

SUBJECT: Adjustable Rate Mortgage Lending Programs

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INTRODUCTION

This release applies to all Wisconsin credit unions, state and federally chartered. It addresses adjustable rate mortgage lending programs. Please also see The League's *ii Release No. B016, "Financial Strategies for Credit Union First Mortgage Lenders."* Also, please see The League's *ii Release No. B053, "Real Estate Mortgage Lending,"* which summarizes various mortgage lending compliance issues the credit union should be aware of.

EXECUTIVE SUMMARY

This release addresses how a credit union should implement and administer a closed-end adjustable rate mortgage (ARM) lending program. The focus of the release is on the practical and legal issues specific to ARM programs. Laws applicable to real estate lending in general are not covered in this release. The release first provides the credit union with the practical considerations in deciding to implement an ARM lending program. Assuming the credit union decides to adopt an ARM program, the release then covers the legal requirements applicable to ARMs during three loan stages: at application; at closing; and during the administration of the loan.

IMPLEMENTING/REVIEWING AN ADJUSTABLE RATE MORTGAGE PROGRAM

Laws Applicable to ARMS

The credit union should be certain that its loan documentation complies with all applicable state and federal laws and regulations that apply to a loan.

When credit unions lend to residents of other states, they may be subject to some lending and consumer protection laws of the other state. For federal credit unions, NCUA rules at 12 CFR 701.21(b) preempt some but not all state lending laws.

Legal counsel should be consulted to help determining which laws of which state will apply so the credit union can obtain appropriate forms and develop sound policies and procedures. Underwriting, rate and fee limits, perfection, and collection procedures may all vary from state to state. The League's WCUL loan forms are designed for compliance in Wisconsin and not for use with non-residents. Some vendors offer forms for use in multiple states with clauses qualified by phrases such as *if permitted by law* or *if required by law*. The approach can be helpful but the credit union must still be aware of which laws apply and develop appropriate policies and procedures for compliance.

Credit unions should review their loan documentation to see that it is consistent with their policies and procedures, including their data processing. The member agrees to the terms the credit union has spelled out in its documentation. This includes the preprinted text as well as the filled-in blanks. The credit union is bound to honor the terms of its loan agreements, security agreements, and mortgages. It is prudent for loan officers and management to be familiar with the terms of all loan documents.

Regulation Z applies to credit extended primarily for personal, family or household (not agricultural or business) purposes unless:

- The loan is to other than a natural person; or
- The loan is over \$73,400, effective Jan. 1, 2026 (up from \$71,900 in 2025). Although consumer credit transactions above the threshold are generally exempt, loans secured by real property or by personal property used or expected to be used as the principal dwelling of a consumer and private education loans are covered by TILA regardless of the loan amount.

Reg. Z defines a “variable rate transaction” as one in which the terms of the legal obligation allow the creditor to increase the interest rate originally disclosed to the consumer (including step-rate loans).

It also requires certain disclosures and notices for open and closed-end loans and home equity loans, including special disclosures and notices when the loans are secured by a dwelling or the interest rates are adjustable, as well as requirements for homeownership counseling in certain situations.

Real Estate Settlement Procedures Act (RESPA) contains certain disclosure requirements and restrictions regarding applications and loan closings for most loans secured by residential real estate. Among other information, RESPA requires a list of homeownership counseling organizations, notice when the servicing of the loan is transferred, limits the size of escrow accounts at settlement and caps the amount that may be required with monthly payments, and prohibits kickbacks to the credit union for referral of business incident to a settlement service. For details see The League's *ii Release No. B014*.

TILA-RESPA Integrated Disclosure Rule applies to most closed-end consumer credit transactions secured by real property. Even loans that are otherwise exempt from RESPA and Reg. X are still covered by the integrated mortgage disclosures rule, including construction-only loans, loans secured by vacant land, and loans secured by 25 or more acres. The rule requires (among other things) a Loan Estimate and a Closing Disclosure. For details, see The League's *ii Release No. B079*.

Wis. Stats. § 138.056 applies to loans covered by § 138.052 (and all first lien mobile home loans) if they are variable rate loans. A “variable rate loan” is a loan the terms of which permit the interest rate to be increased or decreased.

Wis. Stats. § 138.052 applies to any residential mortgage loan secured by a first lien real estate mortgage on a 1-4 family dwelling or a mobile home attached permanently to real estate and used as the borrower's principal dwelling, unless:

- The loan is to a corporation or a limited liability company;
- The loan is primarily for a business or agricultural purpose;
- The loan was made prior to November 1, 1981 and has not been refinanced, renewed, extended, or modified since then; or
- The loan is insured or guaranteed by HUD, the VA, or the Farmers Home Administration.

Wis. Stats. § 138.056 includes variable rate contract requirements, notice provisions when interest rate changes are to be implemented, and required disclosures.

Wis. Stats. § 422.421 is part of the Wisconsin Consumer Act. §§ 421 to 427 apply to any loan, lease, or credit sale made in Wisconsin for personal, family, or household purpose unless:

- The amount financed on closed-end credit exceeds \$25,000 (increased to \$50,000 as of Jan. 1, 2027);
- All borrowers are organizations; or
- The loan is secured by a first mortgage (or second mortgage when the credit union holds the first, or a land contract).

A “variable rate transaction” is any open-end credit plan and any consumer credit transaction other than one pursuant to an open-end credit plan, the terms of which permit the rate of finance charge to be adjusted from time to time during the

term of the plan or transaction other than by an adjustment under § 422.201(10m) or § 422.415. It does not include any consumer credit transaction the terms of which permit only the rates of finance charge that are initially numerically specified in any document evidencing the plan or transaction.

Wis. Stats. § 422.421 includes variable rate provisions, such as required contract terms, when and how adjustments to interest rates can be implemented, notice requirements, and prepayment rules.

Wis. Stats. § 428 applies to personal, family, household, or agricultural purpose loans secured by a first lien real estate mortgage (or second mortgage when the credit union holds the first mortgage, or a land contract) and the amount financed is less than \$25,000.

Regulation B (Equal Credit Opportunity) prohibits lender practices that discriminate on the basis of race, color, religion, national origin, sex, marital status, or age.

Wis. Stats. § 766 (*Marital Property Act*) governs the property rights of married persons, including classification of ownership, credit transactions with married persons, and obligations of spouses for debt.

Wis. Stats. § 706 (*Conveyances of Real Property; Recording; Titles*) provides for signature requirements for homestead property and procedures for recording mortgages.

Loan Originator ID Numbers (three requirements)

1. Those who meet the definition of a “residential mortgage loan originator” (MLO) at credit unions (and other financial institutions) must register with the Nationwide Mortgage Licensing System and Registry (NMLSR).

A registered MLO gets an NMLSR ID number. Registered MLOs and credit unions must provide these numbers to consumers. Under NCUA rules, the credit union must make the ID number(s) of its registered MLO(s) available to members “in a manner and method practicable to the credit union.” A registered MLO must provide his or her number to a member:

- Upon request (either verbally or in writing);
- Before acting as an MLO (either verbally or in writing); and
- Through the originator’s initial written communication with a member, if any, whether on paper or electronically.

See *ii Release No. B070* for details.

2. Fannie Mae and Freddie Mac require all mortgage loan applications to include the mortgage loan originator’s unique identifier.
3. For all closed-end, dwelling-secured consumer loans, Reg. Z §1026.36(g) requires a “loan originator organization” to include certain information on the following documents whenever they are provided to a consumer or presented to a consumer for signature: 1) the credit application; 2) the Loan Estimate and Closing Disclosure (required by Reg. Z §1026.19(e) and (f)); 3) the note or loan contract; and 4) the security instrument (such as the mortgage).

The following information must be shown at least once on each of those documents (not necessarily on every page):

- The loan origination organization’s name and NMLSR ID number (if the NMLSR has provided the organization with an NMLSR ID number); and
- The name (as the name appears in the NMLSR) and NMLSR ID number (if the NMLSR has provided the person with an NMLSR ID number) of the “individual loan originator” (as defined in Reg. Z) with primary responsibility for the origination. If more than one individual loan originator could be named, list the one with primary responsibility for the transaction at the time the loan document is issued.

Note that Reg. Z’s definition of “loan originator” is broader in most ways than the definition of a “mortgage loan originator” under the SAFE Act and Part 761 of the NCUA rules.

For details on the Reg. Z requirements for loan originators, see The League’s *ii Release No. B071*.

Why an Adjustable Rate Mortgage (ARM) Program?

An ARM program permits a credit union to adjust periodically the interest rates on the outstanding balance of a mortgage loan.

The advantages of using ARMs instead of fixed rate mortgages include the following:

- Presents less interest rate risk than holding fixed rate mortgages—because the interest rates can be adjusted during the term of the mortgage.
- Shifts most of the interest rate risk over the life of a mortgage from the credit union to the borrowing member.
- May be more attractive to the secondary market because of the ability of the secondary owner to adjust interest rates.
- Permits a credit union to offer lower initial rates. These “teaser” rates enhance the credit union's ability to market home loans and also may permit more members to qualify for the loans.

Financial Strategy Considerations for Credit Unions Offering Adjustable Rate Mortgages

Selling some ARMs into the secondary market permits a credit union to serve more members and maintain higher liquidity.

Holding some ARMs is an acceptable risk because of the reduced interest rate risk.

During the first one or two years after origination of an ARM, the yield may not be much better than that available on a short-term investment, because the initial rates of ARMs are sometimes discounted to compensate borrowing members for taking on the interest rate risk. If interest rates fall during those early years, the borrower may very well refinance. Depending on whether and how much interest rates rise or fall during the term of an ARM, the loan may not be an effective asset for a credit union to hold.

