

Know Before You Owe Mortgage Disclosure Rule: Post-Effective Date Questions & Guidance

Outlook Live Webinar – April 12, 2016

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The content of this webinar is current as of the date the webinar was originally presented. This webinar has not been updated since its original presentation date and does not reflect the changes and clarifications set forth in the final rule issued on July 7, 2017.

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This presentation:

- Is current as of April 12, 2016.
- Does not contain legal interpretations, legal guidance, or legal advice.
- Is not a substitute for the Integrated Disclosure Rule. Only the Rule, including its amendments and official commentary, can provide complete and definitive information regarding the Rule's requirements.
- Is not binding on the Bureau and does not create any rights, benefits, or defenses, substantive or procedural, that are enforceable by any party in any manner.

Background

- **Before the effective date of the Rule**, Bureau staff presented five webinars to facilitate implementation:
 - Questions addressed in those webinars are indexed and linked on Outlook Live
 - Multiple other compliance aids are available on the Bureau's [webpage](#) dedicated to the implementation of the Rule
- **Since the effective date of the Rule:**
 - The Bureau updated its [eRegulations tool](#), which includes an unofficial, but user-friendly compilation of Regulation Z's regulation text, commentary, and section-by-section analysis
 - Bureau staff presented a sixth webinar, on [Construction Lending](#)
- Bureau staff have continued to reach out and engage with industry stakeholders and State and Federal regulators by responding to inquiries, speaking at conferences, and participating in meetings.
- Today's webinar will focus on common questions that stakeholders have submitted to the Bureau in recent weeks.

Topics to be Discussed

- General Principles
- APR
- Total Interest Percentage (TIP)
- Owner's Title Insurance
- Flood Insurance Premiums
- Refinance Transaction – Escrow Accounts
- Separate Disclosures
- Assumptions
- Property Taxes
- Fees Collected Prior to Consummation
- Calculating Cash to Close – Loan Amount
- Principal Curtailments
- Construction Lending – Interest Reserve

General Principles for Completing the Loan Estimate & Closing Disclosure

Q1: How does a creditor determine whether it must disclose a particular item on the Loan Estimate and Closing Disclosure?

- 12 CFR 1026.17(c)(1) – “The disclosures shall reflect the terms of the legal obligation between the parties.”
 - Comment 17(c)(1)-1 – “The legal obligation is determined by applicable State law or other law. Disclosures based on the assumption that the consumer will abide by the terms of the legal obligation throughout the term of the transaction comply with § 1026.17(c)(1).”
- 12 CFR 1026.19(e)(1)(i) – “[T]he creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.”
- Comment 19(e)(1)(i)-1 – “[A] disclosure is in good faith if it is consistent with § 1026.17(c)(2)(i) The ‘reasonably available’ standard requires that the creditor, acting in good faith, exercise due diligence in obtaining information.”
- 12 CFR 1026.17(c)(2)(i) – “If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer”

Decrease in APR; Finance Charge Remains Accurate

Q2: Is an additional 3-business day waiting period required if the APR decreases by more than 1/4 or 1/8 of a percentage point, but the finance charge remains accurate?

- 12 CFR 1026.22(a)(4) – “If the annual percentage rate disclosed in a transaction secured by real property or a dwelling varies from the actual rate . . . the disclosed annual percentage rate shall also be considered accurate if:
 - i. The rate results from the disclosed finance charge; and
 - ii. The disclosed finance charge would be considered accurate under . . . § 1026.38(o)(2)”

Decrease in APR; Finance Charge Remains Accurate (Q2 Continued)

- 12 CFR 1026.18(d)(1); 12 CFR 1026.38(o)(2) – “The disclosed finance charge and other disclosures affected by the disclosed financed charge (including . . . the annual percentage rate) shall be treated as accurate if the amount disclosed as the finance charge:
 - i. Is understated by no more than \$100; or
 - ii. Is greater than the amount required to be disclosed.”
- 12 CFR 1026.4 – Finance Charge
- 12 CFR 1026.22(a)(5); 12 CFR 1026.19(f)(2)(ii)
- See the [Closing Factsheet](#) on the Bureau’s webpage
- See the [Mortgage Disclosure Improvement Act: Corrected Disclosure for an Overstated APR](#) article in the Federal Reserve System’s Consumer Compliance Outlook newsletter (First Quarter 2011)

APR & Lender Credits

Q3: Can premium rate credits or other types of lender credits be applied to reduce the finance charge and APR?

