

Section 1026.17 – General Disclosures Requirements

17(a) Form of Disclosures

Paragraph 17(a)(1)

* * * * *

2. * * *

(ii) The general segregation requirement described in this subparagraph does not apply to the disclosures required under [§]§ 1026.19(b) [and 1026.20(c)] although the disclosures must be clear and conspicuous.

* * * * *

17(c) Basis of Disclosures and Use of Estimates

Paragraph 17(c)(1)

1. *Legal obligation.* The disclosures shall reflect the credit terms to which the parties are legally bound as of the outset of the transaction. In the case of disclosures required under § 1026.20(c) ► and (d) ◀, the disclosures shall reflect the credit terms to which the parties are legally bound when the disclosures are provided. The legal obligation is determined by applicable state law or other law. (Certain transactions are specifically addressed in this commentary. See, for example, the discussion of buydown transactions elsewhere in the commentary to § 1026.17(c).) The fact that a term or contract may later be deemed unenforceable by a court on the basis of equity or other grounds does not, by itself, mean that disclosures based on that term or contract did not reflect the legal obligation.

* * * * *

Section 1026.18 – Content of Disclosures

* * * * *

18(f) – Variable Rate

1. *Coverage.* The requirements of § 1026.18(f) apply to all transactions in which the terms of the legal obligation allow the creditor to increase the rate originally disclosed to the consumer. It includes not only increases in the interest rate but also increases in other components, such as the rate of required credit life insurance. The provisions, however, do not apply to increases resulting from delinquency (including late payment), default, assumption, acceleration or transfer of the collateral. Section 1026.18(f)(1) applies to variable-rate transactions that are not secured by the consumer's principal dwelling and to those that are secured by the principal dwelling but have a term of one year or less. Section 1026.18(f)(2) applies to variable-rate transactions that are secured by the consumer's principal dwelling and have a term greater than one year. Moreover, transactions subject to § 1026.18(f)(2) are subject to the special early disclosure requirements of § 1026.19(b). (However, “shared-equity” or “shared-appreciation” mortgages are subject to the disclosure requirements of § 1026.18(f)(1) and not to the requirements of §§ 1026.18(f)(2) and 1026.19(b) regardless of the general coverage of those sections.) Creditors are permitted under § 1026.18(f)(1) to substitute in any variable-rate transaction the disclosures required under § 1026.19(b) for those disclosures ordinarily required under § 1026.18(f)(1). Creditors who provide variable-rate disclosures under

§ 1026.19(b) must comply with all of the requirements of that section, including the timing of disclosures, and must also provide the disclosures required under § 1026.18(f)(2). [Creditors substituting § 1026.19(b) disclosures for § 1026.18(f)(1) disclosures may, but need not, also provide disclosures pursuant to § 1026.20(c)]. (Substitution of disclosures under § 1026.18(f)(1) in transactions subject to § 1026.19(b) is not permitted.)

* * * * *

Section 1026.19 – Certain Mortgage and Variable-Rate Transactions

19(b) Certain Variable-Rate Transactions

* * * * *

4. *Other variable-rate regulations.* Transactions in which the creditor is required to comply with and has complied with the disclosure requirements of the variable-rate regulations of other Federal agencies are exempt from the requirements of § 1026.19(b), by virtue of § 1026.19(d)[, and are exempt from the requirements of § 1026.20(c), by virtue of § 1026.20(d)]. The exception is also available to creditors that are required by State law to comply with the Federal variable-rate regulations noted above. Creditors using this exception should comply with the timing requirements of those regulations rather than the timing requirements of Regulation Z in making the variable-rate disclosures.

5. * * * i. * * *

A. * * *

B. * * *

C. “Price-level-adjusted mortgages” or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. The disclosures under § 1026.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest rate discounts: § 1026.19(b)(2)(i), (iii), (iv), (v), (vi), (vii), and (ix). (See comments 20(c)[-2]► (1)(ii)-3.ii, 20(d)(1)(ii)-2.ii, ◀ and 30-1 regarding the inapplicability of variable-rate adjustment notices and interest rate limitations to price-level-adjusted or similar mortgages.)

