

Compliance Panel

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Where should UFMIP
refunds be disclosed
on the alternate CD?

Two common scenarios

- UFMIP refund with no new UFMIP fee
 - UFMIP refund with new UFMIP fee

UFMIP refund with no new UFMIP fee

- 1026.38(j)(2) - The description “Other Credits,” together with a description and amount of other items paid by or on behalf of the consumer and not otherwise disclosed pursuant to paragraphs (f), (g), (h), and (j)(2) of this section;
- Official Interpretation Paragraph 38(j)(2)(vi)-1 - if the credit is attributable to a specific closing cost listed in the Closing Cost Details tables under § 1026.38(f) or (g), that amount should be reflected in the paid by others column on the Closing Cost Details tables and not in the disclosure required under § 1026.38(j)(2)(vi).

Section-by-section analysis – 78 FR 80022 – 1026.38(j)(2)

The only instance where the rebate or refund would be disclosed to the consumer is where the government agency or mortgage insurer is sending the rebate or refund to the closing agent to be used to reduce the amount due from the consumer at consummation. In that event, the rebate or refund can be disclosed as any other credit from a party other than the creditor or seller under proposed § 1026.38(j)(2)(vi).

Where to put on the alternate CD?

- In this scenario, the UFMIP refund would be placed in Section L, Other Credits.
- Since the Alternate CD does not have a Section L, the Standard CD would be the proper form to use.

Note

- Once the GSE's mandate delivery of the UCD, the GSE's will require use of the alternate form for all refinance transactions.
 - Mandate is expected "no earlier than 2nd quarter of 2017 for all loans acquired by FNMA or FHLMC.
- CFPB has given informal guidance that UFMIP refunds may be disclosed in the Payments and Payoffs section.

For reference see <https://www.fanniemae.com/content/faq/uniform-closing-dataset-faqs.pdf>

UFMIP refund with new UFMIP fee

Section-by-section analysis – 70 FR 80022 - 1026.38(j)(2)

- In some instances, the amount of the premium collected during the consummation of the transaction will be reduced by the amount of the rebate or refund, making any separate disclosure under proposed § 1026.38(j)(2)(vi) redundant and confusing to the consumer.

Where to put on the alternate CD?

- In this scenario, the UFMIP refund may be disclosed in section B of the CD to reduce the amount of the new UFMIP fee.

Recap

- If there is an UFMIP refund with no new UFMIP fee, then the refund may be disclosed in section L. As the alternate CD does not have a Section L the standard CD would be the document to use.
- If there is an UFMIP refund and a new UFMIP fee, then the refund may be disclosed in section B to reduce the new fee. The alternate CD would be usable in this scenario.

Under what circumstances are TRID documents required on investment properties?

12 CFR 1026.1(c), Coverage, states that:

1. In general, this part applies to each individual or business that offers or extends credit, other than a person excluded from coverage of this part by section 1029 of the Consumer Financial Protection Act of 2010, Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376, when four conditions are met:
 - i. The credit is offered or extended to consumers;
 - ii. The offering or extension of credit is done regularly;
 - iii. The credit is subject to a finance charge or is payable by a written agreement in more than four installments; and
 - iv. The credit is primarily for personal, family, or household purposes

12 CFR 1026.3, Exempt transactions, states that, “[t]he following transactions are not subject to this part or, if the exemption is limited to specified provisions of this part, are not subject to those provisions:”

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

Official Interpretation to §1026.3(a)-1, Primary Purposes, states that, “A creditor must determine in each case if the transaction is primarily for an exempt purpose. If some question exists as to the primary purpose for a credit extension, the creditor is, of course, free to make the disclosures, and the fact that disclosures are made under such circumstances is not controlling on the question of whether the transaction was exempt.”

Official Interpretation to §1026.3(a)-4, Non-Owner-Occupied Rental Property

- Credit extended to acquire, improve, or maintain rental property (regardless of the number of housing units) that is not owner-occupied is deemed to be for business purposes. This includes, for example, the acquisition of a warehouse that will be leased or a single-family house that will be rented to another person to live in. If the owner expects to occupy the property for more than 14 days during the coming year, the property cannot be considered non-owner-occupied and this special rule will not apply. For example, a beach house that the owner will occupy for a month in the coming summer and rent out the rest of the year is owner occupied and is not governed by this special rule.

