

May 2018

TILA-RESPA Integrated Disclosure rule

Small entity compliance guide



Version Log

The Bureau updates this Guide on a periodic basis to reflect finalized clarifications to the rule which impacts guide content, as well as administrative updates. Below is a version log noting the history of this document and its updates:

Date	Version	Changes
May 2018	5.2	<p>Updates to incorporate changes and clarifications from the April 26, 2018 amendments to the TILA-RESPA Final Rule, including:</p> <ul style="list-style-type: none">▪ Closing Disclosure or corrected Closing Disclosure timing when resetting tolerances (Sections 9, 11, and 12)▪ use of a Closing Disclosure or corrected Closing Disclosure to reset tolerances (Sections 8, 9, 10, and 12)
October 2017	5.1	<p>Miscellaneous administrative changes</p> <p>Change regarding disclosure of specific seller credits (section 13.10).</p>
October 2017	5.0	<p>Updates to incorporate changes and clarifications from the July 7, 2017 amendments to the TILA-RESPA Final Rule, including:</p> <ul style="list-style-type: none">▪ requirements and guidance on current requirements for tolerances in the good faith analysis (Section 7)▪ requirements and guidance for providing revised Loan Estimates (Section 8)▪ requirements for permitting a consumer to shop and providing the written list of service providers (Sections 7.3, 7.5, 7.6, 7.7, 7.11, and 8.7)▪ coverage for cooperative units, trusts, and the partial exemption for certain housing assistance loans (Section 4)▪ guidance on lender and seller credits, including impacts to the good faith analysis (Sections 7.13 and 13.10)▪ tolerance standards applicable to the Total of Payments (Sections 10.11)▪ guidance on disclosing transactions with a simultaneous subordinate-lien loan (Sections 10.8, 11.5, and 13.9)▪ requirements for providing corrected Closing Disclosures for changes to per diem interest (Section 12.7)▪ disclosing cures for tolerance violations (Sections 7.14, 10.13, 12.10)▪ guidance on sharing disclosures with third parties (Section 13.8)

- guidance on construction loans
- the safe harbor provided by correct use of sample forms (Sections 5.2 and 10.3)
- updated effective date requirements for 2017 amendments (Section 1 and 3)
- standardization of coverage of cooperative units throughout.

Miscellaneous administrative changes.

October 2016	4.0	<p>Updates to incorporate guidance from existing webinars to add clarity on topics, including:</p> <ul style="list-style-type: none"> ▪ record retention requirements for the Closing Disclosure (Section 2.3) ▪ completing the Loan Estimate and Closing Disclosure (Sections 5.3 and 10.4) ▪ formatting the Loan Estimate and Closing Disclosure (Sections 5.6, 5.7, 10.11, 13.3, and 13.4) ▪ delivery requirements for the Loan Estimate and the special information booklet (Sections 6.5 and 15.7) ▪ requirements upon receiving an application (Sections 6.7, 6.9, 6.10, and 6.11) ▪ disclosing and determining good faith for services the borrower may shop (Sections 7.4, 7.6, 8.8) ▪ disclosing seller-paid costs and providing seller disclosures (Sections 10.7, 11.5, 11.6, 11.7) ▪ providing revised Loan Estimates and corrected Closing Disclosures (Sections 12.3 and 12.6) ▪ guidance on construction loans ▪ providing special information booklet (Section 15.1, 15.6, and 15.7) ▪ the absence of a HUD-1 comparison chart in the Closing Disclosure (Section 10.12) <p>Additional guidance on providing revised Loan Estimates any time before the Closing Disclosure. (Section 8.1)</p> <p>Revisions to standardize the terminology for “revised Loan Estimates” and “corrected Closing Disclosures.”</p> <p>Revisions to move existing questions to place them next to other questions on related topics (Sections 6.8 and 8.1) and miscellaneous administrative changes.</p>
July 2015	3.0	Effective date change
June 2015	2.1	Miscellaneous administrative changes
March 2015	2.0	<ul style="list-style-type: none"> ▪ Extends the timing requirement for revised disclosure when consumers lock a rate or extend a rate lock after the Loan Estimate is provided (Section 8.7) ▪ Permits certain language related to construction loans for transactions involving new construction on the Loan Estimate (Section 5.6) ▪ Updates to information on where to find additional resources on the rule (Section 1.3) ▪ Additional clarification on questions relating to the Loan Estimate and the seven day waiting period (Section 6.1 and 6.2) ▪ Additional clarification on questions relating to Timing for Revisions to Loan Estimate (Section 9)
September 2014	1.1	