* * * * *

Paragraph 19(b)(2)(xi)

1. *Adjustment notices.* A creditor must disclose to the consumer the type of information that will be contained in subsequent notices of adjustments and when such notices will be provided. (See the commentary to § 1026.20(c) ► and (d) ◀ regarding notices of adjustments.) For example, the disclosure ► provided pursuant to § 1026.20(d) ◀ might state, “You will be notified ► at least 210, but not more than 240, days before the first payment at the adjusted level is due after the initial adjustment of the loan. This notice will contain information about the adjustment, including the interest rate, payment amount, and loan balance.” The disclosure provided pursuant to § 1026.20(c) might state, “You will be notified ◀ at least [25]► 60 ◀, but no more than 120, days before the due date of a payment at a new level. This notice will contain information about the ► adjustment, including the ◀[index and] interest [rates] ► rate ◀,

payment amount, and loan balance.” [In transactions where there may be interest rate adjustments without corresponding payment adjustments in a year, the disclosure might read, “You will be notified once each year during which interest rate adjustments, but no payment adjustments, have been made to your loan. This notice will contain information about the index and interest rates, payment amount, and loan balance.”]

* * * * *

Section 1026.20 [Subsequent] Disclosure Requirements ► Regarding Post-Consummation Events ◀

20(c) [Variable-]►R◀ate adjustments

1. ► *Creditors, assignees, and servicers.* Creditors, assignees, and servicers are subject to the requirements of § 1026.20(c), unless they no longer own the applicable adjustable-rate mortgage or the mortgage servicing rights. Creditors, assignees, and servicers are also subject to the requirements of any provision of subpart C that applies to § 1026.20(c). For example, the form requirements of § 1026.17(a) apply to § 1026.20(c) disclosures and thus, assignees and servicers, as well as creditors, are subject to those requirements.

2. *Conversions.* In addition to the disclosures required by this section for the interest rate adjustment of an adjustable-rate mortgage, § 1026.20(c) disclosures are also required for an ARM converting to a fixed-rate transaction when the adjustment to the interest rate results in a corresponding payment change. When an open-end account converts to a closed-end adjustable-rate mortgage, § 1026.20(c) disclosures are not required until the implementation of an interest rate adjustment post-conversion that results in a corresponding payment change. For example, for an open-end account that converts to a closed-end 3/1 hybrid ARM, the first § 1026.20(c) disclosure would not be required until three years after conversion, and only if that first adjustment resulted in payment change. ◀*[Timing of adjustment notices.* This section requires a creditor (or a subsequent holder) to provide certain disclosures in cases where an adjustment to the interest rate is made in a variable-rate transaction subject to § 1026.19(b). There are two timing rules, depending on whether payment changes accompany interest rate changes. A creditor is required to provide at least one notice each year during which interest rate adjustments have occurred without corresponding payment adjustments. For payment adjustments, a creditor must deliver or place in the mail notices to borrowers at least 25, but not more than 120, calendar days before a payment at a new level is due. The timing rules also apply to the notice required to be given in connection with the adjustment to the rate and payment that follows conversion of a transaction subject to § 1026.19(b) to a fixed-rate transaction. (In cases where an open-end account is converted to a closed-end transaction subject to § 1026.19(b), the requirements of this section do not apply until adjustments are made following conversion.)

2. *Exceptions.* Section 1026.20(c) does not apply to “shared-equity,” “shared-appreciation,” or “price level adjusted” or similar mortgages.

3. *Basis of disclosures.* The disclosures required under this section shall reflect the terms of the parties' legal obligation, as required under § 1026.17(c)(1).

Paragraph 20(c)(1).

1. *Current and prior interest rates.* The requirements under this paragraph are satisfied by disclosing the interest rate used to compute the new adjusted payment amount (current rate) and the adjusted interest rate that was disclosed in the last adjustment notice, as well as all other

interest rates applied to the transaction in the period since the last notice (prior rates). (If there has been no prior adjustment notice, the prior rates are the interest rate applicable to the transaction at consummation, as well as all other interest rates applied to the transaction in the period since consummation.) If no payment adjustment has been made in a year, the current rate is the new adjusted interest rate for the transaction, and the prior rates are the adjusted interest rate applicable to the loan at the time of the last adjustment notice, and all other rates applied to the transaction in the period between the current and last adjustment notices. In disclosing all other rates applied to the transaction during the period between notices, a creditor may disclose a range of the highest and lowest rates applied during that period.]

► *Paragraph 20(c)(1)(i)*

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

Paragraph 20(c)(1)(ii)

1. *Construction loans.* In determining the term of a construction loan that may be permanently financed by the same creditor or assignee, the creditor or assignee may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction.