A credit union should consider the following “down sides” of offering ARMs:

- Lower yields caused by market rates that are materially less than those of fixed rate mortgages.
- Low “teaser” rates may be necessary to compete for borrowers. These may lower the yield to the credit union considerably. Furthermore, members who otherwise would not, may qualify for a loan. Some of these members may be unable to afford higher payments when the interest rates on their loans go up – possibly leading to more defaults.
- There are more opportunities to make mistakes in administering these loans, and a credit union may be penalized for making mistakes in calculating adjustments to rates and sending proper notices of adjustments.

Credit unions offering ARMs should carefully monitor the liquidity and maturity of investments. The caps on ARM rate changes (discussed below) leave credit unions exposed to some interest rate risk. Holding some ARMs that conform to secondary market standards reduces that risk because it is possible for the credit union to sell the loans.

A credit union should exercise care when holding ARMs that permit a borrower to convert to a fixed-rate loan. A borrower will convert when rates are lowest—resulting in low earnings for the credit union and shifting the interest rate risk back to the credit union.

Typically, a member will be able to refinance regardless of whether the ARM contains a conversion option—but the original credit union is not obligated to refinance to a fixed rate loan unless there is a conversion option in the ARM.

If a credit union does permit conversion, it should ensure that the new fixed rate loan conforms to secondary market standards.

Choices and Issues to Consider in Implementing and Reviewing an ARM Lending Program

DFI-CU 54.04 requires the board of directors to adopt written policies to direct the real estate lending activities of a credit union. The board is also to review the loan policies at least annually. The policies should include (among other things) the types of real estate mortgage loans that the credit union will offer, the interest rates and maturities of those loans, quality control standards, and the standards of creditworthiness applicable to real estate loan approvals. See also DFI-CU 54.03 for other limitations on real estate loans made by credit unions.

Types of ARMs

- “Standard” ARMs, either long-term or short-term with a balloon at the end.
- *Partially-adjustable-rate loans.* The rate on these loans is an initial rate that moves in relation to an index, rather than an index rate plus a margin. The rate does not move in direct relationship to changes in the index. Rather, the rate might move, for instance, by one half the amount the index changes. These loans limit the borrower's risk, but the credit union cannot respond as quickly to changes in market interest rates.

- *Payable-on-demand loans.* The credit union can call the loan anytime after a set period, usually three to five years. These are different from balloon loans because the credit union can make an interest rate adjustment anytime after the set period, rather than just at the pre-determined time for the balloon.

Changes in the interest rates on a payable-on-demand loan are not tied to an index and are not made at regular intervals. They are for the purpose of protecting the credit union in the event that interest rates rise substantially.

Payable-on-demand loans must be placed below the market rate for fixed rate loans because the borrowers have no way to judge how much their loan rate might go up. A credit union must be cautious not to make rate changes that seem unjustified or it will lose the credibility it needs to make these loans.

Choosing an Index

Considerations in choosing an index.

- What indexes other local mortgage lenders are using. Using the same ones will permit members to compare loan programs more easily.
The ability of the index to match the credit union's cost of savings, the volatility of the index (size and frequency of changes), and the sensitivity of the index to factors that don't affect other interest rates.
Example: The Federal Reserve discount lending rate is influenced by politics as much as economics and changes in the rate are made infrequently and long after changes in other rates.
Example: The bank prime rate changes infrequently, but when it does it can move in relatively large increments. Historically, the prime rate has shown high volatility compared to other interest rates.
- Whether an index is based on another financial industry—like the bank prime rate or the S&L Cost of All Funds Index. Members may be sensitive to the use of an interest rate tied to the banking industry, who they may believe have the power to set interest rates as they see fit. The Cost of All Funds Index has, in recent years, moved more because of the problems in the S&L industry than because of market rate changes.
- The objectivity of the index. The most objective indexes are tied to Treasury rates, because they are determined by open competition. The one-year Treasury rate is the most popular choice, because it has a maturity of the same length as the most popular ARM adjustment period.
- Whether to use the index value on a certain day, such as the first business day of a particular month, or the average of daily rates for a week (the standard of the secondary market), or a monthly average. The weekly average takes into consideration daily aberrations but changes sufficiently to reflect the current interest rate climate.

Indexes currently approved by the Department of Financial Institutions, pursuant to § 138.056(1), Wis. Stats., for variable rate first lien real estate mortgages.

The Office of Credit Unions does not have an approved list, but recognizes the following approved by the Department of Financial Institutions:

1. The monthly or quarterly average of weekly auction rates on U.S. Treasury Bills with a maturity of either three or six months made available by the Federal Reserve Board (H.15).
2. The monthly average yield on U.S. Treasury securities adjusted to a constant maturity of one, two, three or five years made available by the Federal Reserve Board (H.15).
3. The weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one, two, three or five years made available by the Federal Reserve Board (H.15).
4. The weekly or monthly bank prime loan rate (or averages of those rates), made available by the Federal Reserve Board (H.15). Or as reported in the money rates listing in the *Wall Street Journal*.
5. The national average mortgage contract rate for major lenders on the purchase of previously occupied homes, as computed by the Federal Home Loan Bank Board.
6. The Quarterly Cost of all Funds Index for the State of Wisconsin as computed by the Federal Home Loan Bank Board.
7. The weekly average weighted yield of fixed rate mortgages accepted under the Federal Home Loan Mortgage Corporation purchase program.
8. The one month, three months, six months or one year London Interbank Offered Rates (LIBOR) as reported in the money rates listing in the *Wall Street Journal*.

Note: While LIBOR still appears in the Wisconsin Department of Financial Institutions' *List of Approved Indices* (as of May 2026), LIBOR has been discontinued and may no longer be used.

9. The Federal Cost of Funds Index (COFI) made available by Freddie Mac on or about the 20th of each month.

10. The Secured Overnight Financing Rate (SOFR) as reported by the New York Federal Reserve Bank.

Indexes Other than Approved Indexes. Except for home equity lines of credit, credit unions may use indexes other than approved indexes for their variable rate programs.

For home equity lines of credit, a credit union may not, by contract or otherwise, change the annual percentage rate unless the change is based on an index not under its control and such index is available to the general public.

Selecting a Margin

The rate is calculated by adding together the index rate plus a margin.

The margin is usually constant over the life of the loan.

The margin is determined by how much over the index rate the credit union needs to cover its cost of funds, operating expenses, and additions to reserves.

Choosing an index with a higher average value may mean choosing a lower margin to be competitive with other lenders.

Selecting an Adjustment Period

The adjustment period is the time between one rate change and the next. Most ARMs adjust rates annually to balance the lender's ability to change the rate with the borrower's need to anticipate monthly payments.

The adjustment period depends on a balancing of risk between the credit union and a borrower. The shorter the period, the more the credit union can insulate itself from market rate changes. The longer the period, the less risk for the borrower. The credit union's competition may very well determine the adjustment periods the credit union chooses.

Extending the adjustment period beyond two or three years can defeat the purpose for writing ARMs instead of fixed rate loans.

It is advisable to have the rate on each loan adjust on its anniversary date rather than to have all loans adjust at the same time each year. Such a policy helps keep the average yield on the credit union's mortgage portfolio moving in line with market rates.

Discounted and Premium Initial Rates

Borrowers may be offered a discounted or "teaser" rate for an initial period of time, often a year or more. A discounted rate means that the rate is less than the sum of the index rate plus the margin chosen by the credit union.

The two-fold purpose of a "teaser" rate is:

- A borrower may choose to borrow from the credit union because of the attractive rate.
- The credit union may choose to qualify a borrower based on the borrower's ability to pay under the initial rate. More borrowers will qualify—but the danger exists that more borrowers will default after the "teaser" rate expires.

The credit union may choose to make up for the lower rate with higher rates after the initial rate expires, or by charging higher origination fees, such as closing points.

Generally, credit unions should consider avoiding large initial discounts because of the danger of "payment shock" when the discount period is over and because the loans will lose money during the first year—especially if interest rates fall and the borrower then converts to a fixed rate mortgage.

In some rate environments some lenders might choose to offer "premium" initial rates that are higher than the indexed interest rate.

As noted later in this release, discounted and premium initial rates affect variable rate clauses, APR calculation, ARM application disclosures, and advertisements for the loan. Also see Exhibit B of this release for guidance on calculating the required composite APR for loans with a discounted or premium initial rate.

Caps on Rate or Payment Changes

Caps shift some risk from the borrower back to the credit union. An ARM with caps should therefore "cost" the borrower more than one without.

Regulation Z § 1026.30 requires that a creditor include “in any consumer credit contract secured by a dwelling the maximum interest rate that may be imposed during the term of the obligation” when the annual percentage rate on the loan may increase after consummation. This means that ARMs must have a cap—determined by the credit union at the outset of the loan—on the interest rate that can be charged over the life of a loan. This type of cap is sometimes referred to as a “lifetime cap.”

Currently there is no usury limit in Wisconsin.

A low initial “teaser” rate could be offset by increased lifetime caps.

A credit union may also limit the amount an interest rate can change in any one adjustment period. For example, an ARM with an annual adjustment period may limit rate adjustments to one percentage point per year with a lifetime cap of six percentage points. This type of cap is sometimes referred to as a “periodic cap.” For ARMs subject to the Wisconsin Consumer Act, periodic rate limitations on decreases may not be more restrictive than periodic rate caps on increases.