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1. Introduction

For more than 30 years, federal law required lenders to provide two different disclosure forms to consumers applying for a mortgage. The law also generally required two different forms at or shortly before closing on the loan. Two different federal agencies developed these forms separately, under two federal statutes: the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act of 1974 (RESPA). The information on these forms was overlapping, and the language inconsistent. Consumers often found the forms confusing, and lenders and settlement agents found the forms burdensome to provide and explain.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) directed the Bureau of Consumer Financial Protection (Bureau) to integrate the mortgage loan disclosures under TILA and RESPA Sections 4 and 5. Section 1032(f) of the Dodd-Frank Act mandated that the Bureau propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012. The Bureau satisfied this statutory mandate and issued proposed rules and forms on July 9, 2012. To accomplish this, the Bureau engaged in extensive consumer and industry research, analysis of public comment, and public outreach for more than a year. After issuing the proposal, the Bureau conducted a large-scale quantitative study of its proposed integrated disclosures with approximately 850 consumers, which concluded that the Bureau's integrated disclosures had on average statistically significant better performance than the pre-existing disclosures under TILA and RESPA.

On December 31, 2013, the Bureau published a final rule with new, integrated disclosures – “Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)” (TILA-RESPA Final Rule). On January 20, 2015 and July 21, 2015, the Bureau issued amendments to the TILA-RESPA Final Rule. Additionally, the Bureau published technical corrections on December 24, 2015, and a

correction to supplementary information on February 10, 2016. On July 7, 2017, the Bureau issued further amendments intended to formalize guidance, and provide greater clarity and certainty (2017 TILA-RESPA Rule or 2017 amendments).¹ The 2017 amendments were published in the *Federal Register* on August 11, 2017. On April 26, 2018, the Bureau also issued a final rule amending provisions regarding when a creditor may use a Closing Disclosure to reset tolerances (2018 TILA-RESPA Rule or 2018 amendments). The TILA-RESPA Final Rule, the amendments, and corrections are collectively referred to as the TILA-RESPA Rule in this Guide.

The TILA-RESPA Rule provides a detailed explanation of how the forms should be filled out and used. The Good Faith Estimate (GFE) and the initial Truth-in-Lending disclosure (initial TIL) were combined into a single form, the **Loan Estimate**. Similar to those forms, the **Loan Estimate** form is designed to provide disclosures that will be helpful to consumers in understanding the key features, costs, and risks of the mortgage loan for which they are applying, and must be provided to consumers no later than the third **business day** after they submit a loan **application**. Second, the HUD-1 and final Truth-in-Lending disclosure (final TIL and, together with the initial TIL, the Truth-in-Lending forms) were combined into another form, the **Closing Disclosure**, which is designed to provide disclosures that will be helpful to consumers in understanding all of the costs of the transaction. This form must be provided to consumers at least three **business days** before **consummation** of the loan.

The forms use clear language and design to make it easier for consumers to locate key information, such as interest rate, monthly payments, and costs to close the loan. The **Loan Estimate** and **Closing Disclosure** forms also provide more information to help consumers decide whether they can afford the loan and to facilitate comparison of the cost of different loan offers, including the cost of the loans over time.

