

TILA / RESPA Document Integration: Issues and Options

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Dodd-Frank Mandate

Dodd-Frank Act (“DFA”) section 1032(f) directed the CFPB to develop model forms that combine the early and final loan cost disclosures required under TILA with the early and final settlement cost disclosures required under sections 4 and 5 of RESPA (GFE, special information booklet and the HUD-1/1A settlement statement)

CFPB Authority

- TILA and RESPA were amended to require a combined disclosure but statutory differences still exist.
- CFPB does not have the power to change TILA and RESPA requirements, but it does have the power to independently interpret those requirements differently than FRB's and HUD's past interpretations and to change the disclosure forms accordingly.

Uniform Closing Data Set

- Freddie Mac

(<http://www.freddiemac.com/singlefamily/sell/ucd.html>) and

Fannie Mae

(<https://www.fanniemae.com/singlefamily/uniform-closing-dataset>)

have released a common industry dataset, called the Uniform Closing Dataset, which leverages and maps to Mortgage Industry Standards Maintenance Organization (MISMO) data standards, to support implementation of the TILA/RESPA Closing Disclosure form. MISMO is developing a corresponding mapping dataset for the Loan Estimate that will be available soon.

A Long Implementation Period Is Needed

- Rule will require extensive operational changes and training
- Lenders also must contend with many other new rules at the same time
- How long must lender maintain current systems?
 - New construction loans can be in process for years
 - So long as the lender is financing manufactured homes but not land



Scope

- The Regulation Z amendments apply to most closed-end consumer mortgage loans
- Exclusions from coverage:
 - Home-equity lines of credit
 - Reverse mortgages
 - Mortgages secured by a manufactured home without land
 - Lenders who makes five or fewer mortgages a year
 - “Consumer friendly” subordinate lien mortgages

Partial Exemption – “Consumer Friendly” Junior Mortgage Loans

- Section 1026.3(h) exempts a transaction from the Loan Estimate, Closing Disclosure and Special Information Booklet required by § 1026.19(e), (f), and (g), if:
 - (1) the loan is secured by a **subordinate lien**;
 - (2) the loan’s purpose is to finance down payment, closing costs, or to provide similar **homebuyer assistance**, such as principal or interest subsidies, property rehabilitation assistance, energy efficiency assistance, or foreclosure avoidance or prevention;
 - (3) **interest is not charged** on the loan;

Partial Exemption – “Consumer Friendly” Junior Mortgage Loans (cont'd.)

- (4) **repayment is forgiven or deferred** subject to specified conditions
- (5) **total settlement costs** do not exceed **one percent** of the loan amount and are limited to fees for recordation, application, and housing counseling; and
- (6) the borrower is provided at or before settlement with a **written disclosure** of the loan terms, repayment conditions, and costs of the loan.

Amended Reg. X Provisions

- Regulation X § 1024.5 (Coverage of RESPA)
- Regulation X Appendix A (instructions for Completing HUD-1 and HUD-1A)

New or Amended Reg. Z Provisions

- 12 C.F.R. § 1026.2(a)(25) (security interest arising by operation of law)
- 12 C.F.R. § 1026.3 (Exempt Transactions)
- 12 C.F.R. § 1026.17 (General Disclosures)
- 12 C.F.R. § 1026.18 (no longer applies)
- 12 C.F.R. § 1026.18 (determination of APR - § 18(d)(1), § 38(o)(2))
- 12 C.F.R. § § 1026.19(e), (f), (g) (requires Loan Estimate, Closing Disclosure and Special Information Booklet)

New or Amended Reg. Z Provisions (cont'd.)

- 12 C.F.R. § 1026.20(e) (Escrow Cancellation Notice)
- 12 C.F.R. § 1026.25 (Record Retention)
- 12 C.F.R. § 1026.28(a) (Preemption Determination – RESPA §§ 4, 5)
- 12 C.F.R. § 1026.37 (Loan Estimate)
- 12 C.F.R. § 1026.38 (Closing Disclosure)
- 12 C.F.R. § 1026.39 (Mortgage Transfer Disclosures, Partial Payment Policy)
- Appendix D

35 New Forms in Appendix H

■ Loan Estimate

- [Blank model Loan Estimate](#) fields annotated to show rule citations
- [Blank model Loan Estimate](#) form that illustrates the application of the rule's content requirements
- [Blank model Loan Estimate](#) that illustrates the application of the optional alternative tables for transactions without a seller
- [Sample of completed Loan Estimate](#) for fixed rate loan
- [Sample of completed Loan Estimate](#) for interest only, adjustable rate loan
- [Sample of completed Loan Estimate](#) for refinance
- [Sample of completed Loan Estimate](#) for balloon payment
- [Sample of completed Loan Estimate](#) for negative amortization

35 New Forms in Appendix H including (cont'd.)

Closing Disclosures

- [Blank Closing Disclosure](#) with fields annotated to show Rule citations
[Blank Closing Disclosure](#) [sure](#) that illustrates the application of the Rule's content requirements
[Blank Closing Disclosure](#) that illustrates the alternative disclosures and modifications permitted for transactions without a seller
- [Blank Closing Disclosure](#) that illustrates disclosure provided to seller
[Blank page 2 of Closing Disclosure](#) that illustrates modifications to closing cost details
[Sample of a completed Closing Disclosure](#) for fixed rate loan (companion to sample Loan Estimate above)
[Sample of a completed Closing Disclosure](#) for refinance (companion to sample loan estimate above)
[Sample of the completed Closing Disclosure](#) for refinance transaction where the closing costs have increased in excess of the good faith requirements

35 New Forms in Appendix H (cont'd.)

- [Sample of a completed Closing Disclosure](#) for refinance in which the consumer must pay additional funds to satisfy the existing mortgage loan securing the property and other existing debt to consummate the transaction
[Sample page 3 of Closing Disclosure](#) (summaries of transactions) for disclosure of consumer funds from a simultaneous second-lien credit transaction
[Sample page 3 of Closing Disclosure](#) (summaries of transactions) for disclosure of funds paid outside of closing
- **Other blank forms and samples**
 - [Blank model form](#) for the written list of settlement service providers
[Sample](#) of written list of providers you can shop for
[Sample](#) of written list of providers you cannot shop for
[Blank model form](#) of the escrow cancellation notice

