them under a single name such as “insurance” or “insurance premiums.” In describing the third parties, you must generally refer to a payee by name. The only exception is for the fol-
lowing categories of third parties, for which generic terms are sufficient:
• Public officials.
• Government agencies.
• Credit reporting agencies.
• Appraisers.
• Insurance companies.

4. Prepaid finance charges. The amount of prepaid finance charges must be disclosed as a total amount. You may also break this figure down into its components, but you must show the total figure.

Finance Charge. You must use the term “finance charge” and include a brief description, such as “the dollar amount the credit will cost you.” The term “finance charge” and its corresponding dollar amount must be disclosed more conspicuously than all other terms in the disclosure statement except the annual percentage rate and the credit union’s identity. Section 1026.4 of Regulation Z defines the term “finance charge” and includes a detailed explanation of its components (see the definitions section).

Accuracy of Finance Charge Disclosed. Regulation Z provides a tolerance for errors in calculating and disclosing the finance charge. In any transaction secured by real property or a dwelling, the finance charge is treated as accurate if the amount disclosed is overstated (regardless of the amount of the overstatement), or is understated by no more than $100.

In any other type of transaction, there is no distinction made between a finance charge that is understated or overstated and the amount of tolerance for error depends on the amount involved in the transaction. If the amount of the transaction is $1,000 or less there is a tolerance of $5. For transactions in excess of $1,000 there is a tolerance of $10.

Annual Percentage Rate. You must use the term “annual percentage rate” and include a brief description such as “the cost of your credit as a yearly rate.” The term annual percentage rate and the corresponding numerical rate must, with the finance charge, be disclosed more conspicuously than all other terms in the disclosure statement except your credit union’s identity.

Variable-Rate Information. The disclosure requirements for variable-rate loans differ, depending on whether a transaction is secured by a member’s principal dwelling. For transactions not secured by a principal dwelling, and for short-term transactions (one year or less) secured by a principal dwelling, the disclosure statement must:
• Describe the circumstances under which the APR may increase.
• Describe the limitations, if any, on the amount of a rate increase.
• Describe the effect of a rate increase.
• Provide an example that shows the payment terms that would result from an increase.

For loans with terms greater than one year and secured by a member’s principal dwelling, the disclosure must:
• State that the transaction contains a variable-rate feature.
• State that variable-rate disclosures were provided earlier.
Payment Schedule for Loans That Are Not Home Secured. In disclosing a payment schedule for loans that are not home secured, you must include the number, amounts, and timing of payments that are scheduled for a member to repay an obligation owed to your credit union. For loans repayable on demand with no alternate maturity date, you meet this requirement by disclosing the due dates or payment periods of any interest payments scheduled for the first year. The payment schedule requirements for closed-end mortgage loans were amended pursuant to the Mortgage Disclosure Improvement Act and are discussed later in this section.

Some loans require a series of payments that vary because a finance charge is applied to the unpaid balance to determine each payment. For such loans, you must show the largest and smallest payments in the series of payments the member will make, with a reference to the variations in the other payments in the series—for example, that the highest payment will be payable in the first monthly payment, and each subsequent payment will be lower, with the last payment in the amount shown.

Sample Payment Schedule Disclosures For Non-Home Secured Loans

**Right**

<table>
<thead>
<tr>
<th>Number of Payments</th>
<th>Amount</th>
<th>When Payments are Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>239</td>
<td>$1,084.79</td>
<td>Monthly Beginning July 1, 1999</td>
</tr>
<tr>
<td>1</td>
<td>$1,024.70</td>
<td>April 1, 2019</td>
</tr>
</tbody>
</table>

**Wrong**

<table>
<thead>
<tr>
<th>Number of Payments</th>
<th>Amount</th>
<th>When Payments are Due</th>
</tr>
</thead>
<tbody>
<tr>
<td>239</td>
<td>$1,084.79</td>
<td>July 1, 1999</td>
</tr>
<tr>
<td>1</td>
<td>$1,024.70</td>
<td>April 1, 2019</td>
</tr>
</tbody>
</table>

Regulation Z provides that the schedule of payments must either provide “all due dates” or the “timing” for such payments, such as “monthly or biweekly.” The approves use of the following in making this disclosure:

“Monthly Beginning July 1, 1999.”

12 CFR §1026.18(g) and Office Staff Commentary §1026.18(g)-4.
The rules apply to all transactions secured by a dwelling (principle residence or second home) and transactions secured by real property that do not include a dwelling or other structures. However, the rules do not apply to timeshare plans.

The rule requires credit unions’ initial disclosures to include a payment summary in the form of a table in at least 10-point type, stating the following:

- The initial interest rate along with the corresponding monthly payment amount including any escrow amounts for taxes and property insurance as well as any private mortgage insurance;

- For adjustable-rate or step-rate loans, the maximum interest rate and payment that can occur during the first five years and the maximum interest rate and payment possible over the life of the loan. The requirement to disclose the maximum interest rate and payment amount during the first five years must be based on the first five years after the first regular payment due date, rather than the first five years after consummation; and

- The fact that consumers might not be able to avoid increased payments by refinancing their loans.

- Additional special disclosures are required for loans with negatively-amortizing payment options, introductory interest rates, interest-only payments, and balloon payments.

The rule includes a variety of model forms and clauses that apply to specific loans, such as fixed-rate, adjustable rate, negative amortization, interest-only loans, loans with balloon payments, and loans with introductory rates. The required disclosures must be in the form of a table, in at least 10-point type and must be substantially similar to the model forms and clauses that are provided with the rule. The number of columns and rows may vary, depending on whether the loan is amortizing or has an adjustable rate, although the table may not have more than five columns. Also, the shading shown on the model forms does not have to be duplicated.

For example, for fixed-rate mortgages, credit unions must disclose the interest rate and monthly payment applicable at consummation. If the loan documents don’t provide for any payment increases, only one interest rate and payment in a single column must be disclosed. However, fixed-rate mortgages, with scheduled payment increases must show the interest rate associated with the increased payments even though the rate will not change. In such cases multiple columns may be required. See model form H-4(E) below.

For adjustable-rate mortgage loans, credit unions must disclose the interest rate and monthly payment applicable at consummation and the period of time until the first adjustment, labeled as “introductory rate and monthly payment.” Credit Unions must also disclose the maximum possible interest rate and payment at any time during the first five years after the first regular payment due date and the earliest date that rate may apply. Finally, credit unions must disclose the maximum interest rate and payment that could apply at any time during the term of the loan and the earliest date that rate could apply. See model form H-4(F) below.
For amortizing adjustable rate mortgages with limits on interest rate increases, the table will have at least three columns. If there are no limits on rate increases, then there will only be two columns, one of which would be the rate at consummation and the other would be the maximum possible rate.

Information on any introductory rate must be provided in a box below the table. This would include the rate; how long it will last; the fact that the rate will increase at the first scheduled adjustment, even if market rates do not increase; and the fully indexed rate that would have otherwise applied at consummation. The rule provides a sample clause to use when providing this information. The “rate at consummation” would be the rate at the time the disclosures are provided or the rate during any prior period, as permitted in the contract. For example, if the contract specifies that rate changes are based on the index value 45 days before the change date, then the lender may use any index value in effect 45 days before consummation.

Lenders must disclose an estimate for taxes and insurance, if the lender establishes an escrow account, which must include any mortgage insurance. The mortgage insurance payments must be reflected until the date on which the lender must automatically terminate coverage under other applicable law, even if the consumer has a right to request that the insurance be canceled earlier. The periodic mortgage insurance premiums should be disclosed even if an escrow account is not established. However, payments for credit protection products such as credit life or credit disability should not be included in the disclosed escrow amounts.

For negative amortization loans, the rule will require a disclosure of the fully amortizing payments at the various possible interest rates, along with the dates that these payments are applicable. These will assume that the interest rate will reach its maximum at the earliest possible date. The rule will also require a disclosure of the minimum required payment for each rate, until the loan is recast into fully amortizing payments, along with the dates that these payments are applicable. These are the only payment options that would be disclosed, even if other options are permitted, such as interest-only payments.

The negative amortization loan disclosure must also include a statement that the minimum payment will only cover some of the interest, none of the principal, and that the principal balance will increase. When the loan is recast into fully amortizing payments, this payment must be disclosed at the highest possible interest rate that may apply. The disclosure must also have a statement at the bottom that indicates the amount that the principal balance will increase if only minimum payments are made, with the earliest month and year in which the loan will recast to require fully amortizing payments, assuming the rate reaches the maximum at the earliest possible time.

If a loan has a balloon payment, then the payment must be disclosed in the last row of the table. If it coincides with an interest rate adjustment or other payment increase, such as the expiration of an interest-only option, then it would instead be disclosed in the table as a payment increase. A balloon payment is defined as a payment more than twice
the amount of other payments. The rule provides a sample form that is to be used for this disclosure.

**Total of payments.** To show this amount, the disclosure must use the term “total of payments,” and you must give a descriptive explanation of the term, such as “the amount you will have paid when you have made all scheduled payments.” A footnote to Section 1026.18(h) states that if the transaction involves a single payment, your credit union is not required to include the total of payments item in its disclosure statement. However, where a loan agreement calls for one single payment of principal plus periodic payments of interest, this single payment exception does not apply and you must disclose the total of payments in the disclosure.

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### H-4(E) Fixed-Rate Mortgage Interest Rate and Payment Summary Model Clauses

**INTEREST RATE AND PAYMENT SUMMARY**

<table>
<thead>
<tr>
<th>Rate &amp; Monthly Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
</tr>
<tr>
<td>Principal + Interest Payment</td>
</tr>
<tr>
<td>Est. Taxes + Insurance (Escrow)</td>
</tr>
<tr>
<td>Total Est. Monthly Payment</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Rate &amp; Monthly Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
</tr>
<tr>
<td>Principal + Interest Payment</td>
</tr>
<tr>
<td>Est. Taxes + Insurance (Escrow)</td>
</tr>
<tr>
<td>Total Est. Monthly Payment</td>
</tr>
</tbody>
</table>

---

### H-4(F) Adjustable-Rate Mortgage or Step-Rate Mortgage Interest Rate and Payment Summary Model Clause

**INTEREST RATE AND PAYMENT SUMMARY**

<table>
<thead>
<tr>
<th>Introductory Rate &amp; Monthly Payment (for first (period))</th>
<th>[Maximum during First Five Years (date)]</th>
<th>Maximum Ever (as early as (date))</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
<td>[__________ %]</td>
<td>[__________ %]</td>
</tr>
<tr>
<td>Principal + Interest Payment</td>
<td>$___________</td>
<td>$___________</td>
</tr>
<tr>
<td>Est. Taxes + Insurance (Escrow)</td>
<td>$___________</td>
<td>$___________</td>
</tr>
<tr>
<td>Total Est. Monthly Payment</td>
<td>$___________</td>
<td>$___________</td>
</tr>
</tbody>
</table>

---
Demand feature. If a loan is repayable on demand, disclose that fact. In addition, if the information in your disclosure statement for the loan is based on an assumed maturity of one year, include a statement to this effect.

Total sales price. This disclosure applies only to lenders who sell goods and provide the financing for the sale of those goods. For example, the sale and financing of a repossessed car for a member. See example in figure 1.2.

Prepayment. For a loan with a finance charge that is computed from time to time by applying a rate to the unpaid principal balance, include a statement that indicates whether your credit union may impose a penalty if the member prepays the obligation in full. In all other cases, include a statement that indicates whether the member is entitled to a rebate of any finance charge if the obligation is paid in full.

Question: What are the rules concerning when we must make the two “prepayment” disclosures under Regulation Z for closed-end credit? One says, “If I pay off this loan early, I [may, will not] have to pay a penalty.” The other says, “If I pay off this loan early, I [may, will not] be entitled to a refund of part of the finance charge.”

Answer: The first disclosure—whether or not the consumer will have to pay a penalty for paying off the loan early—must be made when the finance charge is computed on a simple interest basis, or, in the words of Regulation Z, “when an obligation includes a finance charge computed from time to time by application of a rate to the unpaid principal balance...”

The second disclosure—whether the consumer is entitled to a prepayment refund—must be made when “an obligation includes a finance charge other than the finance charge [described in the previous paragraph].” The typical situation is when the finance charge is pre-computed, that is, when the consumer promises to pay a dollar amount that includes the entire finance charge for the term of the loan. (A simple interest loan is different in that the consumer promises to pay a dollar amount that includes only the principal balance of the loan, plus an unstated amount of whatever interest accrues over time at the stated interest rate.)

Late payment. The disclosure must show the dollar amount or percentage of any charge your credit union might impose before maturity due to a late payment. Do not include in this disclosure the amount of any charges that your credit union can impose where the parties agree to an extension of the loan or to a deferral of one or more payments.

Security interest. If your credit union has or will acquire a security interest in property as the result of a loan transaction, you must state this fact in your disclosure. A description of the collateral is not required, just a sentence that identifies the property. Your credit union must identify its security interest even if the property that secures the loan belongs to another person. For example, where someone other than the borrower pledges his or her own property to secure the loan and is required to sign the security agreement.

In purchase money transactions, where the property in which the credit union will have a security interest is also the subject of the loan transaction, a general statement such as “the property
purchased in this transaction” satisfies the requirement. You may also describe the property in general terms, such as “a motor vehicle.”

In nonpurchase money transactions where the loan proceeds are used for another purpose (for example, where the property serving as security is already owned by the borrower), you still are not required to describe the property in any detail but you should identify the property by type (for example, motor vehicles or securities), or by item. You also comply by identifying the specific property. But you cannot use a general phrase such as “property securing this transaction” for a nonpurchase money transaction.

For a loan secured both by the property being purchased and by other property, combine the two disclosure requirements described above. That is, disclose the property being purchased with a general identification and then describe the other property either by type or item. A phrase like “the property being purchased in connection with this loan and other property” is not sufficient because the second part of the phrase does not describe the other property by item or type. A sufficient statement would be: The property being purchased and a 1999 Mazda Miata V1#123.

Purchase and nonpurchase interests can both be described in a disclosure by type. For example, if your credit union makes a loan for the purchase of a residence and retains a security interest in the fixtures that are on the property, you

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**Figure 1.2 Credit Sale Example**

**Total Sale Price Disclosure Example**

<table>
<thead>
<tr>
<th>SPECIAL REGULATION Z DISCLOSURES</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th><strong>Annual Percentage Rate</strong></th>
<th><strong>Finance Charge</strong></th>
<th><strong>Amount Financed</strong></th>
<th><strong>Total of Payments</strong></th>
<th><strong>Total Sales Price</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>The cost of my credit as a yearly rate, which, if variable, is subject to change:</td>
<td>The dollar amount the credit will cost me:</td>
<td>The amount of credit provided to me or on my behalf:</td>
<td>The amount I will have paid after I have made all payments as scheduled:</td>
<td>The total cost of my purchase on credit including my down payment of</td>
</tr>
<tr>
<td>__________ %</td>
<td>$ __________</td>
<td>$ __________</td>
<td>$ __________</td>
<td>$ __________</td>
</tr>
</tbody>
</table>

*Total Sales Price*

The total cost of my purchase on credit including my down payment of $ __________:

PORTIONS INTENTIONALLY DELETED.
can describe the security interest as:

• The residential property being purchased with the proceeds of this loan and any fixtures on the property being purchased.

This can also be stated as:

• The residential property located at 123 Main Street, and any fixtures on that property.

It would be improper to disclose and describe the property as “any real property and fixtures owned by the borrower,” because the term “fixtures” in that sentence is too broad to meet the requirement that you identify the property by item or type.