- 12 CFR 1026.4 – Finance Charge
- 12 CFR 1026.17(c)(1) – “The disclosures shall reflect the terms of the legal obligation”
- Comment 17(c)(1)-19 – “In a loan transaction . . . [s]uch premiums and rebates must be reflected in accordance with the terms of the legal obligation between the consumer and the creditor. Thus, if the creditor is legally obligated to provide the premium or rebate to the consumer as part of the credit transaction, the disclosures should reflect its value in the manner and at the time the creditor is obligated to provide it.”

APR & Lender Credits (Q3 Continued)

- Comment 19(e)(3)(i)-5 – “Non-specific lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee Specific lender credits are specific payments . . . to pay for a specific fee.”
- 12 CFR 1026.37(g)(6)(ii) – “Under the subheading ‘Total Closing Costs,’ . . . [t]he amount of any lender credits”
- Comment 38(h)(3)-1 – “When the consumer receives a generalized credit from the creditor for closing costs, the amount of the credit must be disclosed under § 1026.38(h)(3). . . . [I]f such credit is attributable to a specific loan cost or other cost . . . that amount should be reflected in the Paid by Others column in the Closing Cost Details tables under § 1026.38(f) or (g).”

APR & Seller Points or Credits

Q4: Can seller points or credits be applied to reduce the finance charge and APR?

- Comment 4(c)(5)-1 – “The Seller’s points . . . include any charges imposed by the creditor upon the . . . seller of property for providing credit to the buyer or for providing credit on certain terms.”
- Comment 4(c)(5)-2 – “Mortgage insurance premiums and other finance charges are sometimes paid at or before consummation . . . on the borrower’s behalf by a . . . seller. The creditor should treat the payment made by the seller as seller’s points and exclude it from the finance charge if, based on the seller’s payment, the consumer is not legally bound to the creditor for the charge.”
- Comment 37(h)(1)(vi)-1 – “The seller credits known to the creditor at the time of delivery of the Loan Estimate are disclosed under § 1026.37(h)(1)(vi).”

APR & Seller Points or Credits (Q4 Continued)

- 12 CFR 1026.38(j)(2)(v) – “Under the heading ‘Summaries of Transactions,’ . . . labeled ‘Paid Already by or on Behalf of Borrower at Closing’ . . . [t]he total amount of money that the seller will provide at the real estate closing as a lump sum”
- Comment 38(j)(2)(v)-1 – “When the consumer receives a generalized credit from the seller for closing costs . . . the amount of the credit must be disclosed [in the Summaries of Transactions table]. However, if the seller credit is attributable to a specific loan cost or other cost listed in the Closing Cost Details tables . . . that amount should be reflected in the seller-paid column in the Closing Cost Details tables under § 1026.38(f) or (g).”

Total Interest Percentage (TIP) on the Loan Estimate

Q5: When calculating the Total Interest Percentage on the Loan Estimate, should prepaid interest be included, even if that amount is going to be offset by a credit to the consumer?

- 12 CFR 1026.37(l)(3) – “The total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the amount of credit extended, using the term ‘Total Interest Percentage,’ the abbreviation ‘TIP,’ and the statement ‘The total amount of interest that you will pay over the loan term as a percentage of your loan amount.’”
- “Section 1026.37(l)(3) requires that the calculation include the total amount of interest that the consumer will pay over the life of the loan, which includes prepaid interest.” 78 FR 79730, 79981 (Dec. 31, 2013)
- 12 CFR 1026.17(c)(1) – “The disclosures shall reflect the terms of the legal obligation between the parties.”