CFPB's Integrated Disclosures Requirement

Effective Date: August 1, 2015

- DFA required the implementation of several statutory disclosure requirements, including the Integrated Disclosures, beginning **January 21, 2013**
- CFPB enacted temporary exemption that delayed until August 1, 2015, the effective day of:
 - Disclosure of initial and fully indexed monthly payment for variable rate transaction with escrow account. TILA § 128(a)(16)
 - Disclosure of aggregate amount settlement charges, financed charges, cash to close and wholesale interest rate. TILA § 128(a)(17)
 - Disclosure of mortgage originator fees. TILA § 128(a)(18)
 - Disclosure of total interest as percentage of principal (“TIP”). TILA § 128(a)(19)

CFPB's Integrated Disclosure Requirement

Effective Date: August 1, 2015 (cont'd.)

- Disclosure of repayment analysis of monthly payment. TILA § 128(b)(4)
 - Negative amortization feature warning. TILA § 129C(f)(1).
 - Disclosure of state law anti-deficiency protections. TILA § 129C(g)(2), (3)
 - Disclosure of partial payment acceptance policy. TILA § 129C(h)
 - Mandatory escrow account disclosure. TILA § 129D(h)
 - Waiver of escrow at consummation disclosure. TILA § 129D(j)(1)(A)
 - Appraisal management fee optional disclosure. RESPA 4(c)
- See 12 C.F.R. § 1026.1(c)(5)

Two New Forms

Three Page Loan Estimate Form - 12 C.F.R. §§ 1026.19(e), 37
 Five Page Closing Disclosure Form - §§ 1026.19(f), 38

TUPELO BANK

4321 Random Boulevard - Somecity, TX 54321

Save this Loan Estimate to compare with your Settlement Disclosure.

Loan Estimate

DATE ISSUED 1/3/2012
APPLICANTS James White and Jane Johnson
 123 Anywhere Street, Apt 678
 Anytown, TX 12345
PROPERTY SALE PRICE 456 Avenue A, Anytown, TX 12345
 \$240,000

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT 5 Year Interest Only, 5/3 Adjustable Rate
LOAN TYPE Conventional FHA VA
LOAN ID # 1330172608
RATE LOCK NO YES, until 2/29/2012 at 3:00 p.m. CST.
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on 1/18/2012 at 3:00 p.m. CST.

Loan Terms	Can this amount increase after closing?	
Loan Amount	\$211,000	NO
Interest Rate	4.375%	YES <ul style="list-style-type: none"> Adjusts every three years starting in year 6 Can go as high as 8% in year 9 See AIR table on page 2 for details
Monthly Principal & Interest <i>See Projected Payments Below For Your Total Monthly Payment</i>	\$769.27	YES <ul style="list-style-type: none"> Adjusts every three years starting in year 6 Can go as high as \$1,622 in year 9 Includes interest only and no principal until year 6 See AP table on page 2 for details
Prepayment Penalty		NO
Balloon Payment		NO
		Does the loan have these features?

Projected Payments	Payment Calculation			
	Years 1-5	Years 6-8	Years 9-11	Years 12-30
Principal & Interest	\$769.27	\$1,233 min \$1,542 max	\$1,233 min \$1,622 max	\$1,233 min \$1,622 max
Mortgage Insurance	+ 107	+ 107	+ 107	+ —
Estimated Escrow <i>Amount Can Increase Over Time</i>	+ 533	+ 533	+ 533	+ 533
Estimated Total Monthly Payment	\$1,409	\$1,873 – \$2,182	\$1,873 – \$2,262	\$1,766 – \$2,155
Escrow Information for Taxes, Insurance & Assessments <i>Amount Can Increase Over Time</i>	\$533 a month	<input checked="" type="checkbox"/> Escrow. Your escrow payment covers the taxes, insurance & assessments listed in Section G on page 2. You must pay for other property costs separately. <input type="checkbox"/> No Escrow. You must pay all of your taxes, insurance & assessments separately from your loan payments.		

Closing Costs	Estimated Cash to Close	
	\$32,120	Closing Costs include \$5,963 in estimated Settlement Fees. See details on page 2.

Visit www.consumerfinance.gov/learnmore for general information and tools.

LOAN ESTIMATE

PAGE 1 OF 3 • LOAN ID # 1330172608

Closing Disclosure

This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.

Closing Information	Transaction Information	Loan Information
Date Issued 9/10/2012 Closing Date 9/14/2012 Disbursement Date 9/14/2012 Agent Epsilon Title Co. File # 12-3456 Property 456 Somewhere Ave Anytown, ST 12345 Sale Price \$180,000	Borrower John A. and Mary B. 123 Anywhere Street Anytown, ST 12345 Seller Steve C. and Amy D. 321 Somewhere Drive Anytown, ST 12345 Lender Ficus Bank	Loan Term 30 years Purpose Purchase Product Fixed Rate Loan Type <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> Loan ID # 123456789 MIC # 000654321

Loan Terms	Can this amount increase after closing?	
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <i>See Projected Payments Below For Your Total Monthly Payment</i>	\$761.78	NO
Prepayment Penalty		NO
Balloon Payment		NO
		Does the loan have these features?

Projected Payments	Payment Calculation	
	Years 1-7	Years 8-30
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow <i>Amount Can Increase Over Time</i>	+ 206.13	+ 206.13
Estimated Total Monthly Payment	\$1,050.26	\$967.91
Estimated Taxes, Insurance & Assessments <i>Amount Can Increase Over Time</i> <i>See Details on Page 4</i>	\$356.13 a month	This estimate includes <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association <i>See page 4 for escrowed property costs. You must pay for other property costs separately.</i>
		In escrow? YES YES NO

Cash to Close	Cash to Close	
	\$14,272.55	Includes \$9,729.54 in Closing Costs (\$4,694.05 in Loan Costs + \$5,035.49 in Other Costs) - \$0 in Lender Credits. See details on page 2.