Official Interpretation to §1026.3(a)-5, Owner-Occupied Rental Property

- If credit is extended to acquire, improve, or maintain rental property that is or will be owner-occupied within the coming year, different rules apply:
 - i. Credit extended to acquire the rental property is deemed to be for business purposes if it contains more than 2 housing units.
 - ii. Credit extended to improve or maintain the rental property is deemed to be for business purposes if it contains more than 4 housing units. Since the amended statute defines dwelling to include 1 to 4 housing units, this rule preserves the right of rescission for credit extended for purposes other than acquisition. Neither of these rules means that an extension of credit for property containing fewer than the requisite number of units is necessarily consumer credit. In such cases, the determination of whether it is business or consumer credit should be made by considering the factors listed in comment 3(a)-3.

Official Interpretation to §1026.3(a)-3, Factors

- In determining whether credit to finance an acquisition—such as securities, antiques, or art—is primarily for business or commercial purposes (as opposed to a consumer purpose), the following factors should be considered:
 - i. General
 - A. The relationship of the borrower's primary occupation to the acquisition. The more closely related, the more likely it is to be business purpose.
 - B. The degree to which the borrower will personally manage the acquisition. The more personal involvement there is, the more likely it is to be business purpose.
 - C. The ratio of income from the acquisition to the total income of the borrower. The higher the ratio, the more likely it is to be business purpose.
 - D. The size of the transaction. The larger the transaction, the more likely it is to be business purpose.
 - E. The borrower's statement of purpose for the loan..
 - ii. Business-purpose Examples
 - A. A loan to expand a business, even if it is secured by the borrower's residence or personal property.
 - B. A loan to improve a principal residence by putting in a business office.
 - C. A business account used occasionally for consumer purposes.
 - iii. Business-purpose Examples
 - A. Credit extensions by a company to its employees or agents if the loans are used for personal purposes.
 - B. A loan secured by a mechanic's tools to pay a child's tuition.
 - C. A personal account used occasionally for business purposes.

How are you disclosing TRID 2nd mortgages tied to the 1st mortgage in order for the cash to close to balance?

We have come up with two separate ways of dealing with this situation, and are preparing an article for our newsletter complete with annotated examples of the Loan Estimates and Closing Disclosures.

What are our options for handling the earnest money when relators are involved?
Is the only option that the realtor brings a check to closing?

Nothing in Chapter X of Title 12 of the CFR specifically addresses how earnest money transactions should be handled. Any applicable state specific statutes and regulations should be followed in these instances.

Where are seller-paid fees supposed to go? For example, the abstract of title or lender's attorney fee. Should they be listed under section B, "Services Borrower Did Not Shop For" as a seller fee, or do we list them all under Section H, "Other" costs? I have seen it done both ways.

1026.38(f)(2) - Services borrower did not shop for.

Under the subheading "Services Borrower Did Not Shop For" and in the applicable columns as described in paragraph (f) of this section, an itemization of the services and corresponding costs for each of the **settlement services required by the creditor** for which the consumer did not shop in accordance with § 1026.19(e)(1)(vi)(A) and that are provided by persons other than the creditor or mortgage broker, the name of the person ultimately receiving the payment for each such amount, and the total of all such itemized amounts that are designated borrower-paid at or before closing. Items that were disclosed pursuant to § 1026.37(f)(3) must be disclosed under this paragraph (f)(2) if the consumer was provided a written list of settlement service providers under § 1026.19(e)(1)(vi)(C) and the consumer selected a settlement service provider contained on that written list.

1026.38 (g)(4) - Other.

Under the subheading "Other" and in the applicable column as described in paragraph (g) of this section, an itemization of each amount for charges in connection with the transaction that are in addition to the charges disclosed under paragraphs (f) and (g)(1) through (3) **for services that are required or obtained in the real estate closing by the consumer, the seller, or other party**, the name of the person ultimately receiving the payment, and the total of all such itemized amounts that are designated borrower-paid at or before closing

Thank You

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