Total Interest Percentage (TIP) on the Closing Disclosure

Q6: When calculating the Total Interest Percentage on the Closing Disclosure, are specific credits that offset prepaid interest deducted from the calculation?

- 12 CFR 1026.38(o)(5) – “The total amount of interest that you [the consumer] will pay over the loan term as a percentage of your loan amount.”

Negative Amount for Owner's Title Insurance Policy

Q7: The calculation of the owner's title policy premium in accordance with the rule might result in a negative number. Does the creditor disclose this negative number for the owner's title policy on the Loan Estimate and Closing Disclosure?

- Comment 37(g)(4)-2 – “The premium for an owner's title insurance policy for which a special rate may be available based on the simultaneous issuance of a lender's and an owner's policy is calculated and disclosed pursuant to § 1026.37(g)(4) as follows:
 - i. The title insurance premium for a lender's title policy is based on the full premium rate, consistent with § 1026.37(f)(2) or (f)(3).
 - ii. The owner's title insurance premium is calculated by taking the full owner's title insurance premium, adding the simultaneous issuance premium for the lender's coverage, and then deducting the full premium for lender's coverage.”

Disclosure of Flood Insurance Premiums – Generally

Q8: How are premiums for flood insurance disclosed on the Loan Estimate and Closing Disclosure?

- 12 CFR 1026.4(b)(8) – “The finance charge includes . . . [p]remiums or other charges for insurance against loss of or damage to property . . . written in connection with a credit transaction.”
- 12 CFR 1026.37(c)(4)(iv); 12 CFR 1026.38(c)(2)
- 12 CFR 1026.37(g)(2)(i); 12 CFR 1026.38(g)(2)
- Comments 37(g)(2)-3 and 37(g)(3)-3 – “[T]he term ‘homeowner’s insurance’ means the amounts identified in § 1026.4(b)(8)”

Flood Insurance Premiums – Projected Payments Table

Q9: How does a creditor disclose on the Projected Payments table that the creditor is paying only flood insurance and not other casualty insurance from escrow account funds?

- Comment 37(c)(4)(iv)-2 – “[T]he creditor may indicate that only some of those amounts will be paid using escrow account funds, such as by using the word ‘some.’”
- For information on new Federal flood insurance requirements that took effect in January 2016, *see* the Outlook Live webinar on October 22, 2015, available at:
<https://consumercomplianceoutlook.org/outlook-live/2015/interagency-flood-insurance-regulation-update/>

Refinance Transaction: Escrow Account – Alternative Loan Estimate

Q10: In a refinance transaction, how may a creditor disclose on the alternative Loan Estimate that it is using the balance in the escrow account associated with the prior loan to fund the escrow account associated with the new loan?

- 12 CFR 1026.37(g)(3) – “[A]n itemization of the amounts that the consumer will be expected to place into a reserve or escrow account at consummation to be applied to recurring periodic charges”
- 12 CFR 1026.37(h)(2)(iii) – “The total amount of payoffs and payments to be made to third parties not otherwise disclosed pursuant to paragraphs (f) and (g) of this section, disclosed as a negative number”

Refinance Transaction: Escrow Account – Alternative Closing Disclosure

Q11: In a refinance transaction, how may a creditor disclose on the alternative Closing Disclosure that it is using the balance in the escrow account associated with the prior loan to fund the escrow account associated with the new loan?

- 12 CFR 1026.38(g)(3) – “[A]n itemization of each amount for charges described in § 1026.37(g)(3)”
- Comment 38(g)(3)-1 – “The creditor must state the amount that it will require the consumer to place into a reserve or escrow account at consummation to be applied to recurring charges”
- 12 CFR 1026.38(t)(5)(vii)(B) – “[I]temizes the amounts of payments made at closing to other parties from the credit extended to the consumer or funds provided by the consumer in connection with the transaction”

Separate Disclosures: Borrower's & Seller's Information

Q12: Does the rule require that both the consumer and the seller receive a Closing Disclosure?