The TILA-RESPA Rule applies to most closed-end consumer mortgages. It **does not apply** to home equity lines of credit (HELOCs), reverse mortgages, or mortgages secured by a mobile

¹ The Bureau has created a table that summarizes the changes and clarifications made in the 2017 amendments. That table is available on the Bureau's website at, https://www.consumerfinance.gov/documents/5230/201708_cfpb_2017-TILA-RESPA-Rule-Detailed-Summary-of-Changes-and-Clarifications.pdf.

home or by a dwelling (other than a cooperative unit) that is not attached to real property.² It does not generally apply to loans made by persons who are not considered “creditors” under TILA.³

Generally, the TILA-RESPA Rule’s provisions were effective on October 3, 2015. The December 2015 corrections were effective on December 24, 2015, and the February 2016 corrections were effective on February 10, 2016.

The 2017 amendments are effective and will be incorporated into the Code of Federal Regulations on October 10, 2017. However, compliance with the 2017 amendments is not mandatory on the effective date. Generally, compliance with the amendments is only mandatory for transactions for which a creditor or mortgage broker receives an application on or after October 1, 2018. However, the requirements for the Escrow Cancellation Notice (**Escrow Closing Notice**) and Mortgage Servicing Transfer Notice Partial Payment Policy Disclosure (**Partial Payment Policy Disclosure**) provided post-consummation apply starting October 1, 2018 without regard to when the creditor or mortgage broker receives the application.

The 2017 amendments include an optional compliance period, which begins on October 10, 2017 and is for transactions for which a creditor or mortgage broker receives an application **prior to** October 1, 2018. During this period, early compliance with the 2017 amendments is allowed, but not required.

Additionally, if a creditor or mortgage broker receives an application **prior to** October 1, 2018, optional compliance continues to apply to that transaction after October 1, 2018 (except as noted regarding the **Escrow Closing Notice** and **Partial Payment Policy Disclosures**).

² The 2017 amendments revised the cooperative transactions covered by the TILA-RESPA Rule. Prior to the amendments, the TILA-RESPA Rule did not require a creditor to provide the Integrated Disclosures for a loan secured by a cooperative unit if the cooperative unit is not classified by state law as real property. The 2017 amendments created a uniform rule that covers and requires the TILA-RESPA Disclosures for closed-end consumer credit transactions (other than reverse mortgages) secured by a cooperative unit, **regardless of whether state law classifies cooperative units as real property**. The remainder of the guide reflects this amended coverage.

³ Provisions of the TILA-RESPA Rule may apply, for example, to mortgage brokers and others who are not creditors as defined in Regulation Z. See, for example, 12 CFR 1026.19(e)(1)(ii).

During the optional compliance period (beginning on October 10, 2017 and for transactions with applications received prior to October 1, 2018), the provisions of the 2017 amendments can be implemented all at once or phased in over this period. For example, if a creditor chooses to phase in the 2017 amendments, those changes can be phased-in over the course of a transaction or by **application** date. Notwithstanding this flexibility, a person cannot phase in the 2017 amendments in a way that would violate provisions of Regulation Z that are not being changed.⁴

The 2018 amendments, which do not impose any new burdens on creditors, are effective on June 1, 2018.

The information provided in this Guide incorporates the changes and clarifications from the 2017 and 2018 amendments, and explains the TILA-RESPA Rule as of the 2017 amendments mandatory compliance date on October 1, 2018. To understand the rule as it existed prior to the 2017 amendments, please review version 4.1 of the Guide, available on the Bureau's website at <https://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/>.

1.1 What is the purpose of this guide?

The purpose of this Guide is to provide an easy-to-use summary of the TILA-RESPA Rule. This Guide also highlights issues that small creditors, and those that work with them, might find helpful to consider when implementing the TILA-RESPA Rule.

This Guide also meets the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, which requires the Bureau to issue a small-entity compliance guide to help small entities comply with these new regulations.