Extension of a security interest — “cross-collateralization.” Credit unions sometimes extend a security interest in property they already have an interest in. For example, if a credit union makes a loan secured by a motor vehicle and later makes a loan secured by another motor vehicle being purchased, the credit union may want to extend its security interest for the new purchase to the motor vehicle previously purchased. If the first loan has a clause that extends that security interest to any motor vehicles the member later purchases, the credit union must describe the security interest using a sentence such as: Collateral securing other loans with us may also secure this loan.

For a credit union to extend a security interest in this way, there must be the first loan agreement that extends the security interest to collateral for other loans. The credit union must also disclose that fact in the disclosure statement for the first loan, even if at the time there is no other property that provides collateral in this manner. When a second secured loan is made, the credit union will violate this rule after the fact unless it included such a sentence in the disclosure for the original loan.

A credit union is not required to describe a security interest by using the specific term “security interest.” You can use words such as “pledge,” “lien,” or “mortgage” in place of the phrase “security interest” in appropriate situations.

Insurance. A credit union may exclude from the finance charge any amounts a member pays as premiums for personal or property insurance or for a debt cancellation contract. This only applies if the credit union complies with certain rules which can vary depending on which type of insurance is being purchased. These rules, which include disclosure of the charges, are provided in the Section 1026.4(d) definition and description of the term “finance charge” (see the definitions section).

Certain security interest charges. As with the insurance premiums noted above, a credit union can exclude from the finance charge the amounts a member pays for certain fees and charges prescribed by law, as well as certain fees paid for nonfiling insurance. Section 1026.4(e) provides the rules for these exclusions in its definition and description of the term “finance charge” (see the definitions section).

Contract reference. The disclosure must include a statement that the member should refer to the appropriate contract document for information about the following:

• Nonpayment.
• Default.
• Right to accelerate maturity of the obligation.
• Prepayment rebates and penalties.
In lieu of referring to “appropriate contract documents,” the phrase that appears in the regulation, you may refer to the specific document that contains this information (for example, the promissory note, the mortgage, and so forth). If some provisions appear in one document and other provisions in another, you may name the specific documents or provide a different catchall phrase. This disclosure does not require your credit union to explain any of the provisions, but merely reference the fact that such provisions exist.

Assumption policy. In a disclosure statement for a residential mortgage loan, you must include whether a subsequent purchaser of the residential property will be permitted to assume the remaining obligation on the terms provided in your agreement with the original borrower. But first you must determine whether your credit union permits such assumptions. The FRB indicates in its Commentary that permitting an assumption based on a change in the interest rate does not constitute an assumption of the original terms, but permitting an assumption on payment of an assumption fee does.

Required deposit If a member must maintain a deposit account to get a loan, you must include a statement in your disclosure that the APR does not reflect the effect of the required deposit.

In a footnote to this requirement, the rule states that no statement is required in the following circumstances:

- A member’s funds will be placed in an escrow account for the payment of taxes, insurance, or for repairs.
- A member’s funds will be placed in an account that earns not less than 5 percent per year.
- Payments will be made under a Morris plan.

Maximum interest disclosure for variable-rate mortgage loans. A special rule applies only to adjustable-rate mortgage loans (loans for which the APR may increase after a loan is consummated). You must include a provision in the contracts for such loans (for example, in the promissory note) that sets forth the maximum interest rate your credit union can charge during the term of the loan. This disclosure requirement applies to new loans, loans that are refinanced, and loans that are assumed.

This rule does not bind your credit union to the maximum rate originally disclosed when a member refinances his or her loan or when a loan is assumed by a subsequent purchaser of the property, unless, in the case of an assumption, the contract permits a subsequent purchaser to assume the original mortgage under the terms provided in that mortgage.

Disclosures for RESPA-Related Residential Mortgage Applications

Loan Estimate

When a member applies for a residential mortgage, the first TRID requirement is that the credit union provides an estimate of credit costs and transaction terms (also known as Loan Estimate). The Loan Estimate must include an estimate, made in good faith, of closing costs. The obligation to provide the Loan Estimate falls on the lender or the mort-
gage broker and must be given to most all applicants for a closed-end federally related consumer credit loan secured by real property.

The Loan Estimate must be delivered or mailed to the applicant within three business days after the application is received or prepared. If the application is denied before the end of this three-day period, or the applicant withdraws the application, no estimate is required.

In addition, the Loan Estimate generally must not be provided later than the seventh business day before consummation of the loan.

Furthermore, Loan Estimates must contain a statement indicating that the applicant is not required to accept the loan merely because of receiving the disclosure or signing a loan application.

A member may not be charged any fee (except for a fee imposed for obtaining the member’s credit report, providing the fee is bona fide and the amount is reasonable) by the credit union or any other party in connection with the member’s mortgage loan application before the member has received the Loan Estimate as required above, and has indicated their intent to proceed. If the Loan Estimate is mailed to the member, the member is considered to have received it three business days after it was mailed.

**Loan Estimates are required** for most federally related closed-end consumer credit transactions secured by real property with the exception of Home Equity Lines of Credit (HELOCs), Reverse Mortgages, or Chattel-dwelling loans, such as loans secured by a mobile home or by a dwelling not attached to real property.

Loans which were previously only subject to TILA, but not RESPA, are now required to comply with the TRID Rule. For example, construction only loans and loans secured by vacant land or by 25 or more acres are now subject to the Loan Estimate requirement.

**Exceptions to providing Loan Estimate.** If the credit union knows, or can ascertain within the three business day delivery limit, that an application will be rejected for any reason, the credit union is not obligated to send a Loan Estimate to the applicant. For example, if an applicant has requested credit on terms that the credit union does not offer, you can disregard the Loan Estimate requirement. But if the applicant later amends the application to comply with your credit unions policy or to otherwise satisfy its requirements, you must consider it a new application and provide the estimate within three business days after receiving the amended application.

If the credit union makes a decision to not provide the Loan Estimate, the credit union will not be in compliance with Regulation Z if it later consummates the transaction on the terms originally applied for by the consumer.

**Variable-rate disclosure required by statute.** The variable-rate feature must be described by either:

- Stating that the periodic payments may increase or decrease substantially and stating the maximum interest rate and payment amount for a $10,000 loan originated at a recent interest rate as determined by the CFPB or
- Providing a historical example illustrating the effects of interest rate changes
implemented according to the loan program.

**Adjustable-rate mortgage loan disclosures and booklet.** Section 1026.19(b)(2) of Regulation Z requires credit unions to provide a special variable-rate disclosure and a booklet entitled *Consumer Handbook on Adjustable-Rate Mortgages* (http://files.consumerfinance.gov/f/201401_cfpb_booklet_charm.pdf) to members who apply for variable-rate mortgage loans. These types of loans are better known as adjustable-rate mortgages (ARMs). You must give the ARM disclosure and booklet at the time you give the application. This disclosure requirement is in addition to, not in place of, the other disclosures required.

The ARM disclosure and booklet is provided to any member who applies for an adjustable-rate loan with a term greater than one year that will be secured by the member’s principal dwelling.

Section 1026.19(b)(2) requires credit unions to provide a loan program disclosure for each variable-rate program in which a member expresses an interest. This means that if you offer more than one type of variable-rate loan program, you must prepare separate disclosures for each program. If an applicant expresses an interest in a particular ARM program or in more than one program, you must provide disclosures for each program.

Loan program disclosures can be combined on one form or provided on separate forms. You can print the disclosures inside the *Consumer Handbook on Adjustable-Rate Mortgages* or inside a booklet that you consider a “suitable substitute” (as permitted in the Regulation), but you must then identify the disclosures as your own loan program disclosures.

More than one page is allowed for the disclosures. For example, the credit union could attach a separate page to provide the historical payment example that is required. If several loan program disclosures are provided on one disclosure form, the information that is common to all of the programs can be disclosed once while the features that apply to each program separately. If you take this route, you must indicate which features go together. For example, which features are applicable only in conjunction with other features.

Although the regulation requires the disclosure of one loan maturity or payment amortization, you have the option to illustrate more than one by including columns of figures in the historical payment example.

**Closing Disclosure**

Three business days before consummation of every closed-end loan transaction, the member must receive a Closing Disclosure that includes the items described below.

**PAGE 1**

**General Information.** Using the term “Closing Disclosure” for the forms title, the borrower must be provided with a statement as to the forms purpose, “This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.” The following general information must also be provided:

- Closing information consisting of the
date the disclosures are required, closing date, disbursement date, settlement agent, file number, property address, and sale price (if applicable). For a loan without a seller, the appraised property value is disclosed. If an appraisal was not obtained, an estimated property value is specified.

- Transaction information including borrower name and address, seller’s name and address (if applicable), and lender information.

- Loan Information consisting of terms, purpose, product, loan type, loan identification number, and mortgage insurance case number.

**Loan Terms.** A table of loan terms is to be provided to the borrower with descriptions of applicable information about the loan. This is the same information required to be disclosed on the Loan Estimate updated to reflect the terms of the legal obligation at consummation. The loan amount must be expressed in whole dollars and the table must include loan amount, interest rate, monthly principal and interest amount, whether amounts can change after consummation, prepayment penalties, and balloon payment.

Loans with a prepayment penalty must disclose the maximum penalty amount and date the penalty terminates. For example, “As high as $3,240 if you pay off the loan in the first two years.”

A balloon payment is defined as a payment that is two times a regular periodic payment. For a loan with a balloon payment, the disclosure must include the amount of the balloon payment and due date of the payment. For example, “You will have to pay $149,263 at the end of year 7.”

**Projected Payments.** The table of projected payments shows the periodic payments applicable to the transaction that the member will make over the life of the loan. This includes principal and interest, mortgage insurance, estimated escrow, estimated total monthly payment, and estimated taxes, insurance, and assessments whether or not they are paid with escrowed funds. The table provides a clear disclosure to the member as to whether taxes, insurance and other assessments will be paid with funds held in an escrow account.

The periodic payment table must disclose the amount of periodic payments after any triggering event. Triggering events are defined as:

- Change in principal and interest payments, in the example of an adjustable rate loan;

- Scheduled balloon payment; or

- Lender will automatically terminate mortgage insurance or any functional equivalent.

In the event a periodic payment amount changes more than once in a single year, the subsequent column should disclose the periodic payment amount in the year following the one in which there were multiple changes. The table reflects a year as the 12 month period following the due date of the initial periodic payment.

Four is the maximum number of columns the periodic payments table may contain. The forth column should disclose a range of payments that
reflects all remaining periodic payments not shown in the first three columns. Exceptions apply for balloon payments or the automatic termination of mortgage insurance.

Balloon payments scheduled as a final payment always require their own column. The third column must then be utilized for disclosing the range of payments for the other triggering events. If the balloon payment is not a final payment, the triggering event does not necessarily require its own column.

Automatic termination of mortgage insurance generally requires the corresponding periodic payment to be shown in its own column, unless doing so would exceed the four column maximum. In this circumstance, the column showing the next periodic payment or range of payments should reflect the payment without mortgage insurance.

A range of payments should be disclosed when:

- There are more triggering events than can be shown in four columns and thus one column must be used to show two or more periodic payment amounts.
- More than one of the triggering events occurs in a single year or one of the triggering events occurs in the same year as the initial periodic payment.
- The principal and interest payment may adjust based on an interest rate index and the rates are not yet known, as with an adjustable rate loan.

A column must be added to the table to disclose this information to the member. When payments are expressed as a range, both the minimum and maximum payments should be disclosed rounded to the nearest dollar. For adjustable rate mortgages, disclose the payments using the maximum and minimum interest rates that could apply, per the interest rate caps. Payment ranges are only applicable for disclosing principal and interest payments as well as estimated total monthly payment. A range of payments are not to be disclosed for mortgage insurance or estimated escrow.

**Costs at Closing.** Total closing costs are reflected in a table below the projected payments table. This is the total of the itemized listing of total loan costs, other costs, and lender credits itemized on page two of the disclosure. The cash to close, which is the estimated amount the member will pay at, or receive from, closing is also disclosed within the table. The cash to close is itemized on page three of the Closing Disclosure.

**Alternative Costs at Closing.** For a transaction without a seller, the Alternative Costs at Closing table is disclosed. It reflects the amount of cash due from or paid to the consumer at consummation.

**PAGE 2**

**Closing Cost Details.** The itemization of the member’s loan costs are disclosed on page two of the Closing Disclosure. The Closing Cost Details are broken down into Loan Costs and Other Costs and the number of items within the table can be expanded or deleted to ensure that all of the costs fit onto the page. Lenders are also permitted to disclose Loan Costs and Other Costs on two separate pages of the Closing Disclosure if needed, numbering the pages 2a and 2b. There are specific items required
to be disclosed, even if they are not needed. These are reflected on the model Closing Disclosure form such as the heading Origination Charges and subheading Points. When the same item is paid by different parties, the amounts associated with an item can be entered into multiple columns.

**Loan Costs** should be updated to reflect the legal obligation at consummation. They should generally be the same as they were disclosed on the Loan Estimate. There are exceptions to this requirement as further discussed.

**Loan Costs**

1. **Loan originator compensation** is itemized on the Closing Disclosure, despite it not being disclosed on the Loan Estimate. This is disclosed as an Origination Charge. The compensation from the consumer to a third-party loan originator is designated as Borrower-Paid At Closing or Before Closing. When compensation from the credit union to the third party loan originator is disclosed as Paid by Others on the Closing Disclosure, the designation of (L) can be listed with the amount next to it indicating that the credit union is paying the compensation at consummation. This amount is the same as the amount of third party compensation included in points and fees. The compensation of individual loan originators is not calculated or disclosed.

2. **Items that the consumer could have shopped for, but decided not to**, are disclosed in the Services Borrower Did Not Shop For within the Loan Costs table. The items disclosed as Services Borrower Did Shop For and Services Borrower Did Not Shop For are updated accordingly.

When itemizing costs, ensure that the amounts designated as Borrower-Paid At or Before Closing are subtotaled as Total Loan Costs (Borrower Paid). If an item has been paid prior to closing or by a third party, the amounts are designated as Seller-Paid At or Before Closing and Paid by Others. Those costs are not subtotaled as a Total Loan Cost (Borrower-Paid).

**Other costs** should be disclosed as they were on the Loan Estimate, updated to reflect the terms of the legal obligation and real estate transaction at consummation, except as further discussed.

**Other Costs**

1. **Taxes and Other Government Fees** include an itemization of Transfer Taxes paid by the consumer and the seller, instead of the sum total of Transfer Taxes to be paid by the consumer.

2. **Prepaid items** are items to be paid by the consumer in advance of the first scheduled payment of the loan. These consist of homeowners insurance premium, mortgage insurance premium, prepaid interest, property taxes and a maximum of three additional items. The disclosure must specify the applicable time period covered by the amount to be paid by the consumer and total amount to be paid.

3. **Initial Escrow Payment at Closing.** Property taxes paid during different time periods can be disclosed as separate items. For example, general property taxes assessed for January
1 to December 31 and property taxes to funds schools for November 1 to October 31 can be disclosed as separate items. The last item disclosed in the Initial Escrow Payment at Closing is the Aggregate Adjustment.

4. **Other Costs.** Costs which are incurred by the consumer or seller that were not required to be disclosed on the Loan Estimate may also include:
   - Real estate brokerage fees,
   - Homeowner or condominium association fees paid at consummation,
   - Home warranties,
   - Inspection fees, and
   - Other fees paid at closing that are not required by the credit union or otherwise required to be disclosed elsewhere on the Closing Disclosure.

Earnest money held on deposit does not affect the amount of real estate commissions paid by the consumer or seller on the Closing Disclosure.