- 12 CFR 1026.19(f)(1)(i) – “[T]he creditor shall provide the consumer with the disclosures in § 1026.38 reflecting the actual terms of the transaction.”
- 12 CFR 1026.19(f)(4)(i) – “[T]he settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller’s transaction reflecting the actual terms of the seller’s transaction.”
- Comment 19(f)(4)(i)-1 – “The settlement agent complies with [12 CFR 1026.19(f)(4)(i)] by providing a copy of the Closing Disclosure provided to the consumer, if it also contains the information under § 1026.38 relating to the seller’s transaction, or alternatively providing the disclosures under § 1026.38(t)(5)(v) or (vi), as applicable.”
- 12 CFR 1026.38(t)(5)(v) – “The creditor or settlement agent preparing the form may use form H-25 of appendix H to this part for the disclosure provided to both the consumer and the seller, with the following modifications to separate the information of the consumer and seller, as necessary”

Model Form H-25(I) – Closing Disclosure Provided to Seller*

Closing Disclosure

Closing Information

Date Issued
 Closing Date
 Disbursement Date
 Settlement Agent
 File #
 Property
 Sale Price

Transaction Information

Borrower
 Seller

Summaries of Transactions

SELLER'S TRANSACTION

Due to Seller at Closing

01 Sale Price of Property
 02 Sale Price of Any Personal Property Included in Sale
 03
 04
 05
 06
 07
 08

Adjustments for Items Paid by Seller in Advance

09 City/Town Taxes to
 10 County Taxes to
 11 Assessments to
 12
 13
 14
 15
 16

Due from Seller at Closing

01 Excess Deposit
 02 Closing Costs Paid at Closing (J)
 03 Existing Loan(s) Assumed or Taken Subject to
 04 Payoff of First Mortgage Loan
 05 Payoff of Second Mortgage Loan
 06
 07
 08 Seller Credit
 09
 10
 11
 12
 13

Adjustments for Items Unpaid by Seller

14 City/Town Taxes to
 15 County Taxes to
 16 Assessments to
 17
 18
 19

CALCULATION

Total Due to Seller at Closing
 Total Due from Seller at Closing
 Cash From To Seller

Contact Information

REAL ESTATE BROKER (B)

Name
 Address
 ___ License ID
 Contact
 Contact ___ License ID
 Email
 Phone

REAL ESTATE BROKER (S)

Name
 Address
 ___ License ID
 Contact
 Contact ___ License ID
 Email
 Phone

SETTLEMENT AGENT

Name
 Address
 ___ License ID
 Contact
 Contact ___ License ID
 Email
 Phone



Questions? If you have questions about the loan terms or costs on this form, use the contact information above. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing

Closing Cost Details

Loan Costs

A. Origination Charges

01 % of Loan Amount (Points)
 02
 03
 04
 05
 06
 07
 08

B. Services Borrower Did Not Shop For

01
 02
 03
 04
 05
 06
 07
 08

C. Services Borrower Did Shop For

01
 02
 03
 04
 05
 06
 07
 08

Other Costs

E. Taxes and Other Government Fees

01 Recording Fees Deed: Mortgage:
 02

F. Prepaids

01 Homeowner's Insurance Premium (mo.)
 02 Mortgage Insurance Premium (mo.)
 03 Prepaid Interest (per day from to)
 04 Property Taxes (mo.)
 05

G. Initial Escrow Payment at Closing

01 Homeowner's Insurance per month for mo.
 02 Mortgage Insurance per month for mo.
 03 Property Taxes per month for mo.
 04
 05
 06
 07

H. Other

01
 02
 03
 04
 05
 06
 07
 08
 09
 10
 11
 12
 13

J. TOTAL CLOSING COSTS

Seller Paid

At Closing Before Closing

Separate Disclosures: Creditor's Copy

Q13: When a separate disclosure is provided to the seller, is the Settlement Agent required to provide the creditor with a copy of the seller's Closing Disclosure?