Another form of cap is a “payment cap.” A payment cap limits the amount a monthly mortgage payment can change, rather than the amount the interest rate can change. While payment caps may appeal to borrowers, they pose problems for both borrowers and lenders. When monthly payments cannot keep up with rising interest rates, the amount of each payment that goes to principal decreases—slowing amortization. At the beginning of a loan, so little of a payment goes to principal that even a small increase in rates can increase principal dramatically.

Negative Amortization

Negative Amortization occurs when the principal mortgage balance is increasing rather than decreasing because the amount of the monthly payment is not enough to pay all the interest due. The interest due is added to the principal.

ARMs with payment caps are especially vulnerable to negative amortization.

Negative amortization is problematic for both borrowers and the lender. Borrowers who find that they owe an increased amount of principal even though they have been making timely payments may be in for an unpleasant shock. The credit union may find itself less secure when a borrower has less equity in the home—especially if property values fall. Also, the credit union will have to adjust either the term (if possible) or the payments (see below) so that the note gets paid off.

Wis. Stats. § 138.056(5) limits when a lender may make payment adjustments to account for negative amortization for ARMs secured by first mortgages:

The principal balance of a variable rate loan may be increased to implement an interest rate adjustment only if within ten years after the loan is made, and at least every five years thereafter, the payment amount is adjusted to a level at least sufficient to amortize the loan at the then existing interest rate and principal balance over the remaining term of the loan. The payment amount shall be maintained at least at that level until subsequently adjusted under this subsection, except that the payment amount shall be decreased to reflect any decrease in the interest rate.

Wis. Stats. § 138.056(7) provides that a credit union that adds accrued interest to the principal of an ARM “to implement an interest rate adjustment retains the priority of the original mortgage or equivalent security interest.”

Before closing a closed-end, dwelling-secured loan that “may result in negative amortization” to a first-time borrower, the credit union must confirm that the borrower has received homeownership counseling. Reg. Z § 1026.36(k). For details, see The League’s *ii Release No. B042*.

Convertibility

An ARM may include a clause that permits a borrower to convert the ARM to a fixed rate mortgage, usually at designated times.

The fixed rate is generally the DFI- current market rate for fixed rate loans.

A credit union may charge a higher interest rate or origination fee for an ARM with a convertibility provision, or it may charge special fees at the time of conversion.

A convertibility provision permits the borrower to convert by refinancing with the original lender. Even without such a provision, a borrower may prepay with funds obtained from a different source.

Prepayment Rules

For loans covered by the Wisconsin Consumer Act, see “Prepayment Rule” later in this release.

For loans covered by § 138.056, see “Prepayment Fees and Penalties” later in this release.

Escrow Accounts

Just as with fixed rate mortgages, a credit union must determine whether to require an ARM loan borrower to escrow taxes and insurance.

If the credit union does require an escrow, it must, for first mortgage or equivalent lien loans originating after January 1, 1994 and before April 18, 2018, pay interest at a rate determined annually by the Department of Financial Institutions. Wis. Stats. § 138.052(5)(am)(2). In most cases, it must also provide a notice giving the borrower several options for the timing of real estate tax payments from the escrow account, as required by Wis. Stats. § 138.052(5m). For more information, see The League’s *ii Release No. B047*.

In addition, the credit union must comply with the escrow limitations and disclosures required by the Real Estate Settlement Procedures Act (“RESPA”). For more information, see The League’s *ii Release No. B014*.

Underwriting Considerations

Developing underwriting standards for ARMs is more difficult than for fixed rate loans because of the payment increases that will occur if interest rates rise.

Example: \$60,000 loan; 30 year term; 6% initial rate, for one year; 2% annual cap; 5% lifetime cap; first year's monthly payment: \$360.00. If rates rise enough to trigger the caps, the second year's payment will be 22% higher than the first year's—\$439.00. After three years, the payment will increase by 57%—to \$564.00!

Credit unions are not required to sell real estate loans to the secondary market, but the NCUA strongly recommends that loans be written to conform to secondary market requirements. See *NCUA’s Letter to Credit Unions No. 124*, June 1991.

Credit unions may sell mortgages through the Federal Home Loan Mortgage Corporation (“Freddie Mac”), the Federal National Mortgage Association (“Fannie Mae”), the Government National Mortgage Association (“Ginnie Mae”), private intermediaries such as America's Credit Unions Mortgage, a mortgage banker, or directly to investors. Credit unions that sell directly to Freddie Mac, Fannie Mae, and Ginnie Mae must meet financial strength and insurance standards. The loans they sell on the secondary market must meet underwriting and documentation standards. The originator is required to warrant compliance with those standards.

Secondary market underwriting standards include, but are not limited to:

- Mortgage payments may not exceed 28% of the borrower's gross income.
- All debt service should not exceed 36% of borrower's gross income for loan requests with loan-to-value ratio of less than 90%, or 33% if ratio is more than 90%.
- The credit union must verify employment history (at least two full years of employment) and income.
- If the applicant has been foreclosed upon previously, three years must have elapsed from the completion of the foreclosure.
- In addition to the underwriting issues related to qualification of an applicant for a loan, secondary market standards include many specific documentation requirements.

A credit union that intends to hold a loan in its own portfolio instead of selling it to the secondary market can be more flexible in its underwriting standards. For example, a credit union may be willing to qualify a member who has excellent promotion prospects with a successful employer for a larger loan.

Potential problem of which to be aware when determining underwriting standards: If a member barely qualifies for an ARM loan, will he or she be able to pay increased monthly payments in the future?

To reduce risk of default, the credit union may:

- Qualify a borrower by comparing the borrower's current income to the second year's mortgage payment if all increases are assumed.

- If a “teaser” is offered, qualify a borrower at the fully-indexed rate.

Marketing and Advertising ARM Loans

Credit unions are subject to numerous statutory and regulatory requirements applicable to loan advertisements. See, e.g., Reg. Z §§ 1026.16 and 1026.24; Wis. Stats. §§ 100.18 and 423.301. For example, it is necessary to make certain that advertisements containing “teaser” rates specify the limited term for which the rate is available.

For marketing purposes, a credit union may consider offering creative options such as lower points or closing costs to sell its loans to its members—even if the rates are a bit higher. Low “teaser” rates may sell well, but there are pitfalls.

Data Processing Issues

Some data processing systems may not be capable of handling the varying streams of payments used in a variable rate lending program. The credit union should consider the cost of a new system or revisions to the old when determining whether to implement a new ARM loan program or revise one already in use.

Many data processor representatives promise that their products can generate notices of rate adjustments to members with ARM loans. Be aware that these notices often do not comport with the notice requirements of Reg. Z or state law, even when the salesperson or literature assures you that they do. Check for yourself to assure that your notices comply. Guidance is provided later in this release.

THE APPLICATION PROCESS

Disclosures required by TILA and RESPA

Various requirements apply to ARMs under the federal Truth in Lending Act and the CFPB’s Reg. Z and under the federal Real Estate Settlement Procedures Act (RESPA) and the CFPB’s Reg. X.

TILA-RESPA Rule

The TILA-RESPA Integrated Disclosure Rule applies to most closed-end consumer credit transactions secured by real property. Even loans that are otherwise exempt from RESPA and Reg. X are still covered by the integrated mortgage disclosures rule, including construction-only loans, loans secured by vacant land, and loans secured by 25 or more acres. The rule requires (among other things) a Loan Estimate, a Closing Disclosure, and a “Special Information Booklet” (which is not required if the consumer is applying for a loan that is not to purchase one- to four-family residential property).

For transactions with adjustable interest rates, an Adjustable Interest Rate (AIR) Table with relevant information about how the interest rate will change must appear in the Loan Estimate.

See The League’s *ii Release No. B079* for information on the TILA-RESPA rule.

RESPA & Reg. X

Various RESPA requirements (explained in detail in The League’s *ii Release No. B014*) may apply to an ARM (as to other types of mortgages). For example:

- A list of homeownership counseling organizations must be given within three business days of application.
- Reg. X prohibits kickbacks and unearned fees in connection with settlement services.
- If the credit union holds an escrow account, it must provide an Initial Escrow Account Statement and Annual Escrow Account Statement.
- If settlement services were provided by a wholly or partially owned subsidiary, the “Affiliated Business Arrangement” disclosure and rules apply.
- Notice of Servicing Transfer disclosures (sometimes called “hello and goodbye” letters) must be sent in the event of a sale or transfer.

Truth in Lending & Reg. Z ARM Disclosures

Reg. Z § 1026.19(b) requires that if a closed-end ARM loan secured by the consumer's principal dwelling has a term greater than one year, the credit union must provide certain disclosures "at the time an application form is provided or before the consumer pays a nonrefundable fee, whichever is earlier."

First, the credit union must provide a CFPB publication called the Consumer Handbook on Adjustable Rate Mortgages (CHARM) booklet, which was most recently updated in June 2020. Credit unions can *download the new handbook*, or order it via *the U.S. Government Bookstore*.