**Total Other Costs and Total Closing Costs.** The total of all closing costs paid by the consumer is disclosed as Total Closing Costs (Borrower-Paid). The amount disclosed is reduced by the Lender Credit. The total of items designated as Borrower-Paid At or Before Closing, Seller-Paid At or Before Closing, and Paid by Others are disclosed as Closing Cost Subtotals. If there are Lender Credits, they are disclosed and designated as Borrower-Paid At Closing.

**Lender Credits.** All general lender credits, regardless of their reason or source, are included as Lender Credits. If the lender credit is attributable to a charge listed on page 2 of the Closing Disclosure, then the amount should be listed with the item and designated as Paid By Others. The designation of (L) can be listed with the amount which will indicate to the member that the credit union pays the item at consummation.

A narrative description should be provided by the credit union if a refund is being provided pursuant to the good faith analysis of charges. The amount should be disclosed within the table as a negative number. An example of this, provided in the Reg. Z model form H-25(F), is: “Includes $200 credit for increase in Closing Costs above legal limit.”

**PAGE 3**

Calculating Cash to Close table consists of nine items:

- Total Closing Costs,
- Closing Costs Paid Before Closing,
- Closing Costs Financed (Paid from your Loan Amount),
- Down Payment/Funds from Borrower,
- Deposit,
- Funds for Borrower,
- Seller Credits,
- Adjustments and Other Credits, and
- Cash to Close.

The items should be disclosed within the three columns reflecting the amount as disclosed on the Loan Estimate, the Final amount, and an answer to the question, *Did this change?* An example of this is shown in Figure A.

The amount disclosed in the Loan Estimate category will continue to be rounded to the nearest dollar in order to match the corresponding amount.
disclosed on the Loan Estimate. The Final amount is reflected as the actual amount. For an answer of yes to the question *Did this change?* the member should be provided with where to find the amounts that have changed. An example would be, “See Seller Credits in Section L.”

The following outlines the nine items within the Calculating Cash to Close table:

1. **Final Total Closing Costs**, reflected in the top of the Calculating Cash to Close table shall correspond to the Total Closing Costs (Borrower-Paid) disclosed on page 2 of the Closing Disclosure. For any change in cost disclosed between the Loan Estimate and Final cost columns, indicate that the member should reference the Total Loan Costs or Total Other Costs tables, as applicable. The sample Regulation Z model form states, “See Total Loan Costs (D) and Total Other Costs (I).”

   In the event that the Total Closing Costs exceeds the legal limits, a disclosure statement shall be provided that an increase in closing costs exceeds the legal limits by the dollar amount of the excess in the *Did this change?* column. A statement directing the consumer to the Lender Credit on page 2 must also be included if a credit to the consumer at closing is provided by the creditor.

2. **Closing Costs Paid Before Closing.** The amount disclosed in the Loan Estimate column should be $0. The Final column should disclose the same amount designated as Borrower-Paid Before Closing in the Closing Costs Subtotals of the Other Costs table on page 2 of the Closing Disclosure.

3. **Closing Costs Financed (Paid from your Loan Amount)** reflects the sum of the amounts in the Final column of the Loan Amount and Total Payoffs and Payments. However, the amount is disclosed only if the sum is greater than zero and no larger than the Total Closing Costs (deducting the amount in the Final column of Closing Costs Paid Before Closing).
4. **Down Payment/Funds from Borrower** is the difference between the purchase price of the property and the principal amount of the loan, in a purchase transaction. When the loan amount exceeds the purchase price of the property, $0 should be disclosed.

For other transactions, this is the principal amount of credit extended, excluding any amount disclosed as Closing Costs Financed (Paid from Your Loan Amount) from the total amount of all existing debt satisfied in the transaction. If this yields a negative amount, $0 should be disclosed.

5. **Deposit.** The amount paid to the seller or held in trust or escrow by an attorney or other party under the terms of the contract for sale of the property, in a purchase transaction. In all other transactions, Deposit is $0.

6. **Funds for Borrower.** In a purchase transaction, this is disclosed as $0. In all other transactions, subtract the principal amount of debt extended (excluding any amount disclosed as Closing Costs Financed (Paid from Your Loan Amount)) from the total amount of all existing debt satisfied in the transaction. If this yields a negative amount, $0 should be disclosed.

7. **Seller Credits** is the total amount that the seller will pay for items included in the Loan Costs and Other Costs tables, to the extent known, disclosed as a negative number.

8. **Adjustments and Other Credits** is the total amount of all items in the Loan Costs and Other Costs tables that are paid by persons other than the loan originator, creditor, consumer, or seller. This is included with any other amounts that are required to be paid by the consumer at closing pursuant to the contract of sale (if applicable), disclosed as a negative number.

   Examples of items that are paid by persons other than the loan originator, creditor, consumer or seller include:
   - Gifts from family members,
   - Credits from a developer or home builder to be applied to items in the Loan Costs and Other Costs table.

   Subordinate financing, local or State housing assistance grants, or other similar sources are also included in this section.

   Examples of amounts to be paid by the consumer at closing pursuant to the contract of sale include:
   - Charges for personal property to be acquired by the consumer,
   - Proration for property taxes, and
   - Proration for homeowner’s association dues.

   Adjustments and Other Credits is reduced by the amount of any such additional charges.

9. **Cash to Close** discloses the sum of Loan Amount, Total Closing Costs, Closing Costs Paid Before Closing, and Total Payoffs and Payments in the Loan Estimate and Final columns, with indications of whether the totals are due to or from the member.

   **Alternative Calculating Cash to Close** is an optional table shown in Figure B that can be disclosed for transactions without a seller and is used in place of the table in Figure A. If used, it must be in conjunction with the alternative disclosure provisions of the Alternative Costs at
Closing table on Page 1, as would have also been provided in the borrowers Loan Estimate. As with the Calculating Cash to Close table, there are three columns. The Loan Estimate column amount is rounded to the nearest dollar and shall correspond with the Loan Estimate disclosure previously provided. The Final amounts will reflect the actual amount charged.

The Calculating Cash to Close table consists of the following items.

1. **Loan Amount** discloses the same amount disclosed, as a positive number, in the Final column as the Loan Amount in the Loan Terms table from page 1 of the Closing Disclosure.

2. **Total Closing Costs.** Disclosed as a negative number, it should have the same amount as in the Final column reflected as Total Closing Costs (Borrower-Paid) on page 2. When the amount in the Final column is different from the amount in the Loan Estimate column, the credit union should indicated that the consumer should see the Total Loan Costs or Total Other Costs subheadings as applicable.

   In the event that the Total Closing Costs exceeds the legal limits, a disclosure statement shall be provided that an increase in closing costs exceeds the legal limits by the dollar amount of the excess in the Did this change? column. A statement directing the consumer to the Lender Credit on page 2 must also be included if a credit to the consumer at closing is provided by the credit union.

3. **Closing Costs Paid Before Closing** shall reflect $0 in the Loan Estimate column. The Final column should reflect the same amount designated as Borrower-Paid Before Closing in the Closing Costs Subtotals of the Other Costs table on page 2 of the Closing Disclosure, as a positive number.

4. **Total Payoffs and Payments.** The amount disclosed in the Final column will correspond to the amount disclosed as Total Payoffs and Payments from the Payoffs and Payments table on page 3. This is disclosed as a negative number.

5. **Cash to Close** is the sum of Loan Amount, Total Closing Costs, Closing Costs Paid Before Closing, and Total Payoffs and Payments in the Loan Estimate and Final columns, with

<table>
<thead>
<tr>
<th>Calculating Cash to Close</th>
<th>Use this table to see what has changed from your Loan Estimate.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Loan Estimate</td>
<td>Final</td>
</tr>
<tr>
<td>Loan Amount</td>
<td></td>
</tr>
<tr>
<td>Total Closing Costs (J)</td>
<td></td>
</tr>
<tr>
<td>Closing Costs Paid Before Closing</td>
<td></td>
</tr>
<tr>
<td>Total Payoffs and Payments (K)</td>
<td></td>
</tr>
<tr>
<td>Cash to Close</td>
<td>From To Borrowers</td>
</tr>
</tbody>
</table>

Figure B
indications of whether the totals are due to or from the member.

The Did this Change? column notes the statement, “Closing Costs Financed (Paid from your Loan Amount)” as shown in the sample disclosure in Figure B. It is the sum of the amounts in the Final column of the Loan Amount and Total Payoffs and Payments. This is disclosed only if the sum is greater than zero and no larger than the Total Closing Costs (deducting the amount in the Final column of Closing Costs Paid Before Closing).

Summaries of Transactions discloses the amounts associated with the real estate purchase transaction between the consumer and seller, together with closing costs, in order to disclose the amounts due from or payable to the consumer and seller at closing, as applicable. This is shown in Figure C. A separate Closing Disclosure can be provided to the consumer and the seller that do not reflect the other party’s costs and credits by omitting certain disclosures on each separate Closing Disclosure.

The Summaries of Transactions can be replaced with a Payoffs and Payments table in a transaction without a seller and when the Alternative Cash to Close and Alternative Calculating Cash to Close tables are used. This is shown in Figure D.

Disclosures pertinent to the Borrower’s Transaction and Sellers Transaction are further explained.

Borrowers Transaction

1. Due From Borrower at Closing is the sum of:
   • Sale Price of Property,
   • Sale Price of Any Personal Property Included in Sale,
   • Closing Costs Paid at Closing,
   • Other consumer charges,
   • Adjustments, and
   • Adjustments for Items Paid by the Seller in Advance, pursuant to the terms of the real estate sale contract.

Closing Costs Paid at Closing is the amount designated as Borrower-Paid At Closing minus any Lender Credits on page 2 of the Closing Disclosure.

Adjustments are itemized into two
categories. Amounts owed by the consumer that are neither disclosed on Closing Disclosure page 2 nor specifically required to be disclosed as Due from Borrower at Closing may include:

- A balance in the seller’s reserve account transferred to the consumer in connection with an assumed loan,
- Rent that the consumer will collect after closing for a period of time prior to the closing, or,
- The treatment of any tenant security deposit.

Adjustments for which a time-period is associated with the adjustment are itemized as Adjustments for Items Paid by Seller in Advance. Examples include:

- Taxes paid in advance for an entire year when the closing occurs prior to the expiration of the year,
- Flood or hazard insurance premiums when the consumer is being substituted under the same policy,
- Mortgage insurance in connection with an assumed loan,
- Planned unit development or condominium association assessments paid in advance,
- Fuel or other supplies on hand purchased by the seller which the consumer will use when the consumer takes possession of the property, or
- Ground rent paid in advance by the seller.

2. Paid Already By or on Behalf of Borrower at Closing

The amount Paid Already by or on Behalf of Borrower at Closing is the sum of:

- Deposit,
- Loan Amount,
- Existing Loan(s) Assumed or Taken Subject to,
- Seller Credits,
- Other Credits, and
- Adjustments for Items Unpaid by Seller pursuant to the terms of the real estate sale contract.

The Deposit is the amount paid into a trust account by the consumer pursuant to a contract of sale. If the Deposit has been applied toward a closing cost paid by the consumer, the amount so applied should be deducted from the amount of the Deposit. The Deposit should not include any deductions for the payment of real estate commission disclosed on page 2 of the Closing Disclosure.

Existing Loans Assumed is the total amount of all loans that the consumer is assuming in the transaction, even if more than one loan is being assumed.

Seller Credits include any general credit to the consumer from the seller and includes a seller making an allowance to the consumer for items to purchase separately. This is unless the charge is listed on page 2 of the Closing Disclosure for which the credit is then listed with Seller-Paid at Closing or Seller-Paid Before Closing.

Seller Credits also include any seller credits for issues identified at a walk-through of the property.

Other Credits include a general credit from any party other than the seller or creditor. For example, the
credit a member receives from a real estate agent. These credits must include a description of the credit and the name of the party giving the credit. A credit for which is attributable to a charge disclosed on page 2 of the Closing Disclosure should be designated as Paid by Others on page 2 of the Closing Disclosure.

Other Credits may also include:

- Transferred escrow balance in a refinance transaction,
- Money or payments made by family members associated with the transaction, or
- Disclosure of any amount paid with funds other than closing funds along with a statement attesting to the fact that they were paid with outside of closing funds.

Adjustments for Items Unpaid by Seller are items due to the buyer which are to be paid by the seller, along with the time period associated with the item, such as:

- Taxes paid in arrears for an entire year when the closing occurs prior to the start of the year,
- Flood or hazard insurance premiums when the consumer is being substituted as an insured under the same policy,
- Mortgage insurance in connection with an assumed loan,
- Planned unit development or condominium assessments not yet paid, and
- Ground rent not yet paid by the seller.

3. **Cash to Close To or From Borrower**

   must disclose:
   - Total Due from the Borrower at Closing as a positive number.
   - Total Paid Already by or on Behalf of the Borrower at Closing as a negative number.
   - Sum of Total Due from the Borrower at Closing and Total Paid Already by or on Behalf of the Borrower at Closing. Disclose the sum as Cash to Close From Borrower when the sum is a positive number, and disclose the sum as Cash to Close To Borrower when the result is a negative number. The sum is disclosed as a positive number in either event.

**Sellers Transactions**

1. **Due to Seller At Closing**

   - The Sale Price of the Property,
   - Sale Price of Any Personal Property in the Sale,
   - Adjustments, and
   - Adjustments for Items Paid by Seller in Advance due to the seller pursuant to the terms of the real estate sales contract.

   Adjustments are disclosed in the categories, format, and time periods associated with them as required for the borrower’s transaction.

2. **Due from Seller at Closing**

   - Any Excess Deposit,
   - Closing Costs Paid at Closing by the Seller,
   - Existing Loan(s) Assumed or Taken Subject to by the consumer,
   - Payoff of First Mortgage Loan,
• Payoff of Second Mortgage Loan,
• Payment of other seller obligations,
• Seller Credit,
• Adjustments, and
• Adjustments for Items Unpaid by Seller due to the consumer pursuant to the terms of the real estate sale contract.

The Excess Deposit is the amount of any deposit made by the consumer that has been disbursed to the seller prior to closing.

Seller credits are those obligations such as:
• Satisfaction of outstanding liens imposed due to Federal, State or Local income taxes,
• Real estate property tax liens,
• Judgements against the seller reduced to a lien upon the property,
• Other obligations the seller wishes the Settlement Agent to pay from the Sellers proceeds at closing, and
• Funds to be held by the Settlement Agent for repairs or the payment of water, fuel, or other utility bills that cannot be prorated between the parties at closing because the amounts used by the seller prior to closing are not yet known at closing.

Adjustments for Items Unpaid by the Seller. These amounts are to be disclosed with the time period associated with the adjustment. For items that are owned by the seller that are neither disclosed on page 2 nor specifically disclosed as Due from Seller at Closing will also be disclosed in this category. Examples: Utilities used but not paid for by the seller, Rent collected in advance by the seller from a tenant for a period of extending beyond the closing date, and interest on loan assumptions.

3. Cash to Close Due to or From Seller must disclose:
• Total Due to the Seller at Closing, as a positive number.
• Total Due from the Seller at Closing, as a negative number.
• Disclose the sum of Total Due to the Seller at Closing and Total Due from Seller at Closing as a positive number. When the amount is positive, it is disclosed as Cash To Seller and when the result is negative it is disclosed as Cash from Seller. Either way, the sum is disclosed as a positive number.

PAGE 4

Loan disclosures are provided on Page 4 of the Closing Disclosure. These are:

Assumption. In a disclosure statement you must include whether a subsequent purchaser of the residential property will be permitted to assume the remaining obligation on the terms provided in your agreement with the original borrower. First you must determine whether your credit union permits such assumptions. The FRB indicates that permitting an assumption based on a change in the interest rate does not constitute an assumption of the original terms, but permitting an assumption on payment of an assumption fee does.