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

3. *Non-adjustable-rate mortgages.* For purposes of this section, the following transactions, if structured as fixed-rate and not adjustable-rate mortgages, are not subject to § 1026.20(c):

- i. Shared-equity or shared-appreciation mortgages;
- ii. Price-level adjusted or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation;
- iii. Graduated-payment mortgages or step-rate transactions;
- iv. Renewable balloon-payment instruments; or
- v. Preferred-rate loans. ◀

Paragraph 20(c)(2)

1. [*Current and prior index values.* This section requires disclosure of the index or formula values used to compute the current and prior interest rates disclosed in § 1026.20(c)(1). The creditor need not disclose the margin used in computing the rates. If the prior interest rate was not based on an index or formula value, the creditor also need not disclose the value of the index that would otherwise have been used to compute the prior interest rate.]

► *Timing.* The requirement that the disclosures must be provided between 60 to 120 days “before a payment at the new level is due” requires the creditor, assignee, or servicer to provide the notice to consumers 60 to 120 days prior to the due date, excluding any grace period, of the first payment calculated using the adjusted interest rate. For example, assume an ARM has a 45-day “look-back” period. In such an ARM, the most recent index figure available as of the date 45 days before a new interest rate goes into effect is used to determine the new interest rate. Because interest generally is paid in arrears, the first payment at the new level would not be due until the end of the billing cycle after the new interest rate goes into effect, typically a period of 28 to 31 days. Assume also that the creditor, assignee, or servicer has a 3-day verification period in which to verify the interest rate and perform other quality control measures before providing the notice to consumers. In this case, depending on the delivery method, the creditor, assignee, or servicer can provide the notice to consumers as early as 70 to 73 days before payment at the new level is due.

Because creditors, assignees, or servicers cannot comply with the disclosure timing requirements for ARMs adjusting for the first time within 60 days of consummation when the new interest rate is not known at consummation, the disclosures required under § 1026.20(c) for such loans must be provided as soon as practicable, but not less than 25 days before payment at a new level is due.

Paragraph 20(c)(2)(ii)(A)

1. The *current and new interest rates.* The current interest rate is the interest rate that applies on the date the disclosure is provided to the consumer. The new interest rate is the actual interest rate that will apply on the date of the adjustment. The new interest rate is used to determine the new payment. The “new interest rate” has the same meaning as the “adjusted interest rate.”

Paragraph 20(c)(2)(iv)

1. *Rate limits and unapplied index increases.* The disclosures regarding foregone interest increases apply only to transactions permitting interest rate carryover. The amount of increase foregone at any adjustment is the amount that, subject to rate caps, can be added to future interest rate adjustments to increase, or offset decreases in, the rate determined by using the index or formula.

Paragraph 20(c)(2)(v)(B)

1. *Application of a previously foregone interest increase.* The disclosures regarding foregone interest increases apply only to transactions permitting interest rate carryover. Foregone interest is any percentage added or carried over to the new interest rate because a rate cap prevented the increase at an earlier adjustment.

Paragraph 20(c)(2)(vi)

1. *Amortization statement.* For interest-only loans, § 1026.20(c)(2)(vi) requires a statement that the new payment covers all of the interest but none of the principal, and therefore will not reduce the loan balance. For negatively-amortizing loans, § 1026.20(c)(2)(vi) requires a statement that the new payment covers only part of the interest and none of the principal, and therefore the unpaid interest will be added to the balance of the loan or will increase the term of the loan.

2. *Amortization payment.* Disclosure of the payment needed to fully amortize the loan at the new interest rate is required only when negative amortization occurs as a result of the adjustment. The disclosure is not required simply because a loan has interest-only or partially-amortizing payments. For example, an ARM with a five-year term and payments based on a longer amortization schedule, in which the final payment will equal the periodic payment plus the remaining unpaid balance, does not require disclosure of the payment necessary to fully amortize the loan in the remainder of the five-year term. A disclosure is also not required when the new payment is sufficient to prevent negative amortization but the final loan payment will be a different amount due to rounding. ◀

[Paragraph 20(c)(3)

1. *Unapplied index increases.* The requirement that the consumer receive information about the extent to which the creditor has foregone any increase in the interest rate applies only to those transactions permitting interest rate carryover. The amount of increase that is foregone at an adjustment is the amount that, subject to rate caps, can be applied to future adjustments independently to increase, or offset decreases in, the rate that is determined according to the index or formula.