CLOSING DISCLOSURE

PAGE 1 OF 5 • LOAN ID # 123456789

Two New Forms (cont'd.)

- Loan Estimate:

http://www.consumerfinance.gov/f/201403_cfpb_loan-estimate_modification-H24G.pdf

- Closing Disclosure:

http://www.consumerfinance.gov/f/201403_cfpb_closing-disclosure_cover-H25HJ.pdf

Detailed, Rigid Format Requirements

- Section 1026.18 disclosure requirements don't apply, except as cross-referenced
- Loan Estimate should follow **Form H-24**
- Closing Disclosure should follow **Form H-25**



Detailed, Rigid Format Requirements (cont'd.)

■ Both Disclosures

- See, e.g. §§ 1026.37(o)(1)(ii), 38(t) and the Commentary to those sections for guidance on the proper format to be used in making the disclosures, as well as required and permissible modifications
- Master Heading, Subheadings, Labels, Tables
- Clear and Conspicuous Standard
- Disclosures must be grouped together,
 - segregated from everything else, and
 - provided on separate pages that are not commingled with any other documents or disclosures
- Additional pages permitted in limited circumstances
- Bolding requirements
- Rounding rules
- Dashes, zeros or blanks, but not “n/a” or “not applicable”
- Note hard-coded vs. dynamic test
- No line numbers like the current GFE and HUD-1 forms

Safe Harbor

DFA Section 1032 creates a safe harbor for any person who uses the model forms prescribed by the CFPB.

TUPELO BANK

4321 Random Boulevard • Somecity, TX 54321

Save this Loan Estimate to compare with your Settlement Disclosure.

Loan Estimate

DATE ISSUED 1/3/2012
APPLICANTS James White and Jane Johnson
 123 Anywhere Street, Apt 678
 Anytown, TX 12345
PROPERTY
SALE PRICE 456 Avenue A, Anytown, TX 12345
 \$240,000

LOAN TERM 30 years
PURPOSE Purchase
PRODUCT 5 Year Interest Only, 5/3 Adjustable Rate
LOAN TYPE Conventional FHA VA
LOAN ID # 1330172608
RATE LOCK NO YES, until 2/29/2012 at 3:00 p.m. CST.
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on 1/18/2012 at 3:00 p.m. CST.

Loan Terms		Can this amount increase after closing?	
Loan Amount	\$211,000	NO	
Interest Rate	4.375%	YES	<ul style="list-style-type: none"> • Adjusts every three years starting in year 6 • Can go as high as 8% in year 9 • See AIR table on page 2 for details
Monthly Principal & Interest <i>See Projected Payments Below For Your Total Monthly Payment</i>	\$769.27	YES	<ul style="list-style-type: none"> • Adjusts every three years starting in year 6 • Can go as high as \$1,622 in year 9 • Includes interest only and no principal until year 6 • See AP table on page 2 for details
		Does the loan have these features?	
Prepayment Penalty		NO	
Balloon Payment		NO	

Projected Payments				
Payment Calculation	Years 1-5	Years 6-8	Years 9-11	Years 12-30
Principal & Interest	\$769.27	\$1,233 min \$1,542 max	\$1,233 min \$1,622 max	\$1,233 min \$1,622 max
Mortgage Insurance	+ 107	+ 107	+ 107	+ —
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Closing Costs	
Estimated Cash to Close	\$32,120 Closing Costs include \$5,963 in estimated Settlement Fees. See details on page 2.

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LOAN ESTIMATE

PAGE 1 OF 3 • LOAN ID # 1330172608



Loan Estimate: Contents (12 C.F.R. § 1026.37)

- Page 1: General
 - General information related to applicants, property, loan and rate lock status; loan terms; projected payments during term of the loan; estimated cash to close
- Page 2: Costs
 - Loan costs, other costs, calculating cash to close; adjustable interest rate table (when applicable); adjustable payment table (when applicable)
- Page 3: Other
 - Contact information for lender and loan officer, comparisons, other considerations, and confirmation of receipt (optional)
- “Finance Charge” and “Amount Financed” are no longer required disclosures for Loan Estimate

Loan Estimate – Page 1

- Identifying information about the borrower and the loan
 - Date of disclosure
 - Applicants
 - Security property (must include zip code; 12 C.F.R. §§ 1026.37(a)(6), 38(k)(6));
 - Sale price
 - Term to maturity
 - Purpose (purchase, refinance, construction, home equity)
 - Loan product type
 - Loan ID #
 - Rate lock statement
- Loan terms, amount, monthly P&I and rate; prepayment penalties and balloons
- Projected payments showing any projected increase
- Cash to close (“Loan Costs”, “Other Costs” (fees for settlement services), “Lender Credits”)

Loan Estimate – Page 2

- Itemized **Loan Costs** listed alphabetically (“Origination Charges”, “Services You Cannot Shop For”, “Services You Can Shop For”) and Total
 - Mirrors current Regulation X tolerance categories
- Itemized **Other Costs** (Taxes and government fees, prepaid expenses such as homeowner’s insurance premium, MI premium, prepaid interest, property taxes, initial escrow payment at closing, others, such as title insurance premiums) and Total
- Adds up to **Total Closing Costs**

Loan Estimate – Page 3

- New comparison disclosure promotes informed shopping:
 - Total of Payments and Principal Reduction after the first 5 years
 - APR
 - Total Interest Payment (“TIP”)
- “Other Considerations”:
 - Appraisal requirement, assumption policy, homeowner’s insurance requirement, late payment charges, refinancing not guaranteed, servicing transfer
 - Instead of the RESPA Servicing Transfer Notice, the Rule requires lender to provide the servicing transfer disclosure as described in § 1026.37(m)(6).