Demand Feature. Reference as to whether the terms of the loan allow a demand feature, permitting the lender to
require early repayment of the loan.

**Late Payment.** The fee charged when a payment is late, when it is assessed, and how it is calculated. This does not include the amount of any charges the credit union may impose where the parties agree to an extension of the loan or to a deferral of one or more payments.

**Negative Amortization.** Provides notice to the member if payments will result in the loan amount becoming large than the original loan balance.

**Partial Payments.** Disclosure as to how the lender will apply partial payments. Members are informed that if the loan is sold, the new lender may have a different policy.

**Security Interest.** This includes a statement identifying the address of the property which the member is granting a security interest. The credit union must identify the security interest even if the property belongs to another person. For example, where someone other than the member pledges his or her own property to secure the loan and is required to sign the security agreement.

**Escrow Account.** The lender must disclose if payments are required to an escrow account for the purpose to pay property costs. With an escrow account, the lender must disclose:

- Estimated total amount over year 1 for your escrowed property costs
- Estimated total amount over year 1 for non-escrowed property costs
- Cushion for the escrow account paid at closing
- Escrow amount included in monthly payment

For estimated escrow and non-escrowed items, the table should disclose the expenses accounted for. An example of this table is shown in Figure E.

Property costs include property taxes, homeowners insurance, charges imposed by a cooperative, condominium, or homeowners association, ground rent, leasehold payments, and certain insurance premiums or charges if required by the lender.

If the escrow account is not established, the lender shall make that disclosure along with the amount of estimated property costs over Year 1. This is completed as shown in Figure F.

**Adjustable Payment Table.** Disclosed when the periodic principal and interest payment may change after consummation, but not because of a change to the interest rate.

**Adjustable Interest Rate Table.** Disclosed when the loan’s interest rate may increase after consummation.

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**Figure E**

<table>
<thead>
<tr>
<th>Escrow</th>
<th>Estimated total amount over year 1 for your escrowed property costs: Homeowner’s Insurance Property Taxes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Escrowed Property Costs over Year 1</td>
<td>$2,473.56</td>
</tr>
<tr>
<td>Non-Escrowed Property Costs over Year 1</td>
<td>$1,800.00</td>
</tr>
<tr>
<td>Initial Escrow Payment</td>
<td>A cushion for the escrow account you pay at closing. See Section G on page 2</td>
</tr>
<tr>
<td>Monthly Escrow Payment</td>
<td>The amount included in your total monthly payment.</td>
</tr>
</tbody>
</table>
Loan Calculations. Disclosure and summary of Total of Payments, Finance Charge, Amount Financed, Annual Percentage Rate (APR), and Total Interest Percentage (TIP).

The Amount Financed must include the following statement, “The loan amount available after paying your up-front finance charge.” There are three components to this requirement: (1) you must calculate the amount financed, (2) you must disclose the amount financed as a dollar amount, and (3) you must provide the required description of the amount financed.

Calculating the amount financed is itself a three-step process:

- First, determine the principal loan amount. In the case of a purchase, this is the cash price minus any down payment.
- Second, add to that figure any other amounts financed by your credit union that are not part of the finance charge.
- Third, subtract any prepaid finance charge.

While this formula may seem simple, creditors often either forget to subtract any prepaid finance charge, or they supply the wrong figure. Any component of a finance charge that is paid in cash or by check must be subtracted from the amount of the loan proceeds to determine the amount financed.

Other Disclosures include the following:

- Statement related to the member’s rights in receiving an appraisal,
- Statement informing the consumer of consequences of nonpayment, what constitutes default, when a creditor can accelerate maturity, and prepayment rebates and penalties pursuant to contract details.
- Statement whether State law provides for continued member responsibility for any Liability after Foreclosure
- Statement concerning the members ability to refinance the loan, and
- Statement concerning the extent that interest on the loan can be included as a tax deduction by the member.

Contact Information must disclose the financial institution or brokerage name, address, NMLS or State license ID, con-
tact individual, e-mail and phone number. This can be customized with adding or removing columns to disclose the required information. For example, if there are two real estate brokers the contact information for both should be provided.

**Confirm Receipt** is an optional disclosure which the lender may include. If the signature line to confirm receipt is disclosed, there must be a statement that the signature only signifies receipt of the Closing Disclosure. If the member’s signature is not required, a disclosure stating, “You do not have to accept this loan because you have received this form or signed a loan application” is required.

**Disclosures for reverse mortgage loans**

A reverse mortgage transaction is a nonrecourse consumer credit obligation that meets two criteria.

- **First**, a mortgage or deed of trust or equivalent consensual security interest on the member’s principal dwelling is created to secure one or more credit advances.
- **Second**, any principal, interest, shared appreciation, or equity is not due or payable until after (1) the member dies, (2) ownership of the dwelling is transferred, (3) the member no longer occupies the dwelling as a principal residence, or (4) the member defaults in some respect.

You must give the reverse mortgage disclosure to applicants for reverse mortgages before a loan is consummated. This special disclosure is in addition to all the other disclosures required under Regulation Z. You still must comply with all other rules for mortgage loans as prescribed by other sections of the Regulation. For example, if the interest on a reverse mortgage is based on a variable rate, the Section 1026.19(b) disclosure requirements described above also apply to the loan application.

**High-Cost Mortgage Loans**

The Home Ownership and Equity Protection Act of 1994 (HOEPA) amended the Truth In Lending Act by adding new rules that apply to mortgage loans that bear exceptionally high interest rates or fees. This category of loans is referred to as “Section 32” mortgage loans because the rules are found in Regulation Z section 1026.32. For the sake of simplicity, the term **Section 32 mortgage loans** is also used in this book.

**High-Cost Mortgage Thresholds**

**Determination of APR and APOR**

To determine if a loan is a high-cost mortgage you compare the APR of the loan to the average prime offer rate (APOR) (the definition of APOR is in 1026.35). The APR used in determining if a loan is high-cost depends on the type of loan:

- For fixed rate loans: the rate in effect when the rate is locked.
- For rates that vary with an index: the interest rate that results from adding the maximum margin permitted at any time during the term of the loan or credit plan to the value of the index rate in effect as of the date the rate is set, or the introductory inter-
est rate, whichever is greater.

- For other variable rate loans: the maximum rate that may be imposed during the term of the loan.

APOR for HELOCs: Since there is not a readily available APOR for HELOCs, creditors are to use the APOR for the most closely-comparable closed-end credit transaction. In the commentary the CFPB states that creditors should use the FFIEC’s published rate spread calculator and input the same terms otherwise required to determine the most comparable closed-end loan. For evergreen HELOCs, creditors should enter a term of 30 years.

**Threshold**

A loan will qualify as a high cost mortgage if it meets one of the three following thresholds:

1. The APR applicable to the transaction exceeds the APOR for a comparable transaction by more than:
   - A. 6.5 percentage points for a first-lien transaction, other than as described (B);
   - B. 8.5 percentage points for a first-lien transaction if the dwelling is personal property and the loan amount is less than $50,000 (commentary clarifies that this loan amount refers to the face amount of the note); or
   - C. 8.5 percentage points for a subordinate-lien transaction.

2. The transaction’s total points and fees will exceed:
   - A. 5 percent of the total loan amount for a transaction with a loan amount of $20,000 or more (the $20,000 figure will be adjusted annually according the Consumer Price Index) (commentary clarifies that this loan amount refers to the face amount of the note) (note that “total loan amount” is a defined term in 1026.32); or
   - B. The lesser of 8 percent of the total loan amount or $1,000 for a transaction with a loan amount of less than $20,000 (the $1,000 and $20,000 figures will be adjusted according to the Consumer Price Index).

3. Under the terms of the loan the creditor can charge a prepayment penalty more than 36 months after consummation or account opening, or prepayment penalties that can exceed, in total, more than 2 percent of the amount prepaid.

**High cost mortgage restrictions**

**Balloon Payments**

Except as provided below, high cost mortgages cannot include a payment schedule with a payment that is more than two times a regular periodic payment.

**Exceptions**

- A. A mortgage transaction with a payment schedule that is adjusted to the seasonal or irregular income of the consumer;
- B. A loan with maturity of 12 months or less, if the purpose of the loan is a “bridge” loan connected with the acquisition or construction of a dwelling intended to become the consumer’s principal dwelling.
Open-end credit plans
If the terms of an open-end credit plan provide for a repayment period during which no further draws may be taken, the limitations on balloon payments do not apply to any adjustment in the regular periodic payment that results solely from the credit plan’s transition from the draw period to the repayment period. If the terms of an open-end credit plan do not provide for any repayment period, the balloon payment limitations apply.

Prepayment penalties
Prepayment penalties are not allowed for high cost mortgages. Taken together, the Dodd-Frank Act’s amendments to TILA relating to prepayment penalties mean that most closed-end, dwelling-secured transactions (1) may provide for a prepayment penalty only if they are fixed-rate, qualified mortgages that are neither high-cost nor higher-priced under §§1026.32 and 1026.35; (2) may not, even if permitted to provide for a prepayment penalty, charge the penalty more than three years following consummation or in an amount that exceeds two percent of the amount prepaid; and (3) may be required to limit any penalty even further to comply with the points and fees limitations for qualified mortgages, or to stay below the points and fees threshold for high cost mortgages. In addition, in the open-end credit context, no HELOC secured by a consumer’s principal dwelling may provide for a prepayment penalty more than 3 years following account opening or in an amount that exceeds two percent of the initial credit limit under the plan.

Acceleration of Debt
Any demand feature that permits the creditor to accelerate the indebtedness by terminating the high-cost mortgage in advance of the original maturity date and to demand repayment of the entire outstanding balance is prohibited, except in the following circumstances:

i. There is fraud or material misrepresentation by the consumer in connection with the loan or open-end credit agreement;

ii. The consumer fails to meet the repayment terms of the agreement for any outstanding balance that results in a default in payment under the loan; or

iii. There is any action or inaction by the consumer that adversely affects the creditor’s security for the loan, or any right of the creditor in such security.

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

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

Late Fees
Any late fee must be in the contract.
and may not exceed four percent of the amount of the payment past due. No such charge may be imposed more than once for a single late payment. A late fee may not be imposed if any delinquency is attributable only to a late payment charge imposed on an earlier payment, and the payment otherwise is a full payment for the applicable period and is paid by the due date or within any applicable grace period (this is commonly referred to as late fee ‘pyramiding’). The terms of a high-cost mortgage agreement may, however, provide that any payment shall first be applied to any past due balance. If the consumer fails to make a timely payment by the due date and subsequently resumes making payments but has not paid all past due payments, the creditor may impose a separate late payment charge for any payment(s) outstanding (without deduction due to late fees or related fees) until the default is cured.

**Timing.** A late payment charge may be imposed in connection with a high-cost mortgage only if the payment is not received by the end of the 15-day period beginning on the date the payment is due or, in the case of a high-cost mortgage on which interest on each installment is paid in advance, the end of the 30-day period beginning on the date the payment is due.

**Payoff Statements**

A creditor cannot charge a fee for providing a payoff statement other than a processing fee to cover the cost of sending the statement via fax or courier. Any such fax or courier fee has to be the same as for comparable, non-high cost transactions. Creditors must make a payoff statement available by a method other than fax or courier. Prior to providing a statement by fax or courier, creditor must disclose to consumers that a statement is available via another method for free. If a consumer requests four statements in a calendar year, the creditor can thereafter charge a reasonable fee.

The statement must be provided to the consumer within five business days of receiving the request.

**Financing of Points and Fees**

A creditor may not finance charges that are required to be included in the calculation of points and fees. Credit insurance premiums or debt cancellation or suspension fees that are required to be included in points and fees shall not be considered financed by the creditor when they are calculated and paid in full on a monthly basis.

**Evasion**

Creditors cannot structure transactions to evade the requirements for high cost mortgages. Examples are given in the commentary.

**Pre-loan counseling**

A creditor making a high-cost mortgage to a consumer must receive written certification that the consumer has obtained counseling on the advisability of the mortgage from a counselor that is approved to provide such counseling by HUD, or, if permitted by HUD, by a State housing finance authority.

**Timing of counseling.** The required counseling must occur after the consumer receives either the good faith estimate required by section 5(c) of RESPA (12 U.S.C. 2604(c)) or the
disclosures required by § 1026.40 (for open end loans).

Counseling cannot be provided by a counselor affiliated with the creditor. The cost of counseling could be financed or paid by the creditor, but the creditor cannot condition payment on the closing of the loan. A creditor cannot steer a consumer to a particular counselor.

Open-end high cost repayment ability

The current rule sets forth repayment ability requirements for high cost mortgages in 1026.34(a)(4)(i)-(iv). The ability to repay rule, which was finalized under 1026.43 at the same time as the high cost mortgage rule, sets forth ability to repay standards for most closed-end mortgages, including high cost mortgages. This obviates the need for separate ‘repayment ability’ requirements for most high cost mortgages.

However, as noted above, the high cost mortgage rule expands coverage to HELOCs, and HELOCs are not subject to the ability to repay rule. Thus, the final high cost mortgage rule applies the existing repayment ability requirements set forth in 1026.34(a)(4)(i)-(iv) to open-end high cost mortgages. The CFPB has made conforming amendments to the high cost ability to repay rule to make it consistent with open end loans.

Higher-priced mortgage loans

In July 2008, the Federal Reserve Board (Board) revised Regulation Z for home mortgage loans to better protect consumers and facilitate responsible lending. The changes prohibit unfair, abusive or deceptive home mortgage lending practices and restrict certain other mortgage practices. The changes also establish advertising standards and require certain mortgage disclosures to be given to consumers earlier in the transaction.

The rule created a new category of mortgage loans in section 1026.35 and are referred to as “higher-priced mortgage loans.” This category of loans was intended to capture virtually all loans in the subprime market, but generally exclude loans in the prime market. A loan is higher-priced if it is a first-lien mortgage and has an annual percentage rate that is 1.5 percentage points or more above the average prime offer rate, or 3.5 percentage points if it is a subordinate-lien mortgage. First-lien jumbo mortgage loans, which are those loans over the maximum principal obligation eligible for purchase by Freddie Mac, may be a higher-priced mortgage if the loan’s APR is 2.5 percentage points or more above the average prime offer rate. To provide an index, the “average prime offer rate” is published based on a survey currently published by Freddie Mac in their Primary Mortgage Market Survey.

HELOCs, construction loans, “bridge loans, and reverse mortgages are not covered by the higher-priced mortgage rule.

The rule includes several key protections for “higher-priced mortgage loans” secured by a consumer’s principal dwelling. For loans in this category, these protections will:

- Prohibit a lender from making a loan without regard to borrowers’ ability to repay the loan from income and assets other than the home’s value. A
lender complies, in part, by assessing repayment ability based on the highest scheduled payment in the first seven years of the loan. To show that a lender violated this prohibition, a borrower does not need to demonstrate that it is part of a “pattern or practice.” NOTE: These requirements will also apply to mortgage loans covered by Regulation Z Section 1026.32.

- Require creditors to verify the income and assets they rely upon to determine repayment ability.
- Ban any prepayment penalty if the payment of principal or interest or both can change in the initial four years. For other higher-priced loans, a prepayment penalty period cannot last for more than two years. NOTE: These requirements will also apply to mortgage loans covered by Regulation Z Section 1026.32.

**Escrow for higher-priced mortgage appraisal requirements**

The rules also require that before consummation of a higher-priced mortgage (unless otherwise exempt), a creditor must establish an escrow account for the payment of property taxes and premiums for required mortgage-related insurance. The credit union does not have to escrow for insurance premiums for loans for condominiums, planned unit developments, or other common interest communities where a governing association is required and the association must maintain a master policy insuring the property.