Second, the credit union must provide loan program disclosures for each different ARM program in which the member expresses an interest. These disclosures – the Reg. Z ARM Application Disclosures – supplement, but do not replace, any other requirement disclosures, such as the Loan Estimate. This includes the following disclosures, which must be provided if they apply to your program:

- The fact that the interest rate, payment, or term of the loan can change.
- The index or formula used in making adjustments, and a source of information about the index or formula. If an interest rate is at the credit union's discretion, that fact must be disclosed.
- An explanation of how the interest rate and payment will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin. Include, if applicable, the fact that the interest rate may be rounded off and that the final payment may be adjusted to cover the amount due if periodic payments do not fully amortize the loan.
- A statement that the member should ask about the current margin value and current interest rate.
- The fact that the interest rate will be discounted, and a statement that the member should ask about the amount of the interest rate discount or premium.
- The frequency of interest rate and payment changes.
- Any rules relating to changes in the index, interest rate, payment amount, and outstanding loan balance including, for example, an explanation of interest rate or payment limitations, negative amortization, and interest rate carryover.
- The maximum interest rate and payment for a \$10,000 loan originated at the initial interest rate (index value plus margin, adjusted by the amount of any discount or premium) in effect as of an identified month and year for the loan program disclosure assuming the maximum periodic increases in rates and payments under the program; and the initial interest rate and payment for that loan and a statement that the periodic payment may increase or decrease substantially depending on changes in the rate. A complex and detailed historical example based on the most recent 15 years of rate index values is permitted as an alternative to this bullet but is omitted here.
- An explanation of how the member may calculate the payments for the loan amount to be borrowed based on the initial interest rate used to calculate the maximum interest rate and payment, in the previous disclosure item.
- The fact that the loan program contains a demand feature.
- The type of information that will be provided in notices of adjustments and the timing of such notices.
- A statement that the disclosure forms are available for the creditor's other variable rate loan programs.

See Reg. Z § 1026.19(b) and the related commentary for details. A sample version of the ARM application disclosure is provided in Exhibit A of this release.

Electronic Reg. Z Disclosures

Under Reg. Z § 1026.19, the ARM application disclosures may be provided electronically, depending on how the consumer accesses the application.

- If a consumer accesses an ARM application form electronically, such as online at a home computer (but not as described in the next bullet point), the Federal Reserve's Official Staff Commentary says that the disclosures must be provided in electronic form (such as with the application on its Internet site), in order to meet the requirement to provide disclosure in a timely manner "on or with" the application. If paper disclosures were instead mailed to the consumer, they would not satisfy the Reg. Z requirements.

The electronic disclosures may be given without first obtaining the consumer's consent – as would otherwise be required by the federal Electronic Signatures in Global and National Commerce Act (or E-SIGN) – but only if the consumer accesses the application in electronic form.

- If a consumer is physically present in the credit union's office and accesses an ARM application or solicitation electronically, such as via a terminal or kiosk (or if the consumer uses a terminal or kiosk on the premises of an affiliate or third party that has arranged with the credit union to provide applications to consumers), the credit union can give the disclosures in either electronic or paper form, provided it complies with the timing and delivery ("on or with") requirements of the regulation. However, the Federal Reserve Board has said that paper disclosures are probably necessary in these situations, to comply with the timing requirements and the requirement to provide the ARM disclosures in a form the consumer can keep.

An ordinary paper ARM application cannot just direct the consumer to an Internet site, where some or all of the disclosures can be found. If the credit union wants to provide electronic disclosures for a paper application (for example, where a paper application is submitted in person at the credit union office), it must comply with the E-SIGN consent and notice requirements. For details, see The League's *ii Release No. 0175, "Electronic Signatures and Records."*

Format for Electronic Disclosures

The Reg. Z Official Staff Commentary gives lenders flexibility in how they provide these electronic disclosures. Possible methods include, but are not limited to, the following examples:

- The disclosures could automatically appear on the screen when the application appears;
- The disclosures could be located on the same web page as the application (whether or not they appear on the initial screen), if the application contains a clear and conspicuous reference to the location of the disclosures and indicates that the disclosures contain rate, fee, and other cost information, as applicable;
- Creditors could provide a link to the electronic disclosures on or with the application as long as consumers cannot bypass the disclosures before submitting the application. The link would take the consumer to the disclosures, but the consumer does not have to be required to scroll completely through the disclosures; or
- The disclosures could be located on the same Web page as the application without necessarily appearing on the initial screen, immediately preceding the button that the consumer click to submit the application.

Whatever method is used, a lender does not need to confirm that the consumer has read the disclosures. Any method used for providing disclosures for electronic ARM applications would have to ensure that the disclosures are provided (not just made available) to the consumer clearly and conspicuously, in a timely manner.

NMLSR ID Numbers

Three requirements, explained on p. 2 of this release, may require disclosure of NMLSR ID numbers in certain situations and on certain documents:

1. The SAFE Act and NCUA Rules Part 761 for "mortgage loan originators."
2. Fannie Mae and Freddie Mac requirements.
3. Reg. Z §1026.36(g) rules for "loan originators."

The credit union should take steps to ensure that the appropriate information is provided, as required.

THE CLOSING PROCESS

Reg. Z §§ 1026.19(f) & 1026.38 Closing Disclosure

The TILA-RESPA Integrated Disclosure Rule require the credit union to ensure that the consumer receives the Closing Disclosure no later than three business days before consummation. Note that for transactions with adjustable interest rates, an Adjustable Interest Rate (AIR) Table with relevant information about how the interest rate will change must appear in the Closing Disclosure. For details, see The League's *ii Release No. B079*.

Note that Reg. Z §1026.18(f) says that certain special disclosures are to be provided prior to "consummation" of an adjustable rate loan, but that section does not apply to loans for which a Closing Disclosure is required – and the Closing Disclosure is needed for virtually all closed-end consumer loans secured by real property

Calculating the APR

When credit unions offer variable rate loans with "teaser rates" or initial discounts from the normal indexed rate, it becomes important to examine the Truth in Lending rules for how to properly calculate the Annual Percentage Rate.

A rate is “discounted” when a creditor uses an initial interest rate that is not calculated using the index or formula for later rate adjustments. In such cases, the disclosures for closed-end loans must reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. *It is improper to merely disclose the initial rate such as is permitted on a regular (non-discounted) variable rate loan.*

See Exhibit B of this release for the relevant portions of the Commentary to Reg. Z § 1026.17(c)(1), describing the basis of disclosures for variable rate loans in general, and then the special provisions for discounted and premium initial rates. Discount and premium rates also affect Reg. Z advertisement and ARM application disclosure requirements.

Reg. Z § 1026.36(k) Homeownership Counseling

Before closing a closed-end, dwelling-secured loan that “may result in negative amortization” to a first-time borrower, the credit union must confirm that the borrower has received homeownership counseling. For details, see The League’s ii Release No. B042.

Wis. Stats. § 138.056 Required Terms in an ARM First Mortgage Loan

This statute requires the contract to provide for a term of not more than 40 years. NOTE: DFI-CU 54 limits the term of any mortgage loan to 30 years. The OCU’s Director may waive the 30-year limitation for good cause shown. While 30-year mortgages remain the norm, this gives the OCU flexibility to address situations in which loans with longer terms are warranted. Credit unions considering longer-than-30-year mortgages should evaluate the impact of state laws that may limit the effectiveness of the mortgage.

Use an approved index if the contract provides for adjustments to the interest rate corresponding to an index.

- The initial index value shall be the most recently available value of the index prior to the date of closing of the loan.
- The interest rate at adjustment shall reflect the difference between the initial index value and the index value most recently available as of the date notice of the interest rate adjustment is mailed, except the credit union may decrease or decline to increase the interest rate at any time.
- The interest rate shall decrease to reflect any downward movement of the index except to the extent the decrease offsets increases in the index not implemented as interest rate increases.
- An increase in the index permitting the credit union to increase the interest rate but declined by the credit union for any rate adjustment interval may be carried over and applied in succeeding interest rate adjustment intervals to the extent the increase is not offset by subsequent decreases in the index.
- The contract *may* provide for minimum interest rate change increments (caps).

If the contract does not provide for use of an approved index, then the contract must:

- Provide for no more than a one percent increase in the interest rate not more than once each 6 months and permit decreases in the interest rate to be made at any time.
- If the credit union waives an increase when it can institute one, it may thereafter at any time increase the interest rate to a rate equal to the interest rate if all increases were made at the first opportunity. See Exhibit C for an example of an ARM clause containing an approved index and Exhibit D for an example of an ARM clause containing a non-approved index.

Prepayment Fees and Penalties

Sections 138.052 and 138.056 regulate prepayment fees and penalties. A borrower may prepay a first mortgage or equivalent lien residential loan *at any time in whole or in part*. Wis. Stats. § 138.052(2)(a)-1. Prepayment penalties are severely restricted under these and other laws which may apply (e.g., HOEPA, HPMLs, qualified mortgages). Prepayment penalties are prohibited at federal credit unions.

Wisconsin law governing first mortgage or equivalent lien loans generally provides that a credit union may impose the following prepayment penalties *if the penalty has been agreed to in the loan contract*:

- If the prepayment is made within 5 years of the date of the loan, the lender shall receive an amount not exceeding 60 days’ interest at the contract rate on the amount by which the aggregate principal prepayments for a 12-month period exceed 20% of the original amount of the loan. Wis. Stats. § 138.052(2)(a)-2.

- If the prepayment is made 5 years or more after the date the loan is made, *no premium or penalty may be received by the lender notwithstanding any refinancing, renewal, extension, or modification of the loan.* Wis. Stats. § 138.052(2)(a)-3 (emphasis added).

However, Wis. Stats. § 138.056(3m)(a) provides additional restrictions on ARMs. Lenders may not include a prepayment penalty in a variable rate loan using an approved index unless all of the following are satisfied:

1. The lender also makes variable rate loans without prepayment penalties and the lender provides the borrower with a written statement that the lender also makes variable rate loans without prepayment penalties.
2. At the time of the offer of the variable rate loan, and the borrower acknowledges, in writing, receipt of the statement specified in item 1 above.
3. The penalty is limited to prepayment that is made within 3 years of the date of the loan.
4. The prepayment is not made in connection with the sale of a dwelling or manufactured home securing the loan.