Loan Estimate: Differences From Current Early Disclosures

- Estimated cost to close
- Costs can be itemized, but each subcategory is totaled
- Excludes disclosures that consumer testing indicated did not improve consumer understanding (e.g., finance charge, approximate cost of funds)
- Confirmation of receipt by consumer
 - If no confirmation of receipt, must disclose “Loan Acceptance” under “Other Considerations”

Loan Estimate: Good Faith Requirement (§ 1026.19(e)(3))

Loan Estimate figures must be made in **good faith** and consistent with the best information reasonably available to the lender at the time disclosed

▪ To determine good faith:

- Look at difference between the estimated charges originally provided in the Loan Estimate and the actual charges paid by or imposed on the consumer
- Generally, if the charges paid by or imposed on the consumer **exceed** the amount originally disclosed on the Loan Estimate, it is **not in good faith** (subject to certain exceptions)
 - True whether or not the creditor later discovers a technical error, miscalculation, or underestimation of a charge
- Amount paid or imposed on the consumer must always be less than the amount estimated

Loan Estimate: Revisions and Corrections

- **General Rule:** Lenders are bound by the original Loan Estimate and may not issue revised Loan Estimate because they later discover technical errors, miscalculations or underestimations of charges
- **Revised Loan Estimates** permitted only in certain specific circumstances:
 - **Changed circumstances** that occur after the Loan Estimate is provided to the consumer cause settlement charges to increase more than permitted
 - **Changed circumstances** that occur after the Loan Estimate is provided to the consumer that affect the consumer's eligibility for the terms for which the consumer applied or the value of the security for the loan

Loan Estimate Revisions and Corrections to (cont'd.)

- Changes that are **requested by the consumer**
- **Interest rate not locked** when the Loan Estimate was provided and subsequently locking the rate causes the points or lender credits disclosed on the Loan Estimate to change
- Consumer indicates an **intent to proceed** with the transaction more than 10 business days after the original Loan Estimate was provided
- The loan is a new construction loan and settlement is delayed
 - Model form now includes space for identifying construction loan

Loan Estimate: Revision Permitted for Rate Lock

- Revised disclosures permitted when the points or lender credits change because the interest rate was not locked when the original Loan Estimate was provided
- On the business day following the date the interest rate is locked, the lender must provide a revised Loan Estimate
- Revised Loan Estimate must show revised interest rate, the points disclosed pursuant to § 1026.37(f)(1), lender credits, and any other interest rate-dependent charges and terms.

Loan Estimate: Revision Permitted for Changed Circumstance § 1026.19(e)(3)(iv)(A)

- A **changed circumstance** for purposes of a revised Loan Estimate is:
 - An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer transaction;
 - Information specific to the consumer or loan that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided; or
 - New information specific to the consumer or loan that the creditor did not rely on when providing the Loan Estimate.
- For example, a changed circumstance may be war, natural disaster, or unexpected event specific to the consumer or the transaction (e.g., loss of employment)

Written List of Settlement Service Providers (Model Form H-27(A))

- This blank model form will be used to provide the written list of settlement service providers required by 12 CFR § 1026.19(e)(1)(vi), and the statement required by 12 CFR § 1026.19(e)(1)(vi)(C) that the consumer may select a settlement service provider that is not on the list
 - Creditor must provide at least one settlement service provider on the Written List of Providers

Alternative Loan Estimate (Model Form H-24(G))

- If no seller is involved in the loan, abbreviated disclosures are permitted (12 C.F.R. § 1026.37(d)(2)):
 - Optional alternative table for loan without a seller;
 - Optional alternative for calculating closing costs for transactions without a seller (12 C.F.R. § 1026.37(h)(2)).
 - Property's "Appraised" or Estimated Value" instead of sale price;
 - Lenders may use alternative form for simultaneous second (because it involves no seller)

Closing Disclosure – Page 1

- First page of Closing Disclosure is like first page of Loan Estimate, but it categorizes identification information as “Closing Information”, “Transaction Information” and “Loan Information”
- Also identifies the “Seller”

Closing Disclosure – Page 2

- Details borrower's loan costs
 - Origination charges
 - Services borrower cannot shop for
 - Services borrower can shop for
 - Charges that are borrower-paid, seller-paid or paid by others
 - Equivalent of HUD-1 Section L
- Details borrower's other costs
 - Taxes and other government fees
 - Prepaid expenses
 - Initial escrow payment at closing: escrow analysis to follow RESPA, 12 C.F.R. § 1017
 - Other costs
- Totals Loan Costs, Other Costs, and Total Closing Costs

Closing Disclosure – Page 3

- Calculation of Cash to Close
 - Total Closing Costs, *less* Costs Paid Before Closing, *less* Costs Financed, *less* Downpayment, *less* deposit, *plus* Funds From Borrower, *less* Seller Credits
- Details borrower's transaction
 - Amount due from borrower at closing
 - Adjustment for items paid by seller in advance
 - Amounts already paid by or on behalf of borrower at closing
 - Other credits
 - Adjustments of items unpaid by seller
 - Calculation of cash to close
 - Like Schedule J on first page of HUD-1
- Details seller's transaction in same fashion
 - Like Schedule K on first page of HUD-1

Closing Disclosure – Page 4

- Loan Disclosures (like current Fed Box)
 - Assumption Policy
 - Demand Feature
 - Late Payment Charge
 - Negative Amortization Feature (new)
 - Partial Payment Policy (new)
 - Security Interest (new)
- Escrow Account Details (new)

Closing Disclosure – Page 5

- Loan Calculations (also like current Fed Box)
 - Total of Payments
 - Finance Charge
 - Amount Financed
 - ❖ “The loan amount available after payment of your upfront finance charge.” 12 C.F.R. § 1026.38(o)(3) (new)
 - APR
 - ❖ “Your costs over the loan term expressed as a rate. This is not your interest rate.” 12 C.F.R. § 1026.38(o)(4) (new)
 - Total Interest Percentage (TIP) (new)
 - ❖ “The total amount of interest you will pay over the loan term as a percentage of your loan amount.” 12 C.F.R. § 1026.38(o)(4)

Closing Disclosure – Page 5 (cont'd.)