A small creditor is exempt from the escrow provisions if it meets all of the following requirements: (1) makes the majority of its first-lien covered transactions in rural or underserved counties (which are counties identified in a list by the CFPB); (2) during the preceding calendar year, together with its affiliates, originated 2,000 or fewer first lien covered transactions (excluding originated loans held in portfolio), (3) has an asset size of less than $2 billion (asset threshold adjusts annually based on Consumer Price Index for Urban Wage Earners and Clerical Workers); and (4) together with its affiliates, generally does not escrow for any mortgage obligation that it or its affiliates currently service, except in limited circumstances.

The mandatory escrow account established for a higher-priced mortgage loan may be cancelled upon the consumer’s request at the later of (1) five years after consummation, or (2) the unpaid principal balance is less than 80 percent of the original value and the consumer is not delinquent or in default. Thus, if five years has passed since consummation but the loan-to-value is not less than 80 percent, the escrow account cannot be cancelled. Likewise, even if the loan reaches less than 80 percent loan-to-value, the escrow account cannot be cancelled unless five years has passed. If the underlying debt obligation is terminated at any time, the escrow account may also be cancelled.

**Higher-Priced Mortgage Appraisal Requirements**

In order to extend a higher priced mortgage (subject to the HPML exemptions), a creditor must obtain a written appraisal of the property prior to consummation. The appraisal must be
performed by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction.

A creditor may be exempt from the written appraisal requirement if the loan transaction is:

- A qualified mortgage;
- Is equal to or less than $25,500 (adjusted annually);
- Secured by a mobile home, boat, or trailer;
- Used to finance the initial construction of a dwelling;
- A bridge loan of 12 months or less used to finance the acquisition of a dwelling; or
- Secured by a manufactured home.

**Safe Harbor**

A creditor meets the requirement to obtain a single written appraisal if the creditor:

- Orders that the appraiser perform the appraisal in conformity with the USPAP and title XI of FIRREA (as well as implementing regulations) at the time the appraiser signs the appraiser's certification;
- Verifies through the National Registry that the appraiser who signed the appraiser's certification was a certified or licensed appraiser in the State in which the appraised property is located as of the date the appraiser signed the appraiser's certification;
- Confirms the elements in Appendix N are addressed in the written appraisal; and
- Has no actual knowledge contrary to the facts or certifications contained in the written appraisal.

**Two appraisal requirement**

A creditor must obtain two written appraisals prior to consummation for a higher priced mortgage to finance the acquisition of a principal dwelling if:

(A) The seller acquired the property 90 or fewer days prior to the date of the consumer’s agreement to acquire the property and the price in the consumer’s agreement to acquire the property exceeds the seller’s acquisition price [amount paid by seller not including cost of financing] by more than 10 percent; or

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

Each appraisal must be performed by a different certified or licensed appraiser who conducts a physical visit of the interior of the property. The appraisals must be conducted independently. So if the appraisers for both appraisals are employed by the same appraisal firm or affiliated appraisal firms, the independence will be determined based on the facts and circumstances. The consumer may only be charged for one of the appraisals. The creditor cannot use an appraisal that was previously obtained in connection with the seller’s acquisition or the financing of the seller’s acquisition.
**Required Analysis**

In addition, one of the two appraisals must include an analysis of:

A. The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer’s agreement to acquire the property from the seller;

B. Changes in market conditions between the date the seller acquired the property and the date of the consumer’s agreement to acquire the property; and

C. Any improvements made to the property between the date the seller acquired the property and the date of the consumer’s agreement to acquire the property.

**Prior sale date and price determination**

A creditor must obtain two appraisals unless the creditor can demonstrate by exercising reasonable diligence that the requirement to obtain two appraisals doesn’t apply. The creditor acts with reasonable diligence if the creditor bases its determination on information in written source documents (see Appendix O).

If the creditor exercises reasonable diligence and cannot determine whether a second appraisal would be required, one of the appraisals would only need to include the Required Analysis factors (price difference, market conditions, or improvements) to the extent necessary to perform the analyses.

**Disclosures for assumed mortgage loans**

An assumption of a loan occurs under Regulation Z when a credit union or other creditor expressly agrees in writing with a subsequent buyer to accept that buyer as a primary obligor on an existing residential mortgage loan, and to release the original obligor from those obligations.

Before an assumption occurs, you must give new disclosures to the new obligor, based on the remaining obligation. These new disclosures are limited if the finance charge on the original loan was an add-on or discount finance charge. Otherwise, you must provide the new obligor with all the disclosures you normally provide to any member applying for a residential mortgage loan.

**Disclosures on existing variable-rate loans**

An interest-rate adjustment to an existing variable-rate loan triggers the disclosure requirement in Section 1026.20(c).

**Initial rate adjustment disclosure**

An initial rate adjustment disclosure must be provided to consumers with an ARM between 210 and 240 days before the first payment at the adjusted level is due. If the first payment at the adjusted level is due within the first 210 days after consummation, the disclosure must be provided at consummation.

If the new rate or payment is not known as of the date of the disclosure, an estimate must be disclosed. The estimate shall be based on the index reported within 15 business days prior to the date of the disclosure. Estimates must be labeled to make it clear they are an estimate.

**Rate Adjustment with a Corresponding Change in Payment**

A disclosure must be provided to consumers when, by the terms of the loan
contract, the interest rate is adjusted and results in an adjustment to the payment. A disclosure must also be provided in a conversion of an ARM to a fixed-rate if it results in an adjustment to the payment. No disclosure is required if the first payment at the adjusted level is due within 210 days after consummation and the new rate disclosed at consummation was not an estimate.

Generally, the rate adjustment disclosure must be provided between 60 and 120 days before the first payment at the adjusted level is due. The timing is between 25 and 120 days before the first payment at the adjusted level is due for:

- ARMs with uniformly scheduled rate adjustments occurring at least every 60 days; and
- ARMs originated prior to January 10, 2015, with a look-back period of less than 45 days.

If the first adjustment to an ARM occurs within 60 days of consummation and the new rate disclosed at consummation was an estimate, the disclosure must be provided to consumers as soon as practicable, but not less than 25 days before the first payment at the adjusted level is due.

Appendix H in Regulation Z contains model forms.

### Appraiser independence

*NOTE: The changes discussed under this heading apply equally to both closed-end mortgage loans and open-end mortgage loans such as Home Equity Lines of Credit (HELOCs).*

Regulation Z contains a section relating to “valuation independence.” This section was added pursuant to the Dodd-Frank Act and intended to ensure that real estate appraisers are free to use their independent professional judgment in assigning home values without influence or pressure from those with interests in the transaction. It is also intended to ensure that appraisers receive customary and reasonable payments for their services.

Many of the provisions of this rule are similar to those of the Home Valuation Code of Conduct that applied to loans sold to Freddie Mac and Fannie Mae and which was repealed by the Dodd-Frank Act. This rule is also consistent with current NCUA appraisal rules and guidance that apply to credit unions.

Among other provisions the rule:

- Prohibits coercion or other similar actions designed to cause appraisers to base the value of properties on factors other than independent judgment.
- Prohibits appraisers and appraisal management companies (AMCs) hired by lenders from having financial or other interests in the properties or credit transactions.
- Prohibits creditors from extending credit based on appraisals if they know beforehand of violations involving appraiser coercion or conflicts of interest, unless the creditors determine that the property values are not materially misstated.
- Required that creditors or settlement service providers that have information about appraiser misconduct file reports with the appropriate state licensing authorities.
- Requires the payment of reason-
able and customary compensation to appraisers who are not employees of the creditors or of the AMCs hired by the creditors.

**General information**

The rule applies to any consumer credit transaction that is secured by the consumer’s principal home and will apply to creditors, AMCs, appraisers, mortgage brokers, realtors, title insurers, and other settlement service providers.

The requirements apply to all property valuations, in addition to formal appraisals. This includes estimates of the value of the consumer’s primary home, in either electronic or written form, other than one produced solely by an automated model or system, although this will include valuations that are based in part on the use of an automated model or system. As for appraisers, unless otherwise noted, this applies to anyone who performs valuation functions for the consumer’s primary home, not just those who are licensed or certified appraisers or who otherwise perform formal appraisals.

**Restrictions on property valuations**

Those covered under the rule are prohibited from engaging in coercion, bribery, collusion, inducement, intimidation, and other similar actions designed to cause anyone who prepares a property valuation to base the value on factors other than the person’s independent judgment. This would apply to actions intended to result in a valuation that would be above or below a certain amount. However, this provision does not prevent a person from requesting the appraiser to consider additional, appropriate property information or providing incentives to the appraiser, as long as this does not affect his or her independent judgment.

The following are examples of actions that would violate this provision:

- Withholding, or threatening to withhold, timely payment under the terms of a contract, although this provision would not apply if compensation is withheld for breach of contract or substandard performance of services.

- Implying that current or future retention of the appraiser depends on his or her valuation. Conditioning the compensation paid to the appraiser on the consummation of the loan.

The rule prohibits an appraiser from materially misrepresenting the value of the consumer’s home. However, a bona fide error will not violate this provision. Others may not materially alter the valuation, other than the appraiser, although this does not include alterations that do not significantly affect the value assigned to the home. Also, no one may induce another person to violate either of these prohibitions. However, this does not prevent creditors and others from requesting that the appraiser correct errors in the valuation.

The rule does not prohibit the obtaining of multiple valuations of a single property in order to select the most reliable valuation. The rule also does not otherwise prohibit an action that is permitted or required under applicable federal or state law, regulation, or agency guidance.

Those covered under the rule are also prohibited from extending credit
based on a valuation if the creditor knows at or before loan consummation that: (1) coercion or similar misconduct has occurred; or (2) the person who prepares or performs a property valuation function has a prohibited interest in the property or transaction, unless the creditor uses reasonable diligence to determine that the valuation does not materially misstate the property value.

**Prohibition on conflicts of interest**

In general, the rule prohibits a person who provides a property valuation service from having any interest, financial or otherwise, in the property or transaction. However, having an employment relationship, such as with the creditor or other affiliation does not, by itself, violate this prohibition. In addition, these provisions are not violated solely by the fact that the person providing the service also provides an additional settlement service.

The following are examples of conduct that are prohibited under these provisions:

- The person performing the valuation service has an ownership interest or a reasonably foreseeable interest, which would include when the person seeks a mortgage on the property being valued.
- The person providing the valuation service, or an affiliate of that entity, also serves as a loan officer of the creditor, mortgage broker, or other settlement service provider, unless the safe harbor for settlement providers applies, as described below.
- The person providing this service is compensated based on whether the loan is consummated.

However, the rule provides safe harbors and specific criteria for establishing firewalls between the appraisal function and the loan production function in order to prevent conflicts of interest for appraisers who are employees or affiliates of the creditor. Different safe harbors apply for creditors with assets of more than $250 million as of December 31st for both of the past two calendar years and for creditors with assets of $250 million or less as of December 31st for either of the past two calendar years. If the conditions of these safe harbors are satisfied, then the creditor may rely on valuations prepared by in-house staff or affiliates. If these conditions are not met, then violations are determined based on all of the facts and circumstances. These safe harbors also apply for those who perform valuation functions in addition to other settlement services.

**For creditors with more than $250 million in assets, the conditions for the safe harbor are as follows:**

- The compensation of the person performing the valuation function is not based on the value arrived at in any valuation, although this does not prohibit the basing of compensation on whether the loan closes;
- The person performing the valuation function reports to a person who is not part of the creditor’s loan production function and whose compensation is not based on whether the loan closes; and
• No employee, officer, or director in the creditor’s loan production function is involved in any way in selecting, retaining, recommending, or influencing the selection of the one performing the valuation service, which includes deciding who should or should not be on a list of those approved to perform this function.

For those creditors with $250 million in assets or less, the conditions for the safe harbor are as follows:

• The compensation of the person performing the valuation function is not based on the value arrived at in any valuation, although this does not prohibit the basing of compensation on whether the loan closes; and

• The creditor requires any employee, officer, or director of the creditor who orders, performs, or reviews a valuation to abstain from participating in any decision to approve, deny, or set the terms of the transaction.

Prohibited extensions of credit

If a creditor knows at or before loan consummation of a violation, then it must not extend credit based on the property valuation, unless the creditor documents that it has acted with reasonable diligence to determine that the valuation does not materially misstate or misrepresent the value of the home. The rule does not mandate the due diligence procedures that need to be followed. However, the creditor does not have to obtain a second valuation to document that the creditor has acted with reasonable diligence in these situations. Also, if a creditor knows there is a violation and still extends credit, this violation itself does not void the loan agreement. Whether the loan agreement is valid is determined by state or other applicable law.

Customary and reasonable compensation

The rule requires a creditor or its agent to pay a fee appraiser a rate that is reasonable and customary in the geographic market where the property is located. This geographic area may be a state, metropolitan statistical area, metropolitan division, county, or other type of area. Also, this provision only covers state-licensed or certified appraisers and does not include employees of the creditor or of AMCs. However, the rule is not intended to prohibit a creditor and appraiser from negotiating a rate in good faith, prohibit a creditor from communicating to an appraiser the rates that had been submitted by other appraisers solicited for an assignment, or prohibit the negotiation of volume-based discounts for multiple assignments to one appraiser.

Mandatory reporting requirements

A creditor or settlement service provider involved in the transaction that has a reasonable basis to believe that an appraiser has not complied with ethical, professional, or other requirements for appraisers under applicable federal or state law or regulation, or the Uniform Standards of Professional Appraisal Practice, must report this to the appropriate state licensing agency within a
“reasonable time” after it determines that noncompliance may have occurred. However, this is limited to “material” incidents to the extent they are likely to affect the value assigned to the property and only applies to state-licensed/certified appraisers or those otherwise subject to a state agency’s jurisdiction.

Examples of “material” noncompliance include mischaracterizing the value of the home, performing the appraisal in a grossly negligent manner, and accepting an appraisal assignment on condition that the value assigned will be at least as high as the purchase price.

Marketing and advertising rules for closed-end credit

Section 1026.24 of Regulation Z provides specific rules that apply to all advertisements for closed-end credit. These rules discuss the actual availability of terms offered in an advertisement, require use of the term “annual percentage rate” whenever a rate is disclosed in an advertisement, require additional disclosures in an advertisement that contains “trigger terms,” and provide special rules for multi-page advertisements.

All disclosures required to be made in advertisements must be set forth clearly and conspicuously. To meet this requirement, the disclosures must be legible and reasonably understandable. The regulation otherwise does not designate a size type or the placement for any of the disclosures required.

Actual availability of terms

If an advertisement for any type of closed-end credit states specific credit terms, your credit union must actually arrange or offer those terms.

Rate of finance charge

If any advertisement states a rate of finance charge, the rate must be stated using the specific term “annual percentage rate.” The commentary to this section states that use of the abbreviation “APR” is permissible, with no conditions attached.

If the APR can be increased after consummation of an advertised loan, the advertisement must also state that fact, but the Regulation does not require you to include details regarding rate increases.

No other rate may be stated in an advertisement for consumer loans not secured by a dwelling except either a simple annual rate or a periodic rate that is applied to an unpaid balance and in an advertisement for credit secured by a dwelling, no other rate may be stated except a simple annual rate that is applied to an unpaid balance. These may be stated in conjunction with, but not more conspicuously than, the APR.

In advertisements made through electronic communication, the consumer must be able to view either the simple annual rate or the periodic rate simultaneously with the APR. It is not acceptable to view the APR only by use of a link to information appearing at another location.