This applies to variable rate loans made, refinanced, renewed, extended, or modified on or after March 25, 2006.

Wis. Stats. § 422.421 Restrictions on the Loan Contract Depending on Whether an Approved Index Is Used

Approved Index

If the credit union uses an approved index, the statute requires the loan contract to include:

- The method of determining approved index values.
- The relationship between approved index values and the rates of finance charge.
- The method of implementing the adjustments.
- The frequency of adjustments.
- Any limits on the magnitude of adjustments. Any limit on the amount an interest rate can be decreased must be matched by at least as restrictive a limit on how much interest rates can increase.
- The method of implementing any rounding of the rates of finance charge.
- If the credit union fails at any time to increase the rate of interest (finance charge) to the extent permitted by the provisions of the loan contract, it may not carry over and add any portion of the foregone increase to any subsequent adjustment. However, the decision to forego an increase in the finance charge when an increase can be imposed does not affect in any way the credit union's right to prospectively reestablish the relationship between the approved index values and the rates of finance charge in accordance with the provisions of the loan contract.

Non-Approved Index

The credit union may choose not to use an approved index. In such a case, the loan contract must include the following provisions:

- The method of determining index values;
- The relationship between index values and the rates of finance charge;
- The method of implementing the adjustments;
- The frequency of adjustment;
- Any limits on the magnitude of the adjustments;
- Any minimum increments of adjustments;
- The method of implementing any rounding of the rates of finance charge.

The credit union may not adjust the finance charge earlier than 3 months after the date the adjustable rate contract is entered into.

The credit union may not contract for an increase in the rate of finance charge in excess of 2% plus any permissible carry over for each 12-month period commencing with the date the contract is entered into.

If the credit union fails to increase the rate of finance charge during a 12-month period when it could under the terms of the contract, the increase may be carried over and added to any adjustment in the rate of finance charge *but only* during

the succeeding 12 months *and* the maximum increase that may be carried over is the difference between the rate of finance charge as of the commencement of the preceding 12-month period plus 2% and the highest rate of finance charge actually imposed during that 12-month period, or one percent, *whichever is less*.

See Exhibit E for an example of an ARM clause containing an approved index.

Prepayment Rule

A borrower may prepay a Wisconsin Consumer Act loan in whole or in part at any time without penalty. Wis. Stats. § 422.208.

When a borrower prepays in full the unpaid balance of Wisconsin Consumer Act loan, the credit union must rebate to the borrower an amount not less than the unearned portion of the finance charge. (The amount to be rebated is calculated according to Wis. Stats. § 422.209.)

NOTICE REQUIREMENTS WHEN ADJUSTING THE RATES UNDER A VARIABLE RATE LOAN

Reg. Z and Wis. Stats. §§ 138.056 and 422.421 impose requirements for notifying members that the interest rates on their adjustable rate loans have or will be changing. These requirements address both the timing and the content of the notices.

Because these requirements vary, it can be complicated to determine when a notice is needed for a particular loan and what the notice must include. The League's *ii Release No. B002* is intended to help credit unions easily determine the timing and content requirements of adjustment notices for their variable rate loan programs.

These timing requirements must be taken into account when drafting the variable rate clause, to be sure that the new interest rate will be available by the time the rate change notice must be sent.

First Lien Mortgages

For first lien mortgages, Reg. Z and § 138.056 apply.

Reg. Z ARM Adjustment Notices

These notice rules apply to ARMs secured by the consumer's principal dwelling, with a term of more than one year.

Reg. Z §1026.20 requires two ARM rate adjustment notices:

- An initial interest rate adjustment notice is required only for the first time the interest rate adjusts. It must be provided to a consumer 210 to 240 days before the first payment at the new rate is due. Reg. Z §1026.20(d).
- An ongoing interest rate adjustment notice must be provided to a consumer 60 to 120 days before the first payment at the new rate is due each time an interest rate adjustment results in a payment change. Reg. Z §1026.20(c).

The rules provide special timing requirements for frequently-adjusting ARMs, ARMs with short look-back periods, and ARMs adjusting soon after a loan closes.

See The League's *ii Release No. B002* for details and information on the content of these notices.

Section 138.056 Requirements

Timing. A credit union must give the borrower notice at least 15 days before the change if an increase in payments other than the final payment is required on a first mortgage. The notice must be provided not later than 30 days after any other change. This rule does not apply to a loan secured by an equivalent security interest.

Content. The notice must be mailed to the borrower's last known address and must include:

- The effective date of the interest rate change;
- The amount of the interest rate change;
- The changes in any index which cause the interest rate change;
- The amount of the contractual monthly principal and interest payments required as a result of the change.
- The prepayment rights of the borrower. (See "Prepayment Fees and Penalties," earlier in this release.)

NOTE: The credit union may impose no fees or costs in adjusting the interest rate, payments, principal balance or term of a variable rate loan.

Second Lien Wisconsin Consumer Act Mortgages

For second lien mortgages of \$25,000 (increased to \$50,000 as of Jan. 1, 2027) or less, § 422.421 applies. In addition, the Reg. Z requirements are the same as above.

Section 422.421 Requirements

A credit union must mail or deliver to the member written notice of every change or adjustment to the rate of finance charge. The notice must be mailed or delivered to the member at the member's last-known address. If the loan involves more than one member, the notice may be given to any member.

Timing. The notice must be mailed or delivered at least 15 days prior to the effective date of the adjustment if there will be a change in the amount of the periodic payment, other than the final payment.

The notice must be mailed or delivered not later than 30 days after the effective date of the change if the adjustment is implemented by a change other than a change in the periodic payment.

Exceptions. This notice is not required if the adjustment is made to an open-end credit plan that is based upon changes in an approved index.

Nor is the notice required if the adjustment is made to a closed-end loan where the change is based on an approved index and the change does not cause an adjustment in the amount of the periodic payment other than the final payment.

Final payment. If the final payment (in a closed-end loan) exceeds the final payment disclosed to the member at the outset of the loan by more than 50% (but not less than \$100) as a result of adjustments in the interest rate during the term of the loan, the credit union must give the member written notice of the estimated amount of the final payment at least 90 days but not more than 180 days prior to the due date of the final payment.

No matter what the original terms of the loan, the final payment is not due until the later of the originally scheduled due date or 90 days after mailing of the notice, and the member will not be in default during that period, if the member continues to make payments in the scheduled amounts and with the scheduled frequency until the total amount due has been paid in full.

Data Processing Reminder

Do not depend on your data processing system or the word of its representative that the system will generate rate change notices that comply with Reg. Z and Wisconsin law, either in timing or content. Review the notices produced by the systems to assure yourself that the notices comply.

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League publications are designed to provide accurate information with regard to the subject matter covered, with the understanding that The League does not render legal services. If you have general questions regarding this release, please call The League at (608) 640-4050 if local or (800) 242-0833. For specific legal advice, please consult your credit union's attorney.

Legal Affairs Department

PEG/jb

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EXHIBITS

- A. Sample Reg. Z ARM Application Disclosure - Indexed ARM (Reg. Z § 1026.19(b)(2))
- B. Disclosure of “Composite” Annual Percentage Rates for Discounted “Teaser” and Premium Rate Variable Rate Loans
- C. Sample ARM Note Clause (Approved Index) (§ 138.056)
- D. Sample ARM Note Clause (Non-Approved Index) (§ 138.056)
- E. Sample Wisconsin Consumer Act ARM Note Clause (Approved Index) (§ 422.421)
- F. Basic Closed-End ARM Loan Documentation Checklist
- G. ARM Rate Change Notices Require Close Attention to Rules

EXHIBIT A - SAMPLE REG. Z ARM APPLICATION DISCLOSURE - INDEXED ARM

(Reg. Z § 1026.19(b)(2))

This ARM application disclosure is for illustrative purposes and must be modified to describe the features of the credit union's own variable rate mortgage documentation in compliance with Reg. Z 1026.19(b). See the regulation and staff commentary for detailed guidance. These disclosures must be provided for each program offered by the credit union. The disclosures must be updated as the loan program changes, except for the current index value, amount of a margin, or amount of a discount or premium. This sample uses the option of not providing a historical example with a 15-year rate history.

ABC Credit Union

ARM Application Disclosure

This disclosure describes the features of the adjustable-rate mortgage (ARM) program you are considering. [Information on other ARM programs is available upon request.]

How Your Interest Rate and Payment Are Determined

- Your interest rate will be based on [an index rate plus a margin] [rounded to the _____].
- Your payment will be based on [the interest rate, loan balance, and loan term.]
- The interest rate will be based on [the weekly average yield on United States Treasury securities adjusted to a constant maturity of 1 year (your index), plus our margin.] Ask us for our current interest rate [and margin.]
- Information about the index rate is published [weekly in the Wall Street Journal] [in the Federal Reserve Statistical Release (H.15) at www.federalreserve.gov/releases/h15.]
- Your interest rate will equal the index rate plus our margin [unless your interest rate "caps" [or "floors"] limit the amount of change in the interest rate.]
- [Your initial interest rate is not based on the index used to make later adjustments. Ask us for the amount of the current interest rate discount.]

How Your Interest Rate Can Change

- Your interest rate can change [yearly] [, after the first _____].
- Your interest rate [cannot increase [or decrease] more than _____ percentage points per year.]
- Your interest rate [cannot increase [or decrease] more than _____ percentage points over the term of the loan.]