- 12 CFR 1026.19(f)(4)(iv) – “When the consumer’s and seller’s disclosures under this paragraph (f) are provided on separate documents, as permitted under § 1026.38(t)(5), the settlement agent shall provide to the creditor (if the creditor is not the settlement agent) a copy of the disclosures provided to the seller under paragraph (f)(4)(i) of this section.”
- 12 CFR 1026.25(c)(1)(ii) – “A creditor shall retain each completed disclosure required under § 1026.19(f)(1)(i) or (f)(4)(i), and all documents related to such disclosures, for five years after consummation”

Separate Disclosures: Seller's Closing Disclosure

Q14: When a separate disclosure is provided to the seller, what information is required to be disclosed on the seller's Closing Disclosure?

- 12 CFR 1026.38(t)(5)(v)(A) – “The information required to be disclosed by paragraphs (j) and (k) of this section may be disclosed on separate pages to the consumer and the seller, respectively, with the information required by the other paragraph left blank.”
- 12 CFR 1026.38(t)(5)(v)(B) – “The information required to be disclosed by paragraphs (f) and (g) of this section with respect to costs paid by the consumer may be left blank on the disclosure provided to the seller.”
- 12 CFR 1026.38(t)(5)(v)(C) – “The information required by paragraphs (a)(2), (a)(4)(iii), (a)(5), (b) through (d), (i), (l) through (p), (r) with respect to the creditor and mortgage broker, and (s)(2) of this section may be left blank on the disclosure provided to the seller.”
- 12 CFR 1026.19(f)(4)(i) – “[T]he settlement agent shall provide the seller with the disclosures in § 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction.”

Separate Disclosures: Seller-Paid Costs

Q15: When a separate disclosure is provided to the seller, must seller-paid Loan Costs and Other Costs be included on page 2 of the consumer's Closing Disclosure?

- 12 CFR 1026.38(t)(5)(v) – “The creditor or settlement agent preparing the form may use form H-25 of appendix H to this part for the disclosure provided to both the consumer and the seller, with the following modifications to separate the information of the consumer and seller, as necessary”
- 12 CFR 1026.38(t)(5)(v)(A) – “The information required to be disclosed by paragraphs (j) and (k) of this section may be disclosed on separate pages to the consumer and the seller, respectively, with the information required by the other paragraph left blank.”
- 12 CFR 1026.38(t)(5)(v)(B) – “The information required to be disclosed by paragraphs (f) and (g) of this section with respect to costs paid by the consumer may be left blank on the disclosure provided to the seller.”

Separate Disclosures: Seller-Paid Real Estate Commissions

Q16: When separate disclosures are provided to the consumer and the seller, must seller-paid real estate commissions be included on page 2 of the consumer's Closing Disclosure?

- Comment 38(g)(4)-1 – “The costs disclosed under § 1026.38(g)(4) include all real estate brokerage fees, homeowner’s or condominium association charges paid at consummation, home warranties, inspection fees, and other fees that are part of the real estate closing but not required by the creditor or not disclosed elsewhere under § 1026.38.”
- Comment 38(g)(4)-4 – “The amount of real estate commissions pursuant to § 1026.38(g)(4) must be the total amount paid to any real estate brokerage as a commission, regardless of the identity of the party holding any earnest money deposit. Additional charges made by real estate brokerages or agents to the seller or consumer are itemized separately as additional items for services rendered, with a description of the service and an identification of the person ultimately receiving the payment.”

Assumption: Disclosure on the Loan Estimate & Closing Disclosure

Q17: How does a creditor determine whether to disclose on the Loan Estimate and Closing Disclosure that an assumption is permitted?

- TILA section 128(a)(13) (15 USC 1638(a)(13)) – “In any residential mortgage transaction, a statement indicating whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions.”
- 12 CFR 1026.37(m)(2); 12 CFR 1026.38(l)(1) – “A statement of whether a subsequent purchaser of the property may be permitted to assume the remaining loan obligation on its original terms, labeled ‘Assumption.’”
- Comment 37(m)(2)-1 – “In many cases, the creditor cannot determine, at the time the disclosure is made, whether a loan may be assumable at a future date on its original terms. . . . If the creditor can determine that such assumption is not permitted, the creditor complies with § 1026.37(m)(2) by disclosing that the loan is not assumable. In all other situations, including where . . . uncertainty exists as to the future assumability of a mortgage loan, the creditor complies with § 1026.37(m)(2) by disclosing that, under certain conditions, the creditor may allow a third party to assume the loan on its original terms.”