Trigger terms

There are certain credit terms that if mentioned or described in an advertisement by themselves, might mislead consumers as to the “deal” your credit union is offering compared to similar credit offered by other credit unions. These terms are known as “trigger terms” due to the fact that their inclu-
sion in an advertisement triggers the requirement that you make additional disclosures in the advertisement.

Specifically, if an advertisement for a closed-end loan contains any one of the following terms, you must include additional disclosures:

- The amount or percentage of any down payment. For example:
  “Finance the purchase of a new home with only 10% down.”
  “90% financing available.”

- This only applies when the advertisement is for a credit sale. That is when the seller of the property is also the creditor. A good example would be when a credit union has an advertisement for a repossessed car, and that same advertisement also includes closed-end financing options for that car.

- The number of payments or the period of repayment. For example:
  “Up to 30 years to repay.”
  “Terms from 10 years to 30 years.”

- The amount of any payment. For example:
  “$500 a month will get you a new home.”
  “Payments as low as $475 a month.”

- The amount of any finance charge. For example:
  “Finance charges as low as $5,000 a year.”
  “As little as $1,000 in points.”

An advertisement for closed-end credit that contains one or more of the above trigger terms also must disclose the following:

- The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment.

- The “annual percentage rate,” using that term.

- For an APR that may be increased after consummation, a statement to that effect.

In most cases, a term that is vague is not a trigger term. For example, the phrase “take years to repay” is not a trigger term since it does not state or suggest a specific period of repayment. Specific terms are more likely to be trigger terms. “APR” is not a trigger term in advertisements for closed-end credit. That is, you may state the APR without triggering the requirement that other disclosures be included in the advertisement.

**Question:** Are there any regulation issues if our credit union wants to mail out an advertisement to all borrowers who recently paid off their loan satisfactorily, telling them that if they apply and are approved for a loan by a certain date they would receive $100 off of their closing costs?

**Answer:** Regulation Z (Truth In Lending) has some rules that affect advertising of consumer credit.

If an advertisement states specific credit terms, it may only state terms that the creditor will actually make available. [Regulation Z, §1026.24(a)] Any rate of finance charge included in the advertisement must be the annual percentage rate calculated under Regulation Z rules, and the advertisement must refer to the rate as the “annual percentage rate.”
Disclosure of rates and payments in advertisements for mortgage loans

Rates. If an advertisement for a mortgage loan states a simple annual rate of interest and more than one simple annual rate will apply over the term of the loan, the advertisement must disclose the following in a clear and conspicuous manner:

- Each simple annual rate that will apply.
- The period of time during which each simple annual rate will apply; and
- The APR for the loan.

Payments. If an advertisement for a mortgage loan states the amount of any payment, the advertisement must disclose the following in a clear and conspicuous manner:

- The amount of each payment that will apply over the term of the loan, including any balloon payment.
- The period of time during which each payment will apply; and
- In an advertisement for a loan secured by a first lien on a dwelling, the fact that the payments do not include amounts for taxes and insurance premiums, if applicable, and that the actual payment obligation will be greater.

The above disclosures do not apply to an envelope in which an application...
or solicitation is mailed, or to a banner advertisement or pop-up advertisement linked to an application or solicitation provided electronically.

The above disclosures for rates and payments do not apply to television or radio advertisements.

A television or radio advertisement that states any of the closed-end triggering terms [under 1026.24(d)(1)] may comply by either stating each of the additional disclosures required, or by stating just the APR and listing a toll-free telephone number, or any telephone number that allows a member to reverse the phone charges when calling for information, along with a reference that the number may be used by members to obtain additional cost information.

**Prohibited acts or practices in advertisements for mortgage loans**

The following acts or practices are prohibited in advertisements for mortgage loans:

- **Misleading advertising of “fixed” rates and payments.** The word “fixed” may not be used to refer to rates, payments, or the credit transaction in an advertisement for variable-rate loans or in other loans where the payment will increase, unless:

  - In the case of an advertisement for a variable-rate loan, the phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or ARM” appears in the advertisement before the first use of the word “fixed” and is at least as conspicuous as any use of the word “fixed” and in addition, each use of the word “fixed” to refer to a rate or payment is accompanied by an equally prominent and closely proximate statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

  - In the case of an advertisement for a non-variable rate loan, where the payment will increase as in a stepped-rate mortgage loan with a lower initial payment, each use of the word “fixed” to refer to the payment is accompanied by an equally prominent and closely proximate statement of the time period for which the payment is fixed and the fact that the payment will increase after that period, or

**Tax implications**

In any advertisement for a mortgage loan secured by the member’s principal dwelling, that is distributed in paper form or through the Internet that states that the advertised extension of credit may exceed the fair market value of the dwelling, the advertisement must state that:

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

- The member should consult a tax adviser for further information regarding the deductibility of interest and charges.
• In the case of an advertisement for both variable-rate and non-variable rate loans, the phrase “Adjustable-Rate Mortgage,” “Variable-Rate Mortgage,” or “ARM” appears in the advertisement with equal prominence as the use of the word “fixed” and includes an equally prominent statement of the time period for which the rate or payment is fixed, and the fact that the rate may vary or the payment may increase after that period.

• Misleading comparisons in advertisements. No comparison may be made in an advertisement between actual or hypothetical credit payments or rates and any payment or simple annual rate available for less than the full term of the loan, unless:
  
  • The advertisement includes a clear and conspicuous comparison to the simple annual rates and payments that would apply to the loan and the time periods the rates and payments would apply, and
  
  • In an advertisement for variable-rate loans in which the payment or simple annual rate is based upon the index and margin that will be used to make subsequent adjustments, the advertisement includes an equally prominent statement that the payment or rate is subject to adjustment and the time period when the first adjustment will occur.

• Misrepresentations about government endorsements. No statement may be made in an advertisement that the loan offered is a “government loan program”, “government-supported loan,” or is otherwise endorsed or sponsored by any federal, state, or local government entity, unless the advertisement is for an FHA loan, VA loan, or similar loan program.

• Misleading use of the current lender’s name. The name of the consumer’s current lender may not be used in an advertisement that is not sent by or on behalf of that lender, unless the advertisement discloses with equal prominence the name of the person or creditor making the advertisement, and includes a clear and conspicuous statement that the person making the advertisement is not associated with, or acting on behalf of, the consumer’s current lender.

• Misleading claims of debt elimination. No misleading claim may be made in an advertisement that the mortgage product offered will eliminate debt or result in a waiver or forgiveness of a consumer’s existing loan terms with another creditor.

• Misleading use of the term “counselor”. The use of the term “counselor” may not be used in an advertisement to refer to a for-profit mortgage broker or mortgage creditor, its employees, or persons working for the broker or creditor that are involved in offering, originating or selling mortgages.

• Misleading foreign-language advertisements. An advertisement may not provide some terms only in a foreign language while providing other terms only in English.
The FTC “Mortgage Acts and Practices — Advertising Rule

In mid-2011 the Federal Trade Commission (FTC) issued a final rule relating to unfair or deceptive acts and practices that may occur with regard to mortgage loan advertising. The rule became effective on August 19, 2011, and applies to state chartered credit unions (but not federal credit unions). While the rule doesn’t specifically mention CUSOs in the text, it is believed that the FTC’s jurisdiction and this final rule would also apply to CUSOs.

The final rule will allow the FTC to investigate and enforce its rule and seek civil penalties against those who violate them. The Consumer Financial Protection Bureau (CFPB) and state law enforcement authorities may also bring actions to enforce the rule.

The rule prohibits any misrepresentation in any advertisement or commercial communication regarding any of the terms or conditions of any mortgage loan product (for personal, family or household purposes) regardless of whether it is open-end or closed-end. A “commercial communication” has been defined very broadly to include any written or oral statement designed to make a sale or create interest in purchasing goods or services whether it appears on radio, television, brochure, newspaper, magazine, pamphlet, mailer, insert, letter, poster, billboard, audio program, training materials, the Internet or any other medium.

The following is a non-exclusive list of misrepresentations that would violate the final rule:

- Misrepresentations about the APR, interest charged, the amount of interest owed each month, and the amount of fees or costs associated with the mortgage loan;
- Misrepresentations about the terms of products sold in conjunction with the mortgage loan such as credit life and disability insurance or other add-ons to the loan;
- Misrepresentations about the variability of interest, payment amounts, or other terms of the mortgage loan;
- False or misleading comparisons between rates or payments;
- Misrepresentations about the type of mortgage loan being offered, the amount of the loan, and the existence, number, amount or timing of any payment;
- Misrepresentations about the potential for default on the mortgage loan, about the source of the loan, and about the consumer’s right to reside in the dwelling;
- Misrepresentations about the consumer’s ability to obtain any mortgage loan, or a refinancing or modification of the mortgage loan;
- Misrepresentations about the availability of counseling services or other expert advice offered to the consumer.

For example, an advertisement for a closed-end mortgage loan likely would be deceptive and misleading if it represented that a loan has a very low interest rate, but failed to disclose that the rate would substantially increase after a few months.
Electronic Communication

In late 2007, the Fed issued final rules withdrawing the 2001 interim final rule that had established standards for the electronic delivery of consumer disclosures required under Regulation Z (Truth in Lending). The interim rule addressed the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (ESIGN). The Fed has now withdrawn these provisions and simplified the regulations with regard to electronic communication. The mandatory compliance date is October 1, 2008.

The new rules:

- Eliminate certain portions of the 2001 interim final rules that restate or cross-reference provisions of ESIGN (e.g., the consumer consent provisions). The regulations now simply state that the required consumer disclosures may be provided in electronic form, subject to ESIGN.

- Withdraw provisions of the 2001 interim final rules that “may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection.” For example, the rules no longer mandate any particular means of electronic delivery of disclosures, such as sending disclosures via e-mail. The Fed changed these requirements because of concerns about data security, identity theft, and “phishing” (using fraudulent e-mail requests to obtain consumers’ confidential personal or financial information) that have become more pronounced since 2001. The Fed also eliminated the provisions regarding retention of electronic disclosures posted on a website for at least 90 days, since industry practice is to retain the information for much longer than the required retention period; and

- Adopt certain provisions that provide guidance on the use of electronic disclosures.

Requirements

In accordance with the Electronic Signatures in Global and National Commerce Act (ESIGN) and Regulation Z, any disclosures required by regulation or statute to “electronic communication.”

Definition

“Electronic communication” is defined as a message transmitted electronically between a creditor and a consumer in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

Relationship to ESIGN

The Electronic Signatures in Global and National Commerce Act (ESIGN) authorizes the use of electronic disclosures. It does not affect any of the requirements imposed by Regulation Z other than the requirement that disclosures be in paper form. All electronic disclosures are subject to the content, format, timing, and retainability rules as well as the clear and conspicuous standard imposed by Regulation Z.
Clear and conspicuous standard

To satisfy this standard, electronic disclosures must use visual text in a clear and conspicuous format. The following ESIGN requirements must also be met:

• The credit union must disclose the requirements for accessing and retaining disclosures.

• The consumer must demonstrate the ability to access the information electronically and affirmatively consent to receiving disclosures electronically.

• The credit union must provide the disclosures in accordance with the specified requirements.

Timing and effective delivery online

When credit unions provide closed-end transactions online, members must be required to access the disclosures required by section 1026.18 — identity of creditor, amount financed, itemization of amount financed, finance charge, and annual percentage rate — before becoming obligated. Providing a link to the disclosures satisfies the timing rule if the member cannot bypass the disclosures before becoming obligated. Alternatively, the disclosures must appear automatically on the screen, even if multiple screens are required to view the entire disclosure. Confirmation that the disclosure has been read is not required.

Disclosures that do not have to be segregated and can be combined with the text of another document may appear automatically or be provided by a link that cannot be bypassed.

Timing and delivery of periodic disclosures

Disclosures provided by e-mail are considered timely if they are sent within the required time limits. However, disclosures that are posted on the credit union’s website (for example, periodic statements or change-in-terms notices) are considered timely when:

1. the disclosures are available (at the website), and
2. a notice has been sent to the member alerting the member that the disclosures, statements, or notices have been posted.

Retainability of disclosures

Credit unions must provide or deliver electronic disclosures in a format that can be retained either by printing or electronic storage. This format must be consistent with the hardware and software requirements for accessing and retaining electronic disclosures given to members as required by ESIGN.

When consent is required

Under ESIGN, credit unions are required to obtain a member’s affirmative consent before providing transaction-related disclosures electronically. The following disclosures do not require the consumer’s prior consent:

• Section 1026.60 — disclosures for credit card applications and solicitations.

• Section 1026.40(d) — preliminary home equity line of credit disclosures including the following: (1) the member should retain a copy of those disclosures, (2) when the
application must be submitted to obtain the described terms, (3) any terms that are subject to change prior to opening the credit plan, (4) the member’s right to a refund prior to opening the credit plan, (5) the credit union will receive a security interest in the member’s home, (6) possible actions the credit union may take under certain conditions, (7) payment terms, (8) the length of the draw period, (9) the annual percentage rate, (10) credit union fees, (11) third-party fees, (12) negative amortization may occur, (13) transaction limitations, (14) the member should consult a tax adviser, and (15) variable-rate disclosures.

• **Section 1026.40(e)** — the home equity brochure published by the board.

• **Section 1026.16** — advertising disclosures for open-end credit.

• **Section 1026.17(g)(1)-(5)** — disclosures required when the credit union receives a request for credit by mail or telephone.

• **Section 1026.19(b)** — disclosures required for all closed-end variable-rate transactions that are secured by the member’s principal dwelling and have a term greater than one year.

• **Section 1026.24** — advertising disclosures for closed-end credit.

**NOTE:** The credit union is still obligated to provide these disclosures commensurate with its obligation under Regulation Z:

**Truth In Lending’s Early Disclosure Requirements:**

3. **Credit Card Applications and Solicitations.** Section 1026.60 provides that the consumer must be able to access the required disclosures at the time the blank application or reply form is made available to the consumer. The Interim Rules provide the following options:

   (1) The credit union can provide a clear and conspicuous link to the required disclosures. However, if a link is used, the credit union must utilize a system that will not allow the consumer to bypass the disclosures before submitting the application (similar to the requirements of the E-Sign Act disclosure requirements).

   (2) The credit union may use a system that causes the disclosures to automatically appear on the screen when the application or reply form appears (e.g., a “pop up box”).

   (3) If a link or pop-up box is not used, then the disclosures must appear on the application or reply form. As applicable, the form must contain a clear and conspicuous reference to the fact that the rate, fee, and other cost information either precedes or follows the application or reply form.

**NOTE:** The credit union is not obligated to confirm that the consumer has read the disclosures. However, a well-crafted application or other applicable form will contain language stating that the consumer has in fact read and reviewed such information.
3a. Accuracy of the APR with Regard to Credit Card Applications and Solicitations. Unlike paper applications and solicitations, electronic methods must meet the following accuracy requirements:

(1) If e-mailed to the consumer, the APR must be accurate within 30 days from the date sent.

(2) If made available on the credit union’s website or otherwise electronically, the APR must be accurate within 30 days of the date that the rate appears.

4. Applications for Home Equity Lines of Credit. The required disclosures in connection with a Home Equity Line of Credit must comply with the same rules applicable to a credit card application as discussed in 3., above. (The Early Disclosure and applicable booklet/brochure). This means the disclosures can be provided via link, automatic disclosure, or with the application. In light of the breadth of these disclosures, it is likely that a link will be the method most commonly used to meet this obligation.

5. Applications for Adjustable Rate Mortgages. The required disclosure in connection with an adjustable-rate mortgage loan (as defined by 1026.19 of Regulation Z) must comply with the same rules applicable to a credit card application as discussed in #3 above. (The booklet/brochure). This means the disclosure can be provided via link, automatic disclosure, or with the application. In light of the breadth of this disclosure, it is likely that a link will be the method most commonly used to meet this obligation.