- Other Information
 - Appraisal; (12 C.F.R. § 1026.38(p)(1)) (new)
 - ❖ To comply with Reg. B Appraisal Disclosure and Delivery Rule: “If there was an appraisal in connection with the loan, the creditor is required to provide the consumer with a copy at no additional cost to the consumer at least three days prior to consummation.”
 - Contract Details (12 C.F.R. § 1026.38(p)(2))
 - Liability After Foreclosure (12 C.F.R. § 1026.38(p)(3)) (new)
 - Refinancing Not Guaranteed (12 C.F.R. § 1026.38(p)(4))
 - Tax Deductions (12 C.F.R. § 1026.38(p)(5)) (new)
- Lender contact information
- Confirmation of receipt
- Lender-paid fees also are disclosed (but not on Loan Estimate)

Revised Closing Disclosure

- **General Rule:** Lender must re-disclose terms or costs on the Closing Disclosure if certain changes occur to the loan that cause the disclosures to become inaccurate
- Three categories of changes require a corrected Closing Disclosure containing all changed terms:
 - Changes that occur before consummation that require new three-business-day waiting period
 - Changes that occur before consummation that do not require new three-business-day waiting period
 - Changes that occur after consummation
- Consumer has the right to inspect revised Closing Disclosure during the business day before consummation

Revised Closing Disclosure (Cont'd.)

- New three-business-day waiting period **required** when:
 - Disclosed APR becomes inaccurate
 - Loan product changes
 - Prepayment penalty is added
- New three-business-day waiting period **not required** for all other changes

Revised Closing Disclosure

- A corrected Closing Disclosure is required after consummation:
 - When an event in connection with the settlement causes the Closing Disclosure to become inaccurate and that results in a change to an amount paid by the consumer or seller occurs within 30 days after consummation
 - ❖ Cash to Close (no seller)
 - ❖ Seller's Transaction
 - To document refunds for variation violations
 - To correct non-numerical **clerical** errors
 - ❖ An error is **clerical** if it does not affect a numerical disclosure and does not affect the timing, delivery, or other requirements imposed by § 1026.19(e) or (f)

Alternative Closing Disclosure (Model Form H-25(J))

An Alternative Closing Disclosure may be used if the loan does not have a seller (12 C.F.R. §§ 1026.38(d)(2), (e), (t)(1)(ii)).

- Check boxes are used to indicate whether the Cash to Close is being paid by or to the consumer on Page 1
- The column for seller's costs is deleted on Page 2
- The Summaries of Transactions is deleted and Payoffs and Payments are disclosed at the top of Page 3
- An Alternative Calculating Cash to Close table with fewer entries is used on Page 3



Other New Rules



- New Definition of “Application”
- Pre-Disclosure Restrictions
- Pre-Application Worksheet
- New Definition of “Business” Day
- Timing of Disclosures
- Who Gives The Closing Disclosures
- Financial Disclosure Variations
- Projected Payment Schedule
- New Appendix D Disclosure
- Special Information Booklet
- Partial Payment Policy
- Escrow Account Termination Disclosure

Definition of “Application” Is More Narrowly Defined

- Neither TILA nor RESPA defines “application”
- 12 C.F.R. § 1026.2(a)(3) provides that an “application” will be complete when the applicant “submits” to the creditor:
 - Borrower name
 - Income
 - Social Security Number (TIN for foreign national)
 - Property address
 - Estimated value property
 - Mortgage loan amount
- The new definition of “application” eliminates the “any other information” catch-all provision included in current Regulation X



Problems: Information About the Property and the Loan Product

- Neither the Regulation nor its Commentary tells us where to get an estimate of property value.
- The Loan Estimate requires specific information that comes directly from a sales contract (*i.e.*, sales price, deposit, *etc.*) **but**, a complete “application” does not allow lender to require copy of a sales contract.
- The Loan Estimate requires specific information about the loan product **but**, a complete “application” does not require identification of the product

Pre-Disclosure Restrictions (§ 1026.19(e)(2))

- Fee Restriction: Only a bona fide and reasonable credit report fee may be collected before the consumer indicates his **intent to proceed**, which must follow his receipt of the Loan Estimate
 - Intent to Proceed – may be communicated in any manner the consumer chooses (except silence) unless lender requires a particular form
 - The creditor must document this communication
 - No checks or credit card information may be held for later deposit or charge
- Documentation Restriction: Creditor may not require a consumer to submit documents verifying information related to the application before providing the Loan Estimate (12 C.F.R. § 1026.19(e)(2)(iii)).

Pre-Application Worksheet / Estimate

- Expressly permitted before delivery of a Loan Estimate
- May be issued by either lender or broker
- May not be used as substitute for Loan Estimate
- May not be made with headings, content, and format substantially similar to the Loan Estimate form
- Prescribed disclaimer must be in font size no smaller than 12-point

Pre-Application Worksheet / Estimate (cont'd.)

- If consumer has been provided “with a written estimate of terms or costs specific to that consumer before consumer receives the Loan Estimate and indicates intent to proceed with the transaction”:
 - The estimate must include disclaimer: “Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.”
 - Disclaimer must appear on front of first page of Worksheet/Estimate in font size 12-point or larger.
§ 1026.19(e)(2)(ii)
- Is not required for:
 - Advertisements
 - Information not specific to the consumer, such as:
 - ❖ Preprinted list of area’s typical closing costs
 - ❖ Preprinted list of available rates for different loan products

“Business Day(s)” (§ 1026.19(e)(1))

- For purposes of providing the **Loan Estimate**, a **business day** is a day when the lender’s offices are open to the public for carrying out substantially all of its business functions (lender-based)
- For other purposes, including delivery of the **Closing Disclosure**, **business day** means all calendar days except Sundays and legal public holidays (limited)
- Revised Loan Estimate: Provide three (lender-based) business days after learning about need for revised Loan Estimate and not less than four (limited) business days before consummation

Loan Estimate: Timing Requirements



- Loan Estimate
 - Must be given within three business days after receiving “application”
 - *But* not less than seven business days prior to loan closing
 - Rules for waiver of waiting period similar to Right of Recissions waiver
 - Broker may provide the Loan Estimate; lender maintains responsibility
 - Only fee that lender may collect before providing Loan Estimate is credit report fee
 - Must re-disclose within three (creditor defined) business days of change, unless one of five available exceptions available applies

Loan Estimate: Timing Requirements (cont'd.)