How Your Monthly Payment Can Change

- Your monthly payment [can increase or decrease substantially based on annual changes in the interest rate.]
- [For example, on a \$10,000, [_____] -year] loan with an initial interest rate of [_____] percent [in effect in (month) (year)], the maximum [interest rate is _____ %] [amount that the interest rate can rise under this program is _____ percentage points, to _____ percent], and the monthly payment can rise from a first-year payment of [\$_____] to a maximum of [\$_____ in the ____ year]. To determine your payment, divide your mortgage amount by \$10,000; then multiply the monthly payment by that amount. (For example, the monthly payment for a mortgage amount of \$60,000 would be: $\$60,000 \div \$10,000 = 6$; $6 \times \$______ = \$______$ per month.)
- You will be notified at least 210, but no more than 240, days before the first payment at the adjusted level is due after the initial interest rate adjustment of the loan. You will be notified at least 60, but no more than 120, days before the first payment at the adjusted level is due after any interest rate adjustment resulting in a corresponding payment change. [Include the following if applicable to the credit union's ARM program. For details, see The League's ii Release No. B002: You will be notified no more than 15 days before or 30 days after a rate change takes effect, as required by Wisconsin Statutes §138.056.] These notices will contain information about the adjustment, including the interest rate, payment amount, and loan balance.

[Rev. 07/2015] _____

I acknowledge receipt of a copy of this ARM application disclosure and the Consumer Handbook on Adjustable Rate Mortgages.

EXHIBIT B - DISCLOSURE OF “COMPOSITE” ANNUAL PERCENTAGE RATES FOR DISCOUNTED “TEASER” AND PREMIUM RATE VARIABLE RATE LOANS

Reg. Z Commentary § 1026.17(c)(1)

8. Basis of disclosures in variable-rate transactions.

The disclosures for a variable-rate transaction must be given for the full term of the transaction and must be based on the terms in effect at the time of consummation. Creditors should base the disclosures only on the initial rate and should not assume that this rate will increase. For example, in a loan with an initial rate of 10 percent and a 5 percentage points rate cap, creditors should base the disclosures on the initial rate and should not assume that this rate will increase 5 percentage points. However, in a variable-rate transaction with a seller buydown that is reflected in the credit contract, a consumer buydown, or a discounted or premium rate, disclosures should not be based solely on the initial terms. In those transactions, the disclosed annual percentage rate should be a composite rate based on the rate in effect during the initial period and the rate that is the basis of the variable-rate feature for the remainder of the term. (See the commentary to § 1026.17(c) for a discussion of buydown, discounted, and premium transactions and the commentary to § 1026.19(a)(2) for a discussion of the redisclosure in certain mortgage transactions with a variable-rate feature).

10. Discounted and premium variable-rate transactions.

In some variable-rate transactions, creditors may set an initial interest rate that is not determined by the index or formula used to make later interest rate adjustments. Typically, this initial rate charged to consumers is lower than the rate would be if it were calculated using the index or formula. However, in some cases the initial rate may be higher. In a discounted transaction, for example, a creditor may calculate interest rates according to a formula using the six-month Treasury bill rate plus a 2 percent margin. If the Treasury bill rate at consummation is 10 percent, the creditor may forgo the 2 percent spread and charge only 10 percent for a limited time, instead of setting an initial rate of 12 percent.

- i. When creditors use an initial interest rate that is not calculated using the index or formula for later rate adjustments, the disclosures should reflect a composite annual percentage rate based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation. The rate at consummation need not be used if a contract provides for a delay in the implementation of changes in an index value. For example, if the contract specifies that rate changes are based on the index value in effect 45 days before the change date, creditors may use any index value in effect during the 45 day period before consummation in calculating a composite annual percentage rate.
- ii. The effect of the multiple rates must also be reflected in the calculation and disclosure of the finance charge, total of payments, and payment schedule.
- iii. If a loan contains a rate or payment cap that would prevent the initial rate or payment, at the time of the first adjustment, from changing to the rate determined by the index or formula at consummation, the effect of that rate or payment cap should be reflected in the disclosures.
- iv. Because these transactions involve irregular payment amounts, an annual percentage rate tolerance of 1/4 of 1 percent applies, in accordance with § 1026.22(a)(3).

v. Examples of discounted variable-rate transactions include:

- A. A 30-year loan for \$100,000 with no prepaid finance charges and rates determined by the Treasury bill rate plus 2 percent. Rate and payment adjustments are made annually. Although the Treasury bill rate at the time of consummation is 10 percent, the creditor sets the interest rate for one year at 9 percent, instead of 12 percent according to the formula. The disclosures should reflect a composite annual percentage rate of 11.63 percent based on 9 percent for one year and 12 percent for 29 years. Reflecting those two rate levels, the payment schedule should show 12 payments of \$804.62 and 348 payments of \$1,025.31. The finance charge should be \$266,463.32 and the total of payments of \$366,463.32.

- B. Same loan as above, except with a 2 percent rate cap on periodic adjustments. The disclosure should reflect a composite annual percentage rate of 11.53 percent based on 9 percent for the first year, 11 percent for the second year, and 12 percent for the remaining 28 years. Reflecting those three rate levels, the payment schedule should show 12 payments of \$804.62, 12 payments of \$950.09, and 336 payments of \$1,024.34. The finance charge should be \$265,234.76 and the total of payments \$365,234.76.
- C. Same loan as above, except with a 7½ percent cap on payment adjustments. The disclosures should reflect a composite annual percentage rate of 11.64 percent, based on 9 percent for one year and 12 percent for 29 years. Because of the payment cap, five levels of payments should be reflected. The payment schedule should show 12 payments of \$804.62, 12 payments of \$864.97, 12 payments of \$929.84, 12 payments of \$999.58, and 312 payments of \$1,070.04. The finance charge should be \$277,040.60, and the total of payments \$377,040.60.
- vi. A loan in which the initial interest rate is set according to the index or formula used for later adjustments but is not set at the value of the index or formula at consummation is not a discounted variable-rate loan. For example, if a creditor commits to an initial rate based on the formula on a date prior to consummation, but the index has moved during the period between that time and consummation, a creditor should base its disclosures on the initial rate.

Exhibit C - Sample ARM Note Clause (Approved Index) (§ 138.056)

This clause is presented for illustrative purposes only. The credit union should consult with its attorney to develop a clause that is tailored to the credit union's ARM program.

This Note bears interest on the unpaid principal balance before maturity at the annual rate, which is equal to the following Index Rate, plus _____ percentage points ("Note Rate"), and the Note Rate shall be adjusted as provided below. The Index Rate is the average annual discount rate for 26-week U.S. Treasury bills, as determined by the _____ auction of the bills in the _____ month preceding this date and in the _____ month preceding each Change Date defined below, rounded up or down to the nearest _____ percentage point.

The Initial Note Rate is _____ % per year. The Note Rate will not exceed _____. The Note Rate will never be increased or decreased on any single Change Date defined below by more than _____ percentage points from the rate of interest in effect immediately prior to the Change Date.

The Note Rate shall be adjusted only on the following Change Dates

[Choose one]:

- ☐ The first day of each month.
- ☐ Each scheduled payment date.
- ☐ As and when the Index Rate changes.
- ☐ _____.

Lender may decline to implement in full or in part any authorized increase in the Note Rate, and such increase declined by the Lender may thereafter be used either to offset any subsequent decrease in the Index Rate or to supplement any subsequent increase in the Index Rate on any Change Date. An adjustment in the Note Rate will result in an increase or decrease in

[Choose one]:

- ☐ The amount of each payment of interest.
- ☐ The amount of the final payment.
- ☐ The number of scheduled periodic payments sufficient to repay this Note in substantially equal payments.
- ☐ The amount of each remaining payment of principal and interest so that those remaining payments will be substantially equal and sufficient to repay this Note by its scheduled maturity date.
- ☐ The amount of each remaining payment of principal and interest (other than the final payment) so that those remaining payments will be substantially equal and sufficient to repay this Note by its scheduled maturity date based on the original amortization schedule used by Lender, plus the final payment of principal and interest.

I agree to pay any resulting payments or amounts. If the Index Rate ceases to be available to Lender during the term of this Note, Lender may substitute a comparable index. The term of this Note may not exceed 30 years.

EXHIBIT D - SAMPLE ARM NOTE CLAUSE (NON-APPROVED INDEX) (§ 138.056)

This clause is presented for illustrative purposes only. The credit union should consult with its attorney to develop a clause that is tailored to the credit union's ARM program.

This Note bears interest on the unpaid principal balance before maturity at the initial rate of _____% per year. The rate in effect from time to time is called the "Note Rate." The Note Rate will not exceed _____. Lender may at its option increase or decrease the Note Rate at any time during the term of this Note but may not increase the Note Rate more often than once each six-month period commencing with the date of this Note, and not more than 1% for each six months. However, if Lender fails to increase the Note Rate to the full extent permitted by the preceding sentence, Lender is considered to have temporarily waived such increase and may at any time thereafter increase the Note Rate to a rate determined as if all increases were made in full at the first opportunity. An adjustment in the Note Rate will result in an increase or decrease in

[Choose one]:

- ☐ The amount of the final payment.
- ☐ The number of scheduled periodic payments sufficient to repay this Note in substantially equal payments.
- ☐ The amount of each remaining payment of principal and interest so that those remaining payments will be substantially equal and sufficient to repay this Note by its scheduled maturity date.
- ☐ The amount of each remaining payment of principal and interest (other than the final payment) so that those remaining payments will be substantially equal and sufficient to repay this Note by its scheduled maturity date based on the original amortization schedule used by Lender, plus the final payment of principal and interest.

