What is this new field?

In October of 2016, the CFPB released proposed clarifications on Appendix D. In anticipation of the likely changes, we have added a question on our order forms to ask if you would like to "Ignore the effect of payment increases due to draw?"

Loan Information

Have you provided an initial CD to the consumer?	○ No ◉ Yes
Ignore the effect of payment increases due to draw?	○ Yes ◉ No
Do you want to track fee history?	○ Yes ◉ No
Lien Position	◉ First Lien ○ Subordinate Lien

What does this mean?

Today, we print "YES" on the CD under whether the payment can change by default. We take the more conservative approach when a draw loan switches from the draw period to the permanent phase and disclose that the principal and interest payment can change, even if it wouldn't change for any other reason. We show the initial payment in the left side of the column and then disclose that it can increase and we show the maximum payment amount. This is what prints normally when you do NOT ignore the effect of payment increases due to the draw:

Loan Terms		**Can this amount increase after closing?**	
Loan Amount	$100,000	**NO**	
Interest Rate	4%	**NO**	
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$169.86	**YES**	• Adjusts **every month** starting in mo. 1 • Can go **as high as $8,515** in mo. 1
		Does the loan have these features?	
Prepayment Penalty		**NO**	
Balloon Payment		**YES**	• You will have to pay **$100,014** at the end of year 1

When you select "YES" to ignore the effect of payment increases due to the draw, the system will look at the reasons why the principal and interest could increase due to an ARM, other interest only term during the permanent phase, etc and determine if the only reason to print YES would be the switch from the draw period to the permanent. If that is the case and you choose to ignore the effect of the payment increase due to the draw period, it will print NO:

Loan Terms		**Can this amount increase after closing?**	
Loan Amount	$100,000	**NO**	
Interest Rate	4%	**NO**	
Monthly Principal & Interest *See Projected Payments below for your Estimated Total Monthly Payment*	$169.86	**NO**	
		Does the loan have these features?	
Prepayment Penalty		**NO**	
Balloon Payment		**YES**	• You will have to pay **$100,014** at the end of year 1

What authority do you have to do this?
With respect to the whether the monthly principal and interest amount can increase after closing, the CFPB clarified that the technical answer is NO, but the creditor may also answer as YES to reflect the nature of construction financing. We use guidance from the proposed amendments to TRID (see this link for more information):

> v. *Increase in periodic payment.*
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> A. Calculation of the construction financing periodic
> payments using the assumptions in appendix D produces interest-only periodic payments that are equal in amount. If a creditor provides a separate disclosure for fixed-rate construction financing, although a technically correct answer to "Can this amount increase after closing?" pursuant to § 1026.37(b)(6) is "NO" because appendix D produces interest-only periodic payments that are equal in amount, a creditor may disclose the answer as "YES" to reflect the fact that actual payments may be more than the amount calculated using appendix D.
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> B. If separate disclosures are provided for fixed-rate construction financing and appendix D is used to calculate the periodic payment, a creditor may omit the disclosures pursuant to § 1026.37(b)(6)(iii) and the disclosure of a range of payments under § 1026.37(c)(2)(i) in the construction financing disclosure.

And also,

> Section 1026.37(b)(6) requires a creditor to provide an affirmative or negative answer to the question, "Can this amount increase after closing?" with respect to certain amounts, including the initial periodic payment amount disclosed under § 1026.37(b)(3). Creditors have asked the Bureau what answer may be provided to this question in the case of construction financing if the actual schedule of advances is not known. Proposed comment app. D-7.v explains that, in general, the answer a creditor provides will depend upon whether the construction financing has a fixed rate or an adjustable rate. Proposed comment app. D-7.v.A 157 and B discusses the disclosure of fixed-rate construction financing, and proposed comment app. D-7.v.C discusses the disclosure of adjustable-rate construction financing.
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> The payments made during the construction phase are often interest-only payments. The amount of any particular interest-only payment on a construction loan is typically determined by applying the contract interest rate to the amounts advanced. The amounts advanced may be tied to construction milestones and the total of the amounts advanced will increase with each milestone, usually resulting in increases in the amounts of the interest-only payments that become due. If the construction financing has a fixed rate, the periodic interest-only payments will increase over the term of the loan, reflecting increases in the amounts advanced. If the construction financing has an adjustable rate, the periodic interest-only payments may also increase over time, but the increase may be due to both an increase in the adjustable interest rate and increases in the amounts advanced.
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> A creditor may use the methods in appendix D to estimate interest and make disclosures for construction loans if the actual schedule of advances is not known. The calculation of the periodic payments in a fixed-rate construction loan using appendix D produces interest-only periodic payments that are equal in amount. Although the actual interest-only payments will increase over the term of the construction financing as the amounts advanced increase, because the methods provided by appendix D to estimate interest may be used to make disclosures, a technically correct and compliant answer to "Can this amount increase after closing?" is "NO." The periodic payments for fixed rate construction financing, as calculated under appendix D, do not increase but are equal.
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> Creditors nonetheless have expressed concern over providing an answer of "NO" to the question, "Can this amount increase after closing?" This technically correct disclosure may not 158 reflect the actual increase in payments that will occur over the term of the construction financing, even though the amount of such increases is not known at or before consummation. The Bureau is therefore proposing comment app. D-7.v.A to explain that a creditor may disclose the initial periodic payment using appendix D and nevertheless may answer "YES" to the question, "Can this amount increase after closing?" Comment app. D-7.v.A would also explain that a technically correct answer to "Can this amount increase after closing" is "NO."