- If not delivered in person, lender must place Loan Estimate in mail within 3 “business days” of receiving consumer’s application for a loan
 - Lender-based definition of “business day” applies to timeframe to deliver or place in mail
 - ❖ Any day when a lender’s offices are open to public for conducting substantially all of its business functions
- Delivery in person – receipt occurs upon delivery

Loan Estimate: Timing Requirements (cont'd.)

- Any means of delivery other than “in person”:
“mailing rule” applies
 - Loan Estimate deemed received 3 business days after lender mails or delivers it by any other method, including electronic
 - ❖ Limited definition of “business day” applies
 - Or may rely on proof of actual receipt

Loan Estimate: Timing Requirements (cont'd.)

- Loan Estimate must also be delivered or placed in mail at least 7 business days before loan consummation
 - Same as MDIA for TILA initial disclosures
 - Limited definition of “business day” applies
 - Consumer may waive or modify waiting period based on a bona fide personal financial emergency
 - ❖ Waiver or modification often not an issue as a practical matter, but if you are thinking about waiver or modification – bad idea.

Construction Loans

Delayed Settlement (12 C.F.R. § 1026.37(e)(iv)(F)).

- New construction – contemplates permanent financing following construction loan by another lender
 - If permanent lender reasonably expects that settlement will occur more than 60 days after original Loan Estimate, lender may provide revised Loan Estimate if original Loan Estimate states clearly and conspicuously that, at any time prior to 60 days before consummation, the lender may issue revised disclosures
- If statement is not provided, the permanent lender may not issue revised disclosures, unless dictated by variation refunds
- Model forms include a designated place for construction disclosure (to permit 60 day re-disclosure).

Closing Disclosure: Timing

- Closing Documents, including the Closing Disclosure, must to be available to borrower for inspection 3 days *before* consummation
- Burdensome, but arguably a good idea
 - Time to actually review the documents
 - Time to correct errors
 - Time for final negotiations
 - Time to marshal cash to close
- If the numbers change, the lender must rediscover 3 business days *before* consummation

Redisclosure Timing Exceptions

1. *Bona fide* personal financial emergency
 - Requires a written statement by consumer (bad idea)
2. Changes due to borrower and seller negotiations
 - Redisclose at or before consummation
3. Changes of \$100 or less
 - Redisclose at or before consummation
4. Changes due solely to payments to a government entity in connection with the transaction (e.g., recording fees, taxes)
 - Redisclose within three business days but no later than 30 days after consummation
5. Non-numeric clerical errors
 - Redisclose not later than 30 days after consummation
6. “Points and Fees’ cure for qualified mortgage loans
 - Redisclose and refund coverage “points and fees” overage within 210 days after consummation

Managing Closing Disclosures

- If more than one consumer, only one must get the Loan Estimate and the Closing Disclosure
 - If the loan requires a Notice of Right to Rescind, all consumers must get the Closing Disclosure
- Delivery in person – receipt upon delivery
- Delivery by means other than “in person” – “mailing rule” applies
 - Deemed received 3 business days after mailing
 - Specific definition of “business day” applies
- Or may rely on proof of actual receipt
- Seller must receive Closing Disclosure at or before consummation (12 C.F.R. 1026.19(f)(4)).

Who Provides the Closing Disclosure?

- Three alternatives (12 C.F.R. 1026.19(f)(1)):
 - Alternative 1: The lender provides the Closing Disclosures
 - Alternative 2: The settlement agent provides the Closing Disclosures
 - ❖ Settlement agent must comply with Section 1026.19(f) requirements “as if it were the creditor”
 - Alternative 3: The lender and the settlement agent may agree to split disclosure responsibilities
 - ❖ Lender: disclosure of financial terms
 - ❖ Settlement agent: disclosure of taxes, recording fees, title charges
- The lender remains responsible for settlement agent’s violations in all cases

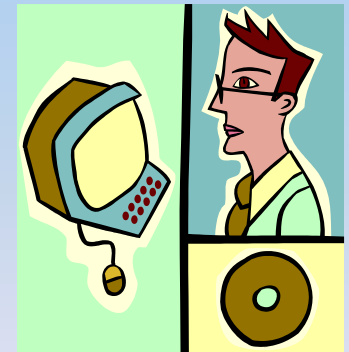
Who Provides the Closing Disclosure? (cont'd.)

Alternative 1: Do it yourself

- Additional responsibility / liability
- Additional staff needed
- New software/training required
- Still need settlement agent for information to complete 2 pages of closing disclosure

Alternative 2: Let settlement agent prepare closing disclosure

- Better be sure settlement agent is:
 - Proficient
 - Compliant
- Vendor due diligence is a must
- Get indemnification from settlement agent



Who Provides the Closing Disclosure? (cont'd.)

Alternative 3: Joint effort

- Lender prepares 3 TIL pages
- Settlement agent prepares 2 pages referring to title/closing costs
- Lender and settlement agent may agree between themselves that each will be liable for its own submissions, although lender remains ultimately liable for entire disclosure (Comment 9(f)(1)(v) – 4)
- Likeliest outcome



MBA Advice: Vetting Settlement Agents Is Essential

1. CFPB Bulletin 2013-03 (April 2013)
 - Applies to supervised banks, non-depository consumer finance companies and service providers supervised by banks/non-banks
 - conduct due diligence
 - review policies and procedures
 - create clear contract provisions
 - monitor compliance
2. OCC Bulletin 2013-29 (October 2013)
 - Applies to national banks and federal savings associations
 - due diligence and third party selection
 - contract negotiations
 - oversight and accountability

Vetting Settlement Agents (cont'd.)