Paragraph 20(c)(4)

1. *Contractual effects of the adjustment.* The contractual effects of an interest rate adjustment must be disclosed including the payment due after the adjustment is made whether or not the payment has been adjusted. A contractual effect of a rate adjustment would include, for example, disclosure of any change in the term or maturity of the loan if the change resulted from the rate adjustment. In transactions in which paying the periodic payments will not fully amortize the outstanding balance at the end of the loan term and where the final payment will equal the periodic payment plus the remaining unpaid balance, the amount of the adjusted payment must be disclosed if such payment has changed as a result of the rate adjustment. A statement of the loan balance also is required. The balance required to be disclosed is the balance on which the new adjusted payment is based. If no payment adjustment is disclosed in the notice, the balance disclosed should be the loan balance on which the payment disclosed under § 1026.20(c)(5) is based, if applicable, or the balance at the time the disclosure is prepared.

Paragraph 20(c)(5)

1. *Fully-amortizing payment.* This paragraph requires a disclosure only when negative amortization occurs as a result of the adjustment. A disclosure is not required simply because a loan calls for interest-only or partially amortizing payments. For example, in a transaction with a five-year term and payments based on a longer amortization schedule, and where the final payment will equal the periodic payment plus the remaining unpaid balance, the creditor would not have to disclose the payment necessary to fully amortize the loan in the remainder of the

five-year term. A disclosure is required, however, if the payment disclosed under § 1026.20(c)(4) is not sufficient to prevent negative amortization in the loan. The adjustment notice must state the payment required to prevent negative amortization. (This paragraph does not apply if the payment disclosed in § 1026.20(c)(4) is sufficient to prevent negative amortization in the loan but the final payment will be a different amount due to rounding.)]

► *Paragraph 20(d)*

1. *Creditors, assignees, and servicers.* Creditors, assignees, and servicers are subject to the requirements of § 1026.20(d), unless they no longer own the applicable adjustable-rate mortgage or the mortgage servicing rights. Creditors, assignees, and servicers are also subject to the requirements of any provision of subpart C that applies to § 1026.20(d). For example, the requirements of § 1026.17(a) with regard to providing disclosures to consumers electronically, apply to § 1026.20(d) disclosures and thus, assignees and servicers, as well as creditors, are subject to those requirements.

2. *Timing and form of initial rate adjustment.* The requirement that the disclosures be provided in writing, separate and distinct from all other correspondence, means that the initial ARM interest rate adjustment notice must be mailed or delivered separately from any other material. For example, in the case of mailing the disclosure, there should be no material in the envelope other than the § 1026.20(d) initial ARM interest rate adjustment notice. In the case of emailing the disclosure, the only attachment should be the initial ARM interest rate adjustment notice. The requirement that the disclosures be provided between 210 to 240 days “before the first payment at the adjusted level is due” means the creditor, assignee, or servicer must provide the notice to consumers 210 to 240 days prior to the due date, excluding any grace period, of the first payment calculated using the adjusted interest rate. Creditors, assignees, or servicers may provide the initial ARM interest rate adjustment notices to consumers in electronic form if they comply with the electronic delivery requirements in § 1026.17(a)(1).

3. *Conversions.* When an open-end account converts to a closed-end adjustable-rate mortgage, § 1026.20(d) disclosures are not required until the implementation of the initial interest rate adjustment post-conversion. For example, for an open-end account that converts to a closed-end 3/1 hybrid ARM, § 1026.20(d) disclosures would not be required until three years after conversion, when the interest rate adjusts for the first time.

Paragraph 20(d)(1)(i)

1. *In general.* An adjustable-rate mortgage, as defined under this section, is a variable-rate transaction as that term is used in subpart C, except as distinguished by commentary to § 1026.20(d)(1)(ii)-2. The requirements of this section are not limited to transactions financing the initial acquisition of the consumer’s principal dwelling.

Paragraph 20(d)(1)(ii)

1. *Construction loans.* In determining the term of a construction loan that may be permanently financed by the same creditor or assignee, the creditor or assignee may treat the construction and the permanent phases as separate transactions with distinct terms to maturity or as a single combined transaction.

2. *Non-adjustable-rate mortgages.* For purposes of this section, the following transactions, if structured as fixed-rate and not adjustable-rate mortgages, are not subject to § 1026.20(d):

- i. Shared-equity or shared-appreciation mortgages;
- ii. Price-level adjusted or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation;
- iii. Graduated-payment mortgages or step-rate transactions;
- iv. Renewable balloon-payment instruments; or
- v. Preferred-rate loans.

Paragraph 20(d)(2)(i)

1. *Date of the disclosure.* The date that appears on the disclosure is the date the creditor, assignee, or servicer generates the notice to be provided to the consumer.