Property Taxes: Tolerance Category & Disclosure on Loan Estimate

Q18: Can a creditor disclose a zero amount or make a rough guess for the amount of property taxes on the Loan Estimate and later update that information?

- 12 CFR 1026.19(e)(1)(i) – “[T]he creditor shall provide the consumer with good faith estimates of the disclosures in § 1026.37.”
- 12 CFR 1026.17(c)(2)(i) – “If any information necessary for an accurate disclosure is unknown to the creditor, the creditor shall make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer”
- *See generally* [Correction of Supplementary Information](#) notice, 81 FR 7032 (Feb. 10, 2016)

Fees Collected Prior to Consummation

Q19: If the consumer pays for a service before closing and the service ends up costing less than the amount collected by the creditor, does the creditor disclose those excess funds as a lender credit?

- Comment 19(e)(3)(i)-5 – Lender Credits
- 12 CFR 1026.38(f) – “Under the master heading ‘Closing Cost Details’ with columns stating whether the charge was borrower-paid at or before closing . . . all loan costs associated with the transaction, listed in a table under the heading ‘Loan Costs.’”
- 12 CFR 1026.38(g) – “Under the master heading ‘Closing Cost Details’ . . . with columns stating whether the charge was borrower-paid at or before closing . . . all costs in connection with the transaction, other than those disclosed under paragraph (f) of this section, listed in a table with a heading disclosed as ‘Other Costs.’”

Excess Funds Paid Before Consummation (Q19 Continued)

- **Scenario**

- Creditor collects \$500 from consumer prior to consummation, to pay for the cost of an appraisal
 - The appraisal ends up costing \$450
 - Therefore, the creditor has collected an excess amount of \$50
- How does the creditor handle the excess \$50?

Calculating Cash to Close – Loan Amount

Q20: For FHA loans with a Base Loan Amount and a Total Loan Amount, which loan amount should be used to complete the Calculating Cash to Close tables?

- 12 CFR 1026.37(b)(1) – “The amount of credit to be extended under the terms of the legal obligation, labeled ‘Loan Amount.’”

Principal Curtailments

Q21: How does the creditor disclose a principal curtailment when that is a feature of the transaction, including for example when it may be required under applicable loan program or investor requirements?

- 12 CFR 1026.38(j)(4)(i) – “Costs that are not paid from closing funds but that would otherwise be disclosed . . . should be marked with the phrase ‘Paid Outside of Closing’ or the abbreviation ‘P.O.C.’ and include the name of the party making the payment.”
- 12 CFR 1026.38(t)(1)(i) – “The creditor shall make the disclosures required by this section clearly and conspicuously in writing, in a form that the consumer may keep.”
- 12 CFR 1026.38(t)(5)(ix) – “An additional page may be attached to the form for the purpose of including customary recitals and information used locally in real estate settlements.”
- 12 CFR 1026.38(g)(4); 12 CFR 1026.38(t)(5)(vii)(B)

Construction Webinar Follow-Up Question: Interest Reserve

Q22: In a construction loan, how does a creditor disclose an “interest reserve” established to ensure that interest is paid as it accrues?

- Comment Appendix D-5.i – “If a creditor permits a consumer to make interest payments as they become due, the interest reserve should be disregarded in the disclosures and calculations under Appendix D.”
- Comment Appendix D-5.ii – “If a creditor requires the establishment of an interest reserve and automatically deducts interest payments from the reserve amount rather than allow the consumer to make interest payments as they become due, the fact that interest will accrue on those interest payments as well as the other loan proceeds must be reflected in the calculations and disclosures.”

Available Bureau Resources

- **Implementation Webpage for the Integrated Disclosure Rule:**
 - <http://www.consumerfinance.gov/regulatory-implementation/tila-respa/>
- **eRegulations Tool:**
 - <http://www.consumerfinance.gov/eregulations>