3. FRB Guidance (December 2013)

- Applies to state member banks, savings and loan companies, non-bank subsidiaries and US operations of foreign banks
 - similar to OCC requirements

4. Be Proactive

- Assess needs
- Conduct risk assessment
- Conduct due diligence assessment
- Negotiate contract
- Monitor/Document performance
- Terminate unsatisfactory performers

ALTA Best Practices (Courtesy of MBA)

1. Regulators hold lenders accountable for vendors' performance
 - Full compliance with federal consumer finance laws is expected
2. ALTA takes pro-active approach
 - Understands lenders will use title companies/settlement agents that can assure compliance
 - Demonstrate ability to reduce lender risk

ALTA Best Practices (cont'd)

3. Seven Pillars of Best Practices for Settlement Agents

- maintain current licenses
- maintain escrow trust account procedures
- maintain information privacy and security
- demonstrate compliance with consumer finance laws
- have written procedures in place
- have liability insurance / fidelity coverage
- resolve consumer complaints

4. Certification

- Third party certifications
- Letter to lenders
- Proof of E&O coverage

Permissible “Variations” for Fees and Charges (Formerly “Tolerances” Under Reg. X) (§ 1026.19(e)(3))

- **0%** Variation (Increase) Permitted:
 - Originator fees
 - Affiliate charges (NEW)
 - Fees paid to unaffiliated Settlement Service Provider (“SSP”) that the consumer cannot shop for (NEW)
- **10%** Variation (Increase) Permitted:
 - Charge paid to unaffiliated SSP that consumer selects from lender’s SSP List
 - Recording Fees
- **Unlimited** Variation (Increase) Permitted, Subject to “Good Faith” Standard -- “Best information reasonably available to the Creditor”;
 - Prepaid interest
 - Property insurance premiums
 - Escrow items
 - Charges paid to SSP not on lender’s SSP List (NEW)

Permissible “Variations” for Fees and Charges (cont’d.)

- Concept of “tolerance” is not found in RESPA (though current GFE requirements and TILA adopt tolerance/variation limitations to facilitate compliance)
- Current Reg. X creates three “tolerance” buckets
 - § 1024.7(e)(1) Zero Tolerance
 - § 1024.7(e)(2) 10% Tolerance
 - § 1024.7(e)(3) No Tolerance
- The Loan Estimate is intended to disclose the actual amount to be charged to a consumer at closing

Permissible “Variations” for Fees and Charges (cont’d.)

1. Required third party vendors and “No Variation” bucket
 - vendor is required if borrower cannot shop for that settlement service provider; therefore, due diligence of vendors is a necessity
2. Federal Agencies already require vendor due diligence
 - OCC, FRB, CFPB
3. Be proactive
 - due diligence and third party selection
 - contract negotiations
 - oversight and accountability

Corrections

- **General Rule:** If the amounts paid by the consumer at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable variation threshold:
 - The lender must refund the excess to the consumer no later than **60 days after the consummation**, and
 - The lender must deliver or place in the mail a corrected Closing Disclosure
- **Zero variance charges:** any amount charged beyond the amount disclosed on the Loan Estimate must be refunded to the consumer
- **10% cumulative variance charges:** when the total sum of the charges exceeds the sum of all such charges disclosed on the Loan Estimate by more than 10%, the difference must be refunded to the consumer.

Corrections (cont'd.)

- **“Points and fees”** cure to maintain qualified mortgage status: refund overcharge to consumer within 210 days after consummation, provided that consumer:
 - Has not notified lender of the overage in writing; or
 - Has not initiated a suit against the lender regarding the loan; or
 - Is not 60 days past due on his mortgage payments.

Affiliate Charges

1. CFPB not a big fan of Affiliated Business Arrangements (“AfBAs”)
 - QM creates an unlevel playing field for AfBAs
 - AfBAs placed in “No Variations” bucket
2. Nonetheless, AfBAs offer certain advantages for lender
 - Affiliate permitted as only vendor on Settlement Service Provider List (beware of RESPA “required use” prohibitions)
 - Better integration to satisfy Closing Disclosure’s 3-business-day requirements

Disclosure of Construction Phase Interest (Appendix D)

- A construction loan is subject to early disclosures (§ 19(e)) and final disclosures (§ 19(f)). For such loans, Regulation Z now requires disclosure of “any payments of interest only that are made during the construction period.” Disclosure must be in the projected payment table format provided in § 37(c) and § 38(c).
- The periodic payments are calculated as described in Appendix D Part I.A.i. The payment of principal in full at the end of the Construction Phase is disclosed as a balloon payment, and the loan is disclosed as a product with a balloon feature (Commentary App. D-7.i).
- Under the current rule, disclosure of estimated monthly payments of Construction Phase interest is not required.