Paragraph 20(d)(2)(iii)(A)

1. *The current and new interest rates.* The current interest rate is the interest rate that applies on the date of the disclosure, pursuant to § 1026.20(d)(2). The new interest rate is the interest rate used to calculate the new payment and may be an estimate pursuant to § 1026.20(d)(2). The “new interest rate” has the same meaning as the “adjusted interest rate.”

Paragraph 20(d)(2)(v)

1. *Rate limits and unapplied index increases.* The disclosures regarding foregone interest increases apply only to transactions permitting interest rate carryover. The amount of increase foregone at the first interest rate adjustment is the amount that, subject to rate caps, can be added to future interest rate adjustments to increase, or offset decreases in, the rate determined by using the index or formula.

Paragraph 20(d)(2)(vii)

1. *Amortization statement.* For interest-only loans, § 1026.20(d)(2)(vii) requires a statement that the new payment covers all of the interest but none of the principal, and therefore will not reduce the loan balance. For negatively-amortizing loans, § 1026.20(d)(2)(vii) requires a statement that the new payment covers only part of the interest and none of the principal, and therefore the unpaid interest will add to the balance of the loan or will increase the term of the loan.

2. *Amortization payment.* Disclosure of the payment needed to fully amortize the loan at the new interest rate is required only when negative amortization occurs as a result of the adjustment. The disclosure is not required simply because a loan has interest-only or partially-amortizing payments. For example, an ARM with a five-year term and payments based on a longer amortization schedule, in which the final payment will equal the periodic payment plus the remaining unpaid balance, does not require disclosure of the payment necessary to fully amortize the loan in the remainder of the five-year term. A disclosure is also not required when the new payment is sufficient to prevent negative amortization but the final loan payment will be a different amount due to rounding.

Paragraph 20(d)(2)(viii)

1. *List of alternatives.* The list of alternatives provided to consumers should avoid technical terms and explain the alternatives using the terms and explanations in Form H-4(D)(3)

and (4) in Appendix H to this part. For the alternative “payment forbearance,” the disclosure should explain that payment forbearance temporarily gives the consumer more time to pay. ◀

* * * * *

~~**Subpart E – Special Rules for Certain Home Mortgage Transactions**~~

~~* * * * *~~

~~**Section 1026.36 – Prohibited Acts or Practices in Connection With Credit Secured by a Dwelling**~~

~~▶ **Paragraph 36(c)(1)(ii)**~~

~~1. **Handling of Partial Payments.** If a servicer receives a partial payment from a consumer, to the extent not prohibited by applicable law and the legal obligation between the parties, the servicer may take any of the following actions:~~

~~(i) Credit the partial payment upon receipt; or~~

~~(ii) Return the partial payment to the consumer; or~~

~~(iii) Hold the payment in a suspense or unapplied funds account. If the payment is held in a suspense or unapplied funds account, this must be reflected on the periodic statement, in accordance with § 1026.41. When sufficient funds accumulate to cover a full contractual payment, they must be applied to the oldest outstanding payment.~~

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

~~1. **Payment requirements.** The servicer may specify reasonable requirements for making payments in writing, such as requiring that payments be accompanied by the account number or payment coupon; setting a cut-off hour for payment to be received, or setting different hours for payment by mail and payments made in person; specifying that only checks or money orders should be sent by mail; specifying that payment is to be made in U.S. dollars; or specifying one particular address for receiving payments, such as a post office box. The servicer may be prohibited, however, from requiring payment solely by preauthorized electronic fund transfer. (See Section 913 of the Electronic Fund Transfer Act, 15 U.S.C. 1693k.)~~

~~2. **Payment requirements – limitations.** Requirements for making payments must be reasonable; it should not be difficult for most consumers to make conforming payments. For example, it would be reasonable to require a cut-off time of 5 p.m. for receipt of a mailed check at the location specified by the servicer for receipt of such check.~~

~~3. **Implied guidelines for payments.** In the absence of specified requirements for making payments, payments may be made at any location where the servicer conducts business; any time during the servicer's normal business hours; and by cash, money order, draft, or other similar instrument in properly negotiable form, or by electronic fund transfer if the servicer and consumer have so agreed. ◀~~

~~[**Paragraph 36(c)(1)(ii)**]~~

~~▶ **Paragraph 36(c)(2)** ◀~~

~~1. **Pyramiding of late fees.** The prohibition on pyramiding of late fees in this subsection should be construed consistently with the “credit practices rule” of the Federal Trade Commission, 16 CFR 444.4.~~