I agree to pay any resulting payments or amounts. The term of this Note may not exceed 30 years.

**EXHIBIT E - SAMPLE WISCONSIN CONSUMER ACT ARM NOTE CLAUSE
(APPROVED INDEX) (§ 422.421)**

This clause is presented for illustrative purposes only. The credit union should consult with its attorney to develop a clause that is tailored to the credit union's ARM program.

This Note bears interest on the unpaid principal balance until the final scheduled maturity date at the annual rate, which is equal to the following Index Rate, plus _____ percentage points ("Note Rate"), and the Note Rate shall be adjusted as provided below. The Index Rate is the average annual discount interest rate for 26-week U.S. Treasury bills, as determined by the _____ auction of the bills in the _____ month preceding this date and in the month preceding each Change Date defined below, rounded up or down to the nearest _____ percentage point.

The Initial Note Rate is _____% per year. An adjustment in the Note Rate will result in an increase or decrease in

[Choose one]:

- ☐ The amount of each payment of interest.
- ☐ The amount of the final payment.
- ☐ The number of scheduled periodic payments sufficient to repay this Note in substantially equal payments.
- ☐ The amount of each remaining payment of principal and interest so that those remaining payments will be substantially equal and sufficient to repay this Note by its scheduled maturity date.
- ☐ The amount of each remaining payment of principal and interest (other than the final payment) so that those remaining payments will be substantially equal and sufficient to repay this Note by its scheduled maturity date based on the original amortization schedule used by Lender, plus the final payment of principal and interest.

I agree to pay any resulting payments or amounts.

The Note Rate shall be adjusted only on the following Change Dates

[Choose one]:

- ☐ The first day of each month.
- ☐ Each scheduled payment date.
- ☐ As and when the Index Rate Changes.
- ☐ _____

The Note Rate shall not exceed _____. If the Index Rate ceases to be available to Lender during the term of this Note, the Lender may substitute a comparable Index. The term of this Note may not exceed 30 years.

Rev. (4/13)

EXHIBIT F - BASIC CLOSED-END ARM LOAN DOCUMENTATION CHECKLIST

This checklist is designed to assist you with basic closed-end adjustable rate real estate mortgage lending in Wisconsin. It does not address the requirements of laws of other states that may apply when the borrower resides, or collateral is located, in another state.

This checklist does *not* include extra requirements for construction, secondary market, commercial, open-end, government-insured, condominium, business, or purchase-money real estate loans. Please call The League's Legal Affairs Department with any questions about the checklist items.

This checklist is a supplement to the basis real estate lending checklist provided in *ii Release No. B053*, Exhibit A. This version emphasizes the additional requirements for basic ARM lending. See the checklist in *ii Release No. B053* for more details on the basic real estate lending issues.

Advertising

- ☐ Consult *ii Release No. 0124 – Advertising Compliance Checklist*.
 - Devote particular attention to the Truth in Lending and the “trigger terms”
 - The APR must be calculated properly, reflecting any finance charges other than interest.
 - The checklist includes some items that have special application to adjustable rates.
 - Keep in mind that a “discounted” or “premium” initial rate (not derived from merely adding the margin to the current index value) will require calculating a composite APR. The composite APR is based on the initial rate for as long as it is charged and, for the remainder of the term, the rate that would have been applied using the index or formula at the time of consummation.
 - Credit unions can check the accuracy of their APR calculations with free software developed by federal regulators at <https://www.ffiec.gov/examtools/FFIEC-Calculators/APR/#/accountdata>

Lobby Poster

- ☐ “Equal Housing Opportunity” poster. See *ii Release No. B021*.
- ☐ Home Mortgage Disclosure Act notice. See *ii Release No. B017*. (Required for credit unions subject to HMDA/Reg. C.)
- ☐ Customer Identification Program (CIP) Notice. See *ii Release No. 0159*.

At the Time of Application

- ☐ Delay charging fees as required by Reg. Z § 1026.19(a).
- ☐ Credit Union Loan Application (#82083).
- ☐ Information for Government Monitoring Purposes. Use only when required by Reg. B (ECOA). See *ii Release No. B041, Exhibit A*.
- ☐ If the credit union is subject to HMDA/Reg. C, and if the transaction is a “covered loan” (most dwelling-secured loans are covered, though there are exceptions), then the credit union must notify applicants that it is requesting certain information and then request that information (or collect it based on visual observation or surname in some cases). See *ii Release No. B017*. Do not use the Reg. B “Voluntary Information for Government Monitoring Purposes” form, found in *ii Release No. B041 Exhibit A*, for compliance with Reg. C, since it does not comply with HMDA on or after Jan. 1, 2018. As of that date, HMDA requires a more extensive data collection form for demographic information of applicant and co-applicant.
- ☐ Provide the CFPB's "*Consumer Handbook on Adjustable-Rate Mortgages*" (*CHARM booklet*) at the time of application or before the consumer pays a nonrefundable fee, whichever is earlier, if secured by the consumer's primary residence with a term greater than one year.
- ☐ Provide the Reg. Z ARM Application Disclosure if secured by the consumer's primary residence with a term greater than one year.
 - See Reg. Z § 1026.19(b) and commentary, and *ii Release No. B030*.
 - Update your disclosure annually *and* whenever program changes.
 - Professionally developed disclosures may help assure compliance.

In Originator's First Written Communication (or Earlier)

- ☐ Mortgage loan originator's "unique identifier." *See ii Release No. B070.*

Within 3 Business Days of Application

- ☐ WCA or Non-WCA loan forms? *See ii Release No. B001.*
- ☐ Determine whether the loan is HOEPA high-cost mortgage loan. *See ii Release No. B062.*
- ☐ Determine whether the loan is a Higher-Priced Mortgage Loan. *See ii Release No. B068.*
 - The FFIEC's HPML calculator requires input of whether the rate is fixed or variable. www.ffiec.gov/ratespread/newcalc.aspxH.
 - The calculated APR for the loan, not just the bare interest rate, must be input. Remember that the APR is affected by Finance Charges and by providing a discounted or premium rate, rather than the indexed rate, at closing. *See Exhibit B of this release.*
- ☐ Loan Estimate. *See ii Release No. B079.*
- ☐ RESPA Servicing Disclosure Statement. *See ii Release No. B014.*
- ☐ Homeownership counseling list. *See ii Release No. B014.*

Underwriting

- ☐ Ability-to-repay/qualified mortgage rule. *See ii Release No. B074.*
- ☐ Underwriting for Higher-Priced Mortgage Loans. *See ii Release No. B068.*
- ☐ Appraisal or qualified "evaluation" showing fair market value. *See ii Release No. B008.*
- ☐ Letter report/title insurance/abstract & attorney opinion. *See ii Release No. B053.*
- ☐ FEMA Standard Flood Hazard Determination form. *See ii Release No. B003.*
- ☐ Insurance policy. *See ii Release No. B053.*
- ☐ Credit score disclosure. *See ii Release No. 0126.*
- ☐ Risk-based pricing notice. *See ii Release No. 0126.*
- ☐ Evidence of payment of taxes. *See ii Release No. B053.*
- ☐ Environmental review.
- ☐ Documentation of types of mortgages held by senior lien holders, with current balance/limit. *See ii Release No. B053.*

Within 30 Days of Application

- ☐ Adverse Action Notice (#82029). *See ii Releases No. 0126 and B041.*

Pre-Closing

- ☐ Affiliated Business Arrangement Disclosure (if applicable). *See ii Release No. B014.*
- ☐ Notice of Relationship. *Wis. Stats. § 186.116.*
- ☐ Notice of Special Flood Hazards and Notice of Availability of Federal Disaster Relief Assistance. *See ii Release No. B003.*
- ☐ HOEPA disclosures. *See ii Release No. B062.*
- ☐ Escrow Account Analysis. *See ii Release No. B014.*
- ☐ Payoff quotes from prior mortgage lenders who will be paid off.
- ☐ Homeownership counseling certification (for certain loans, including HOEPA loans and loans with negative amortization). *See ii Release Nos. B042 and B062.*
- ☐ Copies of appraisals/valuations to applicant. *See ii Release No. B077.*
- ☐ Closing Disclosure. *See ii Release No. B079.*

Closing

- ☐ Waiting periods before loan closing. *See ii Release No. B079.*
- ☐ Customer Identification Program (CIP) procedures for each borrower. *See ii Release No. 0159.*

- ☐ Check Office of Foreign Assets Control (OFAC) list for the name of each borrower, co-borrower, guarantor, check payee, etc. *See ii Release No. 0148.*
- ☐ Combined Notice to Cosigner and Explanation of Personal Obligation (Closed-End) (#82028). *See ii Release No. B007.*
- ☐ Note.

WCUL forms:

- Consumer Note (#82073), if Wisconsin Consumer Act loan.
 - Use the preprinted variable rate clauses in the note, if it suits your ARM program, or check the separate box referencing a completed Consumer Variable Interest Rate Addendum (#82018).
- Mortgage Note (non-consumer) (#82042) if non-WCA loan.
 - Complete form with the preprinted variable rate clause in the center, if it suits your ARM program, or check the separate checkbox, referencing a completed variable interest rate addendum.