Address or location to receive electronic communication

Credit unions may provide electronic disclosures by:

- sending them to a member’s electronic address — an e-mail address that is not limited to receiving communications solely from the credit union, or

- making the disclosures available at another location such as the credit union’s website and sending a notice to the member’s e-mail address or postal address regarding the online availability of those disclosures.

Credit unions do not need to comply with the rules for disclosures posted on an Internet website when those disclosures are required by the following sections: 1026.5a, 1026.40(d) and 1026.40(e), 1026.16, 1026.17(g)(1) through (5), 1026.19(b) and 1026.24. See the discussion in the “When consent is required” section above.

Electronic signatures

An electronic signature as defined under ESIGN satisfies any requirement under Regulation Z for a member’s signature or initials.

This does not infer a need for signatures unless otherwise stated herein. This reference is merely to note that the use of signatures (generally as to contractual provisions) is sufficient. However, the credit union should always consult with local counsel as to whether state laws may impose further requirements.
Appendix 1-A – Sample Loan Estimate
**Loan Estimate**

**DATE ISSUED** 2/15/2013  
**APPLICANTS** Michael Jones and Mary Stone  
123 Anywhere Street  
Anytown, ST 12345  
**PROPERTY** 456 Somewhere Avenue  
Anytown, ST 12345  
**SALE PRICE** $180,000

**Loan Terms**

<table>
<thead>
<tr>
<th>Loan Amount</th>
<th>$162,000</th>
<th>NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest Rate</td>
<td>3.875%</td>
<td>NO</td>
</tr>
<tr>
<td>Monthly Principal &amp; Interest</td>
<td>$761.78</td>
<td>NO</td>
</tr>
</tbody>
</table>

**Prepayment Penalty**  
YES • As high as $3,240 if you pay off the loan during the first 2 years  
**Balloon Payment**  
NO

**Projected Payments**

<table>
<thead>
<tr>
<th>Payment Calculation</th>
<th>Years 1-7</th>
<th>Years 8-30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal &amp; Interest</td>
<td>$761.78</td>
<td>$761.78</td>
</tr>
<tr>
<td>Mortgage Insurance</td>
<td>+ 82</td>
<td>+ –</td>
</tr>
<tr>
<td>Estimated Escrow</td>
<td>+ 206</td>
<td>+ 206</td>
</tr>
<tr>
<td><strong>Estimated Total Monthly Payment</strong></td>
<td><strong>$1,050</strong></td>
<td><strong>$968</strong></td>
</tr>
</tbody>
</table>

**Estimated Taxes, Insurance & Assessments**  
Amount can increase over time  
$206 a month

**This estimate includes**

- Property Taxes
- Homeowner's Insurance

**In escrow?**  
YES

**Costs at Closing**

**Estimated Closing Costs**  
$8,054  
Includes $5,672 in Loan Costs + $2,382 in Other Costs – $0 in Lender Credits. See page 2 for details.

**Estimated Cash to Close**  
$16,054  
Includes Closing Costs. See Calculating Cash to Close on page 2 for details.

*Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on 3/4/2013 at 5:00 p.m. EDT*

Visit www.consumerfinance.gov/mortgage-estimate for general information and tools.

Save this Loan Estimate to compare with your Closing Disclosure.
## Closing Cost Details

<table>
<thead>
<tr>
<th>Loan Costs</th>
<th>Other Costs</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Origination Charges</strong></td>
<td><strong>E. Taxes and Other Government Fees</strong> $85</td>
</tr>
<tr>
<td>$1,802</td>
<td>Recording Fees and Other Taxes $85</td>
</tr>
<tr>
<td>.25 % of Loan Amount (Points) $405</td>
<td>Transfer Taxes</td>
</tr>
<tr>
<td>Application Fee $300</td>
<td><strong>F. Prepaids</strong> $867</td>
</tr>
<tr>
<td>Underwriting Fee $1,097</td>
<td>Appraisal Fee $405</td>
</tr>
<tr>
<td></td>
<td>Credit Report Fee $30</td>
</tr>
<tr>
<td><strong>B. Services You Cannot Shop For</strong></td>
<td>Flood Determination Fee $20</td>
</tr>
<tr>
<td>$672</td>
<td>Flood Monitoring Fee $32</td>
</tr>
<tr>
<td></td>
<td>Tax Monitoring Fee $75</td>
</tr>
<tr>
<td></td>
<td>Tax Status Research Fee $110</td>
</tr>
<tr>
<td><strong>C. Services You Can Shop For</strong></td>
<td></td>
</tr>
<tr>
<td>$3,198</td>
<td></td>
</tr>
<tr>
<td>Pest Inspection Fee $135</td>
<td>Mortgage Insurance per month for mo. $211</td>
</tr>
<tr>
<td>Survey Fee $65</td>
<td>Property Taxes $105.30 per month for 2 mo.</td>
</tr>
<tr>
<td>Title – Insurance Binder $700</td>
<td><strong>H. Other</strong> $1,017</td>
</tr>
<tr>
<td>Title – Lender's Title Policy $535</td>
<td>Title – Owner's Title Policy (optional) $1,017</td>
</tr>
<tr>
<td>Title – Settlement Agent Fee $502</td>
<td></td>
</tr>
<tr>
<td>Title – Title Search $1,261</td>
<td><strong>I. TOTAL OTHER COSTS (E + F + G + H)</strong> $2,382</td>
</tr>
</tbody>
</table>

| **D. TOTAL LOAN COSTS (A + B + C)** | **J. TOTAL CLOSING COSTS** $8,054 |
| $5,672 | D + I $8,054 |
| | Lender Credits |

### Calculating Cash to Close

<table>
<thead>
<tr>
<th>Total Closing Costs (J)</th>
<th>Estimated Cash to Close $16,054</th>
</tr>
</thead>
<tbody>
<tr>
<td>$8,054</td>
<td></td>
</tr>
<tr>
<td>Closing Costs Financed (Paid from your Loan Amount) $0</td>
<td></td>
</tr>
<tr>
<td>Down Payment/ Funds from Borrower $18,000</td>
<td></td>
</tr>
<tr>
<td>Deposit $10,000</td>
<td></td>
</tr>
<tr>
<td>Funds for Borrower $0</td>
<td></td>
</tr>
<tr>
<td>Seller Credits $0</td>
<td></td>
</tr>
<tr>
<td>Adjustments and Other Credits $0</td>
<td></td>
</tr>
</tbody>
</table>
Additional Information About This Loan

Comparisons

<table>
<thead>
<tr>
<th>Description</th>
<th>Value</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>In 5 Years</td>
<td>$56,582</td>
<td>Total you will have paid in principal, interest, mortgage insurance, and loan costs.</td>
</tr>
<tr>
<td></td>
<td>$15,773</td>
<td>Principal you will have paid off.</td>
</tr>
<tr>
<td>Annual Percentage Rate (APR)</td>
<td>4.274%</td>
<td>Your costs over the loan term expressed as a rate. This is not your interest rate.</td>
</tr>
<tr>
<td>Total Interest Percentage (TIP)</td>
<td>69.45%</td>
<td>The total amount of interest that you will pay over the loan term as a percentage of your loan amount.</td>
</tr>
</tbody>
</table>

Other Considerations

Appraisal

We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.

Assumption

If you sell or transfer this property to another person, we
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan on the original terms.

Homeowner's Insurance

This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.

Late Payment

If your payment is more than 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.

Refinance

Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

Servicing

We intend
☐ to service your loan. If so, you will make your payments to us.
☒ to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature Date Co-Applicant Signature Date
Appendix 1-B – Sample Closing Disclosure
## Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

### Loan Terms

<table>
<thead>
<tr>
<th>Loan Terms</th>
<th>Can this amount increase after closing?</th>
</tr>
</thead>
<tbody>
<tr>
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</tr>
<tr>
<td>Prepayment Penalty</td>
<td>YES</td>
</tr>
<tr>
<td>Balloon Payment</td>
<td>NO</td>
</tr>
</tbody>
</table>

### Can this amount increase after closing?

- **Loan Amount**: NO
- **Interest Rate**: NO
- **Monthly Principal & Interest**: NO
- **Prepayment Penalty**: YES • As high as $3,240 if you pay off the loan during the first 2 years
- **Balloon Payment**: NO

### Projected Payments

<table>
<thead>
<tr>
<th>Payment Calculation</th>
<th>Years 1-7</th>
<th>Years 8-30</th>
</tr>
</thead>
<tbody>
<tr>
<td>Principal &amp; Interest</td>
<td>$761.78</td>
<td>$761.78</td>
</tr>
<tr>
<td>Mortgage Insurance</td>
<td>+ 82.35</td>
<td>+</td>
</tr>
<tr>
<td>Estimated Escrow</td>
<td>+ 206.13</td>
<td>+ 206.13</td>
</tr>
<tr>
<td>Estimated Total Monthly Payment</td>
<td>$1,050.26</td>
<td>$967.91</td>
</tr>
</tbody>
</table>

### Estimated Taxes, Insurance & Assessments

- **Amount can increase over time**: $356.13 a month
- **In escrow?**: YES

### Costs at Closing

- **Closing Costs**: $9,712.10 Includes $4,694.05 in Loan Costs + $5,018.05 in Other Costs – $0 in Lender Credits. See page 2 for details.
- **Cash to Close**: $14,147.26 Includes Closing Costs. See Calculating Cash to Close on page 3 for details.
### Loan Costs

<table>
<thead>
<tr>
<th>A. Origination Charges</th>
<th>Borrower-Paid</th>
<th>Seller-Paid</th>
<th>Paid by Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 0.25 % of Loan Amount (Points)</td>
<td>$405.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>02 Application Fee</td>
<td>$300.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>03 Underwriting Fee</td>
<td>$1,097.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>04</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>05</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>06</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>07</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>B. Services Borrower Did Not Shop For</th>
<th>Borrower-Paid</th>
<th>Seller-Paid</th>
<th>Paid by Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Appraisal Fee to John Smith Appraisers Inc.</td>
<td>$405.00</td>
<td></td>
<td>$405.00</td>
</tr>
<tr>
<td>02 Credit Report Fee to Information Inc.</td>
<td>$29.80</td>
<td></td>
<td></td>
</tr>
<tr>
<td>03 Flood Determination Fee to Info Co.</td>
<td>$20.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>04 Flood Monitoring Fee to Info Co.</td>
<td>$31.75</td>
<td></td>
<td></td>
</tr>
<tr>
<td>05 Tax Monitoring Fee to Info Co.</td>
<td>$75.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>06 Tax Status Research Fee to Info Co.</td>
<td>$80.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>07</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>C. Services Borrower Did Shop For</th>
<th>Borrower-Paid</th>
<th>Seller-Paid</th>
<th>Paid by Others</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Pest Inspection Fee to Pests Co.</td>
<td>$120.50</td>
<td></td>
<td></td>
</tr>
<tr>
<td>02 Survey Fee to Surveys Co.</td>
<td>$85.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>03 Title – Insurance Binder to Epsilon Title Co.</td>
<td>$650.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>04 Title – Lender's Title Insurance to Epsilon Title Co.</td>
<td>$500.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>05 Title – Settlement Agent Fee to Epsilon Title Co.</td>
<td>$500.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>06 Title – Title Search to Epsilon Title Co.</td>
<td>$800.00</td>
<td></td>
<td></td>
</tr>
<tr>
<td>07</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>08</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| D. TOTAL LOAN COSTS (Borrower-Paid) | $4,694.05 |

| Loan Costs Subtotals (A + B + C) | $4,664.25 | $29.80 |

### Other Costs

<table>
<thead>
<tr>
<th>E. Taxes and Other Government Fees</th>
<th>$85.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Recording Fees to Deed: $40.00 Mortgage: $45.00</td>
<td>$85.00</td>
</tr>
<tr>
<td>02 Transfer Tax to Any State</td>
<td>$95.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>F. Prepaids</th>
<th>$2,120.80</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Homeowner's Insurance Premium (12 mo.) to Insurance Co.</td>
<td>$1,209.96</td>
</tr>
<tr>
<td>02 Mortgage Insurance Premium (6 mo.)</td>
<td></td>
</tr>
<tr>
<td>03 Prepaid Interest ($17.44 per day from 4/15/13 to 5/1/13)</td>
<td>$279.04</td>
</tr>
<tr>
<td>04 Property Taxes (6 mo.) to Any County USA</td>
<td>$631.80</td>
</tr>
<tr>
<td>05</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>G. Initial Escrow Payment at Closing</th>
<th>$412.25</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Homeowner's Insurance $100.83 per month for 2 mo.</td>
<td>$201.66</td>
</tr>
<tr>
<td>02 Mortgage Insurance per month for 6 mo.</td>
<td></td>
</tr>
<tr>
<td>03 Property Taxes $105.30 per month for 2 mo.</td>
<td>$210.60</td>
</tr>
<tr>
<td>04</td>
<td></td>
</tr>
<tr>
<td>05</td>
<td></td>
</tr>
<tr>
<td>06</td>
<td></td>
</tr>
<tr>
<td>07</td>
<td></td>
</tr>
<tr>
<td>08 Aggregate Adjustment</td>
<td>-0.01</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>H. Other</th>
<th>$2,400.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 HOA Capital Contribution to HOA Acre Inc.</td>
<td>$500.00</td>
</tr>
<tr>
<td>02 HOA Processing Fee to HOA Acre Inc.</td>
<td>$150.00</td>
</tr>
<tr>
<td>03 Home Inspection Fee to Engineers Inc.</td>
<td>$750.00</td>
</tr>
<tr>
<td>04 Home Warranty Fee to XYZ Warranty Inc.</td>
<td></td>
</tr>
<tr>
<td>05 Real Estate Commission to Alpha Real Estate Broker</td>
<td></td>
</tr>
<tr>
<td>06 Real Estate Commission to Omega Real Estate Broker</td>
<td></td>
</tr>
<tr>
<td>07 Title – Owner's Title Insurance (optional) to Epsilon Title Co.</td>
<td>$1,000.00</td>
</tr>
<tr>
<td>08</td>
<td></td>
</tr>
</tbody>
</table>

| I. TOTAL OTHER COSTS (Borrower-Paid) | $5,018.05 |

| Other Costs Subtotals (E + F + G + H) | $5,018.05 |

| J. TOTAL CLOSING COSTS (Borrower-Paid) | $9,712.10 |

| Closing Costs Subtotals (D + I) | $9,682.30 | $29.80 |

| Lender Credits | $12,800.00 | $750.00 | $405.00 |
### Calculating Cash to Close

<table>
<thead>
<tr>
<th></th>
<th>Loan Estimate</th>
<th>Final</th>
<th>Did this change?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total Closing Costs (J)</td>
<td>$8,054.00</td>
<td>$9,712.10</td>
<td>YES • See Total Loan Costs (D) and Total Other Costs (I)</td>
</tr>
<tr>
<td>Closing Costs Paid Before Closing</td>
<td>$0</td>
<td>$-29.80</td>
<td>YES • You paid these Closing Costs before closing</td>
</tr>
<tr>
<td>Closing Costs Financed (Paid from your Loan Amount)</td>
<td>$0</td>
<td>$0</td>
<td>NO</td>
</tr>
<tr>
<td>Down Payment/Funds from Borrower</td>
<td>$18,000.00</td>
<td>$18,000.00</td>
<td>NO</td>
</tr>
<tr>
<td>Deposit</td>
<td>$-10,000.00</td>
<td>$-10,000.00</td>
<td>NO</td>
</tr>
<tr>
<td>Funds for Borrower</td>
<td>$0</td>
<td>$0</td>
<td>NO</td>
</tr>
<tr>
<td>Seller Credits</td>
<td>$0</td>
<td>$-2,500.00</td>
<td>YES • See Seller Credits in Section L</td>
</tr>
<tr>
<td>Adjustments and Other Credits</td>
<td>$0</td>
<td>$-1,035.04</td>
<td>YES • See details in Sections K and L</td>
</tr>
<tr>
<td><strong>Cash to Close</strong></td>
<td><strong>$16,054.00</strong></td>
<td><strong>$14,147.26</strong></td>
<td></td>
</tr>
</tbody>
</table>