Current MDIA Payment Disclosure Schedule

H-4(F) Adjustable-Rate Mortgage or Step-Rate Mortgage Interest Rate and Payment Summary Model Clause

INTEREST RATE AND PAYMENT SUMMARY

	INTRODUCTORY Rate & Monthly Payment (for first <i>period</i>)	[MAXIMUM during FIRST FIVE YEARS (<i>date</i>)]	MAXIMUM EVER (as early as <i>date</i>)
Interest Rate	___%	[___%]	___%
Principal + Interest Payment	\$ _____	[\$ _____]	\$ _____
Est. Taxes + Insurance [(Escrow)] • [Includes [Private] Mortgage Insurance]	[\$ _____]	[\$ _____]	[\$ _____]
Total Est. Monthly Payment	\$ _____	[\$ _____]	\$ _____

New Rule: Projected Payment Schedule

Projected Payments

Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow <i>Amount Can Increase Over Time</i>	+ 206.13	+ 206.13
Estimated Total Monthly Payment	\$1,050.26	\$967.91
Estimated Taxes, Insurance & Assessments <i>Amount Can Increase Over Time</i> <i>See Details on Page 4</i>	\$356.13 a month	This estimate includes <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association <i>See page 4 for escrowed property costs. You must pay for other property costs separately</i>
		In escrow? YES YES NO

Special Information Booklet (§ 1026.19(g))

- Lender generally must provide the special information booklet (RESPA Settlement Costs Booklet) to applicant for a consumer loan secured by real property no later than 3 business days after receiving the consumer's loan application
- Not required if the consumer is applying for:
 - Refinance
 - Subordinate lien loan
 - Reverse mortgage loan

Partial Prepayment Policy Disclosure (§ 1026.39(d))

If notice of a mortgage ownership's transfer is required, that notice must include information about the applicable **partial payment** policy

- **Partial payment disclosure** must include:

- The heading “**Partial Payment**” above the following additional information:
 - ❖ If borrower periodic payments are:
 - Accepted, a statement that the lender may accept partial payments and apply them to the loan
 - Accepted, but not applied to the loan until the remaining amount is paid, a statement that the lender may hold partial payments in a separate account until the remainder of the payment is made and then apply the full periodic payment to the loan
 - Not accepted, a statement that the lender does not accept any partial payments
 - ❖ A statement that the acquiring investor may have a different policy if the loan is sold

Escrow Account Termination Disclosure (Model Form H-29)

- A lender must provide a consumer with this disclosure notice no later than three business days before the consumer's escrow account is canceled
- For loans subject to the **escrow account cancellation notice** requirement, lender or servicer must disclose
 - When and why the escrow account will be closed
 - That an escrow account may also be called an impound or trust account

Escrow Account Termination Disclosure (cont'd.)

- That, without an escrow account, the consumer must directly pay all property costs (*i.e.* taxes, homeowner's insurance)
- A “**Cost to You**” table itemizing the amount of any fee imposed on the consumer in connection with the closure of the escrow account and a statement that the fee is for closing the escrow account
- Under “**In the Future**”, consequences for failure to pay property costs, a telephone number for additional information, whether escrow account can be kept open and whether there is a deadline to request that the escrow account be kept open

Preemption

Relation to State Laws

TILA Preemption Standard: TILA preempts state law requirements that are inconsistent with TILA, to the extent of the inconsistency

For example:

State law uses a term also used by Regulation Z but the state law term has a different meaning, or state law requires a term Regulation Z uses to describe a different meaning

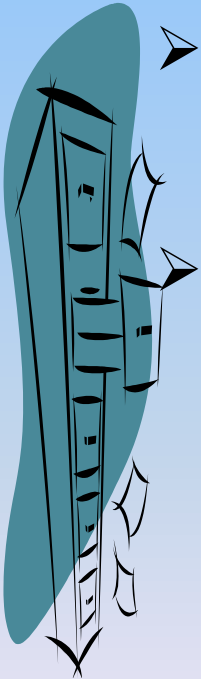
- A lender, state or other interested party may request the CFPB to make a preemption determination

If CFPB determines the term is inconsistent, a lender may not make disclosures using the inconsistent term or form

Final Rule maintains existing state TILA exemptions as long as state laws require substantially similar disclosures: ME, CT, MA, WY and OK

Recordkeeping Requirements

- General record retention requirement : two years (§ 25(c)(1)).
- Specific record retention requirements for mortgage loans covered by the Integrated Rule (§ 25(c)(1)).
 - Must evidence compliance
 - Loan Estimate: Three years after the later of the date of consummation, the date disclosures are required to be made, or the date the action is required to be taken
 - Closing Disclosure: Five years after consummation (applies to original creditor even if sold or transferred)
 - ❖ If loan is sold or transferred, copies of disclosures must be provided to new owner or servicer as part of the transfer. The new owner or servicer must retain the records for the balance of the five years.



Liability

RESPA and TILA disclosures combined into integrated documents

- Rule does not establish non-compliance liability that applies to each disclosure requirement
 - Certain specific cure provisions as to fee “variations”
- CFPB has stated that it will address statutory authority relied upon for each requirement to determine liability for non-compliance, and that this provides sufficient guidance

TILA Disclosure Statements	RESPA GFE & HUD-1
Administrative enforcement	Administrative enforcement aspects
Private right of action	No RESPA private right of action
Actual damages	Private action right under other laws
Statutory damages in certain cases	Remedies vary.
Court costs and attorney's fees	
Outdated liability & cure provisions	

Liability (cont'd.)

Assignee may be subject to same claim that consumer can bring against lender, subject to liability standard

- General mortgage loan assignee liability standard:
 - Violation must be apparent on the face of the disclosure statement
 - A violation is apparent on the face of the disclosure statement if:
 - ❖ The disclosure can be determined to be incomplete or inaccurate by a comparison among the disclosure statement, any itemization of the amount financed, the note, or any other disclosure of disbursement
 - ❖ The disclosure does not use the terms or format required by TILA
- Investors' concerns

TILA Penalties

- TILA authorizes borrower to bring affirmative action against lender for civil money penalties, actual damages and attorneys' fees for errors in disclosure of:
 - the APR,
 - the Finance Charge,
 - the Amount Financed,
 - the Total of Payments,
 - the Payment Schedule,
 - the security interest, and
 - the notice of the consumer's right to rescind.
- RESPA imposes no penalties against lenders or settlement agents for GFE or HUD-1 disclosure violations.



More Liability?

- Loan Estimate (= Early TIL + GFE) and Closing Disclosure (= Final TIL + HUD1--1/A) will be subject to Regulation Z liability rules
- Will lenders have liability for errors in disclosure of terms now disclosed in the GFE or the HUD-1, such as cash to close?