FNMA/FMAC forms:

- Wisconsin single-family version of (1) Multistate Fixed/Adjustable Rate Note or (2) Adjustable Rate Note (*consult vendor for appropriate version*).
 - May not be available in Wisconsin Consumer Act version.
 - Buy the form from a vendor so it is ready for use.
 - 1-4 Family Rider needed if rental.
 - These forms do not typically include language for:
 - Setoff/consensual lien on shares
 - Cross-collateral
 - Interest rate carry-over
 - Complete note with attorney-drafted variable rate clause in compliance with Wis. Stats. § 422.421 (Wisconsin Consumer Act) or sec. 138.056(2) (Non-WCA) as applicable.
 - Prepayment penalties are generally prohibited in Wisconsin; the only possibilities are in limited situations with specialized forms and guidance.
- ☐ Mortgage.

WCUL forms:

- Consumer Mortgage (#82020) if Wisconsin Consumer Act; Mortgage (non-consumer) (#82043) if non-WCA.

FNMA/FMAC forms:

- Mortgage - Wisconsin Single Family FNMA/FMAC Uniform Instrument (Form 3050) *and* Multi-State Fixed/Adjustable Rate Rider – Single Family (*consult vendor for appropriate version*).
 - Be sure to use both the mortgage and the adjustable rate rider.
 - This form typically includes an escrow requirement, which can only be waived in writing by the lender.
 - Buy form from a vendor so it is ready to use.
- ☐ Initial Escrow Account Disclosure Statement. *See ii Release No. B014.*
- ☐ Notice of Escrow Payment Options. *See ii Release No. B047.*
- ☐ Notice of Right to Cancel (#82034). *See ii Release No. B036.*
- ☐ Copy of credit report to borrower. *Wis. Stats. § 186.53.*
- ☐ Payroll deduction or automatic payment authorization, if voluntarily signed.

Post Closing

- ☐ Record mortgage A.S.A.P.
- ☐ Tattle Tale notice. *See ii Release No. B005.*
- ☐ Notice of lien to senior mortgage holders. *See ii Release No. B048.*
- ☐ Confirmation that Notice of Right to Cancel not exercised (after midnight of the third business day). *See ii Release No. B036.*
- ☐ Obtain final title policy or letter report.
- ☐ Comply with Reg. Z and Reg. X Mortgage Servicing Rule. *See ii Release No. B075.*

Before Any Interest Rate Change on an ARM

- ☐ Send Interest Rate Adjustment Notices meeting all applicable timing and content requirements that apply per:
 - Wisconsin Consumer Act § 422.421
 - Wis. Stats. § 138.056
 - Reg. Z § 1026.20
 - Your loan note (FNMA/FMAC notes add more content in the notices than required by law)

See ii Release No. B002.

Annual

- ☐ Information Returns Reporting. *See ii Release No. 0130.*
- ☐ Monitor for Annual Payment of Real Estate Taxes. *Wis. Admin. Code. Ch. DFI-CU 54.*
- ☐ Annual Escrow Account Statements. *See ii Release No. B014.*
- ☐ Home Mortgage Disclosure Act (HMDA) Loan/Application Register. *See ii Release No. B017.* (In some cases, credit unions are required to submit data quarterly.)

At least 15 days before effective date of assignment, sale or transfer of servicing rights (if provided by transferor) or no more than 15 days after effective date (if provided by transferee).

- ☐ Notice of Servicing Transfer. *See ii Release No. B014.*

Within 30 Days of Sale or Transfer of Mortgage Loan

- ☐ Mortgage Transfer Disclosure. *See ii Release No. B042.*

Delinquency

- ☐ HUD Homeowner Delinquency Notice and Servicemembers Civil Relief Act Notice. *See ii Release No. B058.*
- ☐ FACT ACT Notice of Negative Information. *See ii Release No. 0126.*
- ☐ Notice of Right to Cure Default. *See ii Release No. B031.*
- ☐ Comply with Reg. Z and Reg. X Mortgage Servicing Rule provisions related to delinquency. *See ii Release No. B075.*

At Time Debt is Fully Paid

- ☐ Satisfaction of Mortgage (#81063). *See ii Release No. B078.*

EXHIBIT G - ARM RATE CHANGE NOTICES REQUIRE CLOSE ATTENTION TO RULES

We provide this exhibit to “walk through” the analysis and the considerations involved in a variable rate loan adjustment.

A popular variable rate mortgage rate index, *The Wall Street Journal* prime rate, inched up from 3.50% to 3.75% on December 15, 2016. A virtually identical index used by other lenders, the bank prime loan rate reported in the *Federal Reserve Board's H.15 Selected Interest Rates*, had the same change on the same date.

The effects of rate index changes on your adjustable rate loan programs may be very different from the effects on other lenders. The rate changes, if any, required for your existing loan products will depend on the variable rate clause in your loan agreement and the specific terms provided. The timing and content of your rate change notices, if any, will depend on both the loan agreement and applicable law.

Here is the problem. Each of the following laws or rules has its own requirements for variable rate adjustment notices:

- Reg. Z applies to nearly all residential mortgage loans,
- Wis. Stats. § 422.421 applies to all Wisconsin Consumer Act loans with adjustable rates, and
- Wis. Stats. § 138.056 applies to nearly all Wisconsin residential loans secured by a first lien on a primary residence.

Each of these laws has its own scope, timing, and sometimes content requirements for the notices.

Reg. Z does not preempt the Wisconsin laws, so a given member's loan will often be subject to one of the state laws as well as Reg. Z. That can make your notices complicated - any given mortgage loan or HELOC may well be subject to two of the rules. If so, your notice must comply with both laws.

Any given *loan product* at your credit union may have to comply with *all three rules* because some members may have second mortgages under the Wisconsin Consumer Act and other members may have first mortgages subject to Wis. Stats. § 138.056. And all are likely to be subject to the Regulation Z notice rules.

If your credit union has a federal charter (not just federal insurance), the NCUA says that the Federal Credit Union Act preempts any state law purporting to limit or affect the manner or timing of notifying the borrower of a change in interest rate. See NCUA Rules & Regs. § 701.21(b). As a result, a federally chartered credit union may only need to comply with Reg. Z notice requirements. However, this preemption of state law is compromised to the extent the credit union, in its forms, *agrees* to be bound by the Wisconsin Consumer Act.

Please use *ii Release No. B002* to determine which compliance timing and content requirements apply to your notices for your various loan programs under each of the laws that applies. In this exhibit we will provide some examples of how the rules can apply in some situations, but the full guidance regarding which requirements may apply to *your* loan programs is found in the *ii Release*.

Closed-end ARMs

ii Release No. B002 is helpful for your rate change notices on closed-end adjustable rate mortgages. You would follow the steps in the *ii Release*, reviewing the requirements for the Wisconsin Consumer Act, Wis. Stats. § 138.056, and Reg. Z.

The Reg. Z rules were drastically revised in 2014 they are very complex. The *ii Release No. B002* gives detailed guidance. There are also commercial vendors willing to assist with those notices. But be sure to still comply with Wisconsin law. Nationwide vendors might not address the notice requirements imposed in Wisconsin. If so, the credit union must take up the slack. Again, compliance with Wis. Stats. § 138.056 may cause the biggest complication:

- It may require a notice when not required by Reg. Z (such as when the rate changes without an increase in the payment).
- The timing may be different.
- The contents may be different.

Pages 7-9 of *ii Release No. B002* provides extensive discussion exploring the differences in "State v. Federal Arm Notice Rules." We won't deal with every step here, but we can offer an overview of what you can expect.

Timing

On most closed-end ARMs subject to Regulation Z with a term greater than one year and secured by a principal residence:

- For the initial rate change, the notice must be provided 210 to 240 days before the first payment at the new rate is due.
- For ongoing rate changes, the notices must be provided 60 to 120 days before the first payment change triggered by a new rate is due.

The contents of the Reg. Z rate change notices are complex. They must include:

1. A statement including:
 - An explanation that under the terms of the loan, the interest rate may change,
 - The effective date of the adjustment and future adjustments, and
 - Any other changes to loan terms, features, or options on the same date;
2. A table containing:
 - The current and new rates,
 - The current and new payments and the date the first payment is due, and
 - For interest- only or negatively-amortizing payments, allocation and other information;
3. An explanation of how the rate is determined, including:
 - The specific index or formula used in making the adjustment and a source of information about that index or formula, and
 - The type and amount of any adjustment to the index, including any margin and information on the margin;
4. Any limits on the interest rate or payment increases, including the extent to which such limits result in foregone increase to the interest rate, and the earliest date such increases may apply in the future;
5. An explanation of how the new payment is determined, including:
 - The index or formula used,
 - Any adjustment to the index or formula, such as a margin,
 - The loan balance expected on the date of the adjustment,
 - The length of the remaining loan term, and
 - If the new rate or payment is an estimate (see below for more information), a statement that actual information will be coming 2 to 4 months before the adjustment;
6. If applicable, a statement (as described in the text of the regulation) that the new payment will be interest only, or will result in negative amortization; and
7. The circumstances under which a prepayment penalty (as defined in §1026.32(b)(6)(i)) may be imposed.

The following additional items must be included in the initial Reg. Z rate adjustment disclosure *only*:

- The date of the disclosure;
- The telephone number of the servicer (for consumers to call if they anticipate not being able to make payments);
- Alternatives to paying at the new rate, by including a brief explanation of (i) refinancing the loan, (ii) selling the property, (iii) modifying the terms of the loan, and (iv) arranging payment forbearance; and
- Housing counseling information. (See the material on page 7 of *ii Release No. B002* for details on the housing counseling information.)