### Summaries of Transactions

#### BORROWER’S TRANSACTION

<table>
<thead>
<tr>
<th>K. Due from Borrower at Closing</th>
<th>$189,762.30</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Sale Price of Property</td>
<td>$180,000.00</td>
</tr>
<tr>
<td>02 Sale Price of Any Personal Property Included in Sale</td>
<td></td>
</tr>
<tr>
<td>03 Closing Costs Paid at Closing (J)</td>
<td>$9,682.30</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adjustments</th>
<th>05</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>06</td>
</tr>
<tr>
<td></td>
<td>07</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adjustments for Items Paid by Seller in Advance</th>
<th>08 City/Town Taxes to</th>
</tr>
</thead>
<tbody>
<tr>
<td>09 County Taxes to</td>
<td></td>
</tr>
<tr>
<td>10 Assessments to</td>
<td></td>
</tr>
<tr>
<td>11 HOA Dues 4/15/13 to 4/30/13</td>
<td>$80.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>L. Paid Already by or on Behalf of Borrower at Closing</th>
<th>$175,615.04</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Deposit</td>
<td>$10,000.00</td>
</tr>
<tr>
<td>02 Loan Amount</td>
<td>$162,000.00</td>
</tr>
<tr>
<td>03 Existing Loan(s) Assumed or Taken Subject to</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adjustments</th>
<th>05 Seller Credit</th>
<th>$2,500.00</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>06 Rebate from Epsilon Title Co.</td>
<td>$750.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adjustments</th>
<th>08</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>09</td>
</tr>
<tr>
<td></td>
<td>10</td>
</tr>
<tr>
<td></td>
<td>11</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adjustments for Items Unpaid by Seller</th>
<th>12 City/Town Taxes 1/1/13 to 4/14/13</th>
<th>$365.04</th>
</tr>
</thead>
<tbody>
<tr>
<td>13 County Taxes to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>14 Assessments to</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>CALCULATION</strong></th>
<th><strong>Total Due from Borrower at Closing (K) $189,762.30</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cash to Close</strong></td>
<td><strong>From □ To Borrower $14,147.26</strong></td>
</tr>
</tbody>
</table>

#### SELLER’S TRANSACTION

<table>
<thead>
<tr>
<th>M. Due to Seller at Closing</th>
<th>$180,080.00</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Sale Price of Property</td>
<td>$180,000.00</td>
</tr>
<tr>
<td>02 Sale Price of Any Personal Property Included in Sale</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adjustments for Items Paid by Seller in Advance</th>
<th>09 City/Town Taxes to</th>
</tr>
</thead>
<tbody>
<tr>
<td>10 County Taxes to</td>
<td></td>
</tr>
<tr>
<td>11 Assessments to</td>
<td></td>
</tr>
<tr>
<td>12 HOA Dues 4/15/13 to 4/30/13</td>
<td>$80.00</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>N. Due from Seller at Closing</th>
<th>$115,665.04</th>
</tr>
</thead>
<tbody>
<tr>
<td>01 Excess Deposit</td>
<td></td>
</tr>
<tr>
<td>02 Closing Costs Paid at Closing (J)</td>
<td>$12,800.00</td>
</tr>
<tr>
<td>03 Existing Loan(s) Assumed or Taken Subject to</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Adjustments for Items Unpaid by Seller</th>
<th>14 City/Town Taxes 1/1/13 to 4/14/13</th>
<th>$365.04</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 County Taxes to</td>
<td></td>
<td></td>
</tr>
<tr>
<td>16 Assessments to</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>CALCULATION</strong></th>
<th><strong>Total Due to Seller at Closing (M) $180,080.00</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cash □ From □ To Seller $64,414.96</strong></td>
<td></td>
</tr>
</tbody>
</table>
## Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this
loan on the original terms.
☒ will not allow assumption of this loan on the original terms.

## Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early
repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

## Late Payment
If your payment is more than 15 days late, your lender will charge a
late fee of 5% of the monthly principal and interest payment.

## Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ are scheduled to make monthly payments that do not pay all of
the interest due that month. As a result, your loan amount will
increase (negatively amortize), and your loan amount will likely
become larger than your original loan amount. Increases in your
loan amount lower the equity you have in this property.
☒ may have monthly payments that do not pay all of the interest
due that month. If you do, your loan amount will increase
(negatively amortize), and, as a result, your loan amount may
become larger than your original loan amount. Increases in your
loan amount lower the equity you have in this property.
☒ do not have a negative amortization feature.

## Partial Payments
Your lender
☒ may accept payments that are less than the full amount due
(partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the
payment, and then apply the full payment to your loan.
☐ does not accept any partial payments.
If this loan is sold, your new lender may have a different policy.

## Security Interest
You are granting a security interest in
456 Somewhere Ave., Anytown, ST 12345

You may lose this property if you do not make your payments or
satisfy other obligations for this loan.

## Escrow Account

### Positive Escrow Account

| Escrowed Property Costs over Year 1 | $2,473.56 | Estimated total amount over year 1 for your escrowed property costs: Homeowner's Insurance Property Taxes |
| Non-Escrowed Property Costs over Year 1 | $1,800.00 | Estimated total amount over year 1 for your non-escrowed property costs: Homeowner's Association Dues |
| Initial Escrow Payment | $412.25 | A cushion for the escrow account you pay at closing. See Section G on page 2. |
| Monthly Escrow Payment | $206.13 | The amount included in your total monthly payment. |

☐ will not have an escrow account because ☐ you declined it ☒ your
lender does not offer one. You must directly pay your property
costs, such as taxes and homeowner's insurance. Contact your
lender to ask if your loan can have an escrow account.

### Negative Escrow Account

| Estimated Property Costs over Year 1 | Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year. |
| Escrow Waiver Fee | |

In the future,
Your property costs may change and, as a result, your escrow pay-
ment may change. You may be able to cancel your escrow account,
but if you do, you must pay your property costs directly. If you fail
to pay your property taxes, your state or local government may (1)
impose fines and penalties or (2) place a tax lien on this property. If
you fail to pay any of your property costs, your lender may (1) add
the amounts to your loan balance, (2) add an escrow account to your
loan, or (3) require you to pay for property insurance that the lender
buys on your behalf, which likely would cost more and provide fewer
benefits than what you could buy on your own.
### Appraisal
If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.

### Contract Details
See your note and security instrument for information about
- what happens if you fail to make your payments,
- what is a default on the loan,
- situations in which your lender can require early repayment of the loan, and
- the rules for making payments before they are due.

### Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,
- state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information.

- state law does not protect you from liability for the unpaid balance.

### Refinance
Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.

### Tax Deductions
If you borrow more than this property is worth, the interest on the loan amount above this property’s fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.

---

### Loan Calculations

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total of Payments</strong></td>
<td>$285,803.36</td>
</tr>
<tr>
<td><strong>Total Interest Percentage (TIP)</strong></td>
<td>69.46%</td>
</tr>
<tr>
<td><strong>Finance Charge</strong></td>
<td>$118,830.27</td>
</tr>
<tr>
<td><strong>Amount Financed</strong></td>
<td>$162,000.00</td>
</tr>
<tr>
<td><strong>Annual Percentage Rate (APR)</strong></td>
<td>4.174%</td>
</tr>
</tbody>
</table>

### Other Disclosures

Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing

---

### Contact Information

<table>
<thead>
<tr>
<th>Name</th>
<th>Ficus Bank</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
<td>4321 Random Blvd. Somecity, ST 12340</td>
</tr>
<tr>
<td><strong>NMLS ID</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ST License ID</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Contact</strong></td>
<td>Joe Smith</td>
</tr>
<tr>
<td><strong>Contact NMLS ID</strong></td>
<td>12345</td>
</tr>
<tr>
<td><strong>Contact ST License ID</strong></td>
<td>P16415</td>
</tr>
<tr>
<td><strong>Email</strong></td>
<td><a href="mailto:joesmith@ficusbank.com">joesmith@ficusbank.com</a></td>
</tr>
<tr>
<td><strong>Phone</strong></td>
<td>123-456-7890</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name</th>
<th>Omega Real Estate Broker Inc.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
<td>789 Local Lane Sometown, ST 12345</td>
</tr>
<tr>
<td><strong>NMLS ID</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ST License ID</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Contact</strong></td>
<td>Samuel Green</td>
</tr>
<tr>
<td><strong>Contact NMLS ID</strong></td>
<td>P16415</td>
</tr>
<tr>
<td><strong>Contact ST License ID</strong></td>
<td>P16415</td>
</tr>
<tr>
<td><strong>Email</strong></td>
<td><a href="mailto:sam@omegare.biz">sam@omegare.biz</a></td>
</tr>
<tr>
<td><strong>Phone</strong></td>
<td>123-555-1717</td>
</tr>
</tbody>
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<table>
<thead>
<tr>
<th>Name</th>
<th>Alpha Real Estate Broker Co.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
<td>987 Suburb Ct. Someplace, ST 12340</td>
</tr>
<tr>
<td><strong>NMLS ID</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ST License ID</strong></td>
<td></td>
</tr>
<tr>
<td><strong>Contact</strong></td>
<td>Joseph Cain</td>
</tr>
<tr>
<td><strong>Contact NMLS ID</strong></td>
<td>987 Suburb Ct. Someplace, ST 12340</td>
</tr>
<tr>
<td><strong>Contact ST License ID</strong></td>
<td>Z61461</td>
</tr>
<tr>
<td><strong>Email</strong></td>
<td><a href="mailto:joe@alphare.biz">joe@alphare.biz</a></td>
</tr>
<tr>
<td><strong>Phone</strong></td>
<td>321-555-7171</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name</th>
<th>Epsilon Title Co.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Address</strong></td>
<td>123 Commerce Pl. Somecity, ST 12344</td>
</tr>
<tr>
<td><strong>NMLS ID</strong></td>
<td></td>
</tr>
<tr>
<td><strong>ST License ID</strong></td>
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</tr>
<tr>
<td><strong>Contact</strong></td>
<td>Sarah Arnold</td>
</tr>
<tr>
<td><strong>Contact NMLS ID</strong></td>
<td>987 Suburb Ct. Someplace, ST 12340</td>
</tr>
<tr>
<td><strong>Contact ST License ID</strong></td>
<td>987 Suburb Ct. Someplace, ST 12340</td>
</tr>
<tr>
<td><strong>Email</strong></td>
<td><a href="mailto:sarah@epsilontitle.com">sarah@epsilontitle.com</a></td>
</tr>
<tr>
<td><strong>Phone</strong></td>
<td>987-555-4321</td>
</tr>
</tbody>
</table>

---

### Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

---

<table>
<thead>
<tr>
<th>Applicant Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Co-Applicant Signature</td>
<td>Date</td>
</tr>
</tbody>
</table>
Appendix 1-C – Escrow Closing Notice
Escrow Closing Notice

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

☐ you asked us to close it.

☐ we are closing it.

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

<table>
<thead>
<tr>
<th>Cost to You</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Escrow Closing Fee</td>
<td>[dollar amount]</td>
</tr>
<tr>
<td>For closing your escrow account</td>
<td></td>
</tr>
</tbody>
</table>

In the future,

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

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

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

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

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

<table>
<thead>
<tr>
<th>First Lien Closed-End</th>
<th>First Lien Open-End</th>
<th>Subordinate Lien Closed-End</th>
<th>Subordinate Lien Open-End</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer Handbook on Adjustable-Rate Mortgages (i)</td>
<td>HELOC Account Opening Disclosure (vi)</td>
<td>Consumer Handbook on Adjustable-Rate Mortgages (i)</td>
<td>HELOC Account Opening Disclosure (vi)</td>
</tr>
<tr>
<td>Loan Estimate/GFE</td>
<td>HELOC Brochure (iii)</td>
<td>Loan Estimate/GFE</td>
<td>HELOC Brochure (iii)</td>
</tr>
<tr>
<td>Special Information Booklet (ii)</td>
<td>List of Homeownership Counseling Organizations</td>
<td>Special Information Booklet (ii)</td>
<td>List of Homeownership Counseling Organizations</td>
</tr>
<tr>
<td>List of Homeownership Counseling Organizations</td>
<td>Appraisal Notice</td>
<td>List of Homeownership Counseling Organizations</td>
<td>Appraisal Notice</td>
</tr>
<tr>
<td>Appraisal Notice</td>
<td>Notice to Home Loan Application (iv)</td>
<td>Notice to Home Loan Application (iv)</td>
<td>Notice to Home Loan Application (iv)</td>
</tr>
<tr>
<td>Notice to Home Loan Application (iv)</td>
<td>Risk-Based Pricing Notice (v)</td>
<td>Risk-Based Pricing Notice (v)</td>
<td>Risk-Based Pricing Notice (v)</td>
</tr>
<tr>
<td>Risk-Based Pricing Notice (v)</td>
<td>Adverse Action Notice (vii)</td>
<td>Adverse Action Notice (vii)</td>
<td>Adverse Action Notice (vii)</td>
</tr>
<tr>
<td>Adverse Action Notice (vii)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(i) Consumer Handbook for Adjustable-Rate Mortgages - applies only for adjustable-rate mortgages
(ii) Special Information Booklet - only if the proceeds of the loan will be used for the purchase of a one to four family residential property
(iii) HELOC Brochure - “When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit”
(iv) Notice to Home Loan Applicant - if the applicant’s credit score was used in connection with the application
(v) Risk-Based Pricing Notice - if credit is extended on materially less favorable terms
(vi) HELOC Account Opening Disclosure - required by Section 1026.6 of Regulation Z
(vii) Adverse Action Notice - if the application for credit is denied
## Closing Disclosures

<table>
<thead>
<tr>
<th>First Lien Closed-End</th>
<th>First Lien Open-End</th>
<th>Subordinate Lien Closed-End</th>
<th>Subordinate Lien Open-End</th>
</tr>
</thead>
<tbody>
<tr>
<td>Closing Disclosure</td>
<td>Right of Rescission(i)</td>
<td>Closing Disclosure</td>
<td>Right of Rescission(i)</td>
</tr>
<tr>
<td>Right of Rescission(i)</td>
<td>Notice of Special Flood Hazards(ii)</td>
<td>Right of Rescission(i)</td>
<td>Notice of Special Flood Hazards(ii)</td>
</tr>
<tr>
<td>Notice of Special Flood Hazards(ii)</td>
<td>Initial Escrow Account Statement(iii)</td>
<td>Notice of Special Flood Hazards(ii)</td>
<td>Initial Escrow Account Statement(iii)</td>
</tr>
<tr>
<td>Initial Escrow Account Statement(iii)</td>
<td></td>
<td>Initial Escrow Account Statement(iii)</td>
<td></td>
</tr>
</tbody>
</table>

(i) Right of Rescission - if the credit union will acquire or retain a security interest in the applicant’s principal dwelling

(ii) Notice of Special Flood Hazards - if the property securing the loan is located in a Special Flood Hazard Area. Must be provided within a reasonable period of time before completion of transaction

(iii) Initial Escrow Account Statement - if an escrow account is being established in connection with the transaction