You may want to review your processes, software, contracts with service providers, or other aspects of your business operations in order to identify any changes needed to comply with this

⁴ For example, during the optional compliance period, creditors are allowed to provide either the RESPA disclosures (the good faith estimate and settlement statement) or the Integrated Disclosures (the **Loan Estimate** and **Closing Disclosure**) for a transaction secured by a cooperative unit that is not considered to be real property under applicable state law. However, a creditor cannot provide a Good Faith Estimate followed by a **Closing Disclosure** for a transaction secured by a cooperative unit that is not considered to be real property under applicable state law. The creditor would violate § 1026.38(i), which requires that information that was disclosed on the **Loan Estimate** be included on the **Closing Disclosure**.

rule. Changes related to this rule may take careful planning, time, or resources to implement. This Guide will help you identify and plan for any necessary changes.

To support rule implementation, the Bureau continues to coordinate with other agencies, publish and update plain-language guides, and publish updates to the Official Interpretations, if needed.

This Guide summarizes the TILA-RESPA Rule, but it is not a substitute for the rule. Only the rule and its Official Interpretations (also known as commentary) can provide complete and definitive information regarding its requirements. The discussions below provide citations to the sections of the TILA-RESPA Rule on the subject being discussed. Keep in mind that the Official Interpretations, which provide detailed explanations of many of the TILA-RESPA Rule's requirements, are found after the text of the rule and its appendices. The interpretations are arranged by rule section and paragraph for ease of use. The 2013 Final Rule and the Official Interpretations, and related corrections and amendments, are available at www.consumerfinance.gov/policy-compliance/rulemaking/final-rules/2013-integrated-mortgage-disclosure-rule-under-real-estate-settlement-procedures-act-regulation-x-and-truth-lending-act-regulation-z/.

The focus of this Guide is the TILA-RESPA Rule. This Guide does not discuss other federal or state laws that may apply to the origination of closed-end credit.

The content of this Guide does not include any rules, bulletins, guidance, or other interpretations issued or released after the date on the Guide's cover page.

At the end of this Guide, there is more information about the TILA-RESPA Rule and related implementation support from the Bureau.

1.2 Who should read this guide?

If your organization originates closed-end residential mortgage loans, you may find this Guide helpful to determine your compliance obligations for the mortgage loans you originate. This Guide may also be helpful to settlement service providers, secondary market participants, software providers, and other companies that serve as business partners to creditors.

1.3 Where can I find additional resources that will help me understand the TILA-RESPA Rule?

Resources to help you understand and comply with the Dodd-Frank Act mortgage reforms and our regulations, including downloadable compliance guides, are available through the Bureau's website at www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/. On this website, we also offer the ability to sign up for an email distribution list through which we announce additional resources and tools as they become available. The eRegulations tool, which is available at www.consumerfinance.gov/eregulations, includes an unofficial version of Regulation Z (12 CFR part 1026), in which the TILA-RESPA Rule is codified. The tool provides updated versions of the regulatory text and commentary in a single location.

If after reviewing these materials, as well as the regulation and official commentary, you have a specific regulatory interpretation question about the TILA-RESPA Rule, you can submit it to us on our website at <https://reginquiries.consumerfinance.gov/>. Please understand that the responses we provide are not official interpretations of the Bureau and are not a substitute for formal legal counsel or other compliance advice.

Email comments about the Guide to CFPB_RegulatoryImplementation@consumerfinance.gov. Your feedback is crucial to making this Guide as helpful as possible. The Bureau welcomes your suggestions for improvements and your thoughts on its usefulness and readability.

The Bureau is particularly interested in feedback relating to:

- How useful you found this Guide for understanding the TILA-RESPA Rule;
- How useful you found this Guide for implementing the TILA-RESPA Rule at your business; or
- Suggestions you have for improving the Guide, such as additional implementation tips.

2. Overview of the TILA-RESPA Rule

2.1 What is the TILA-RESPA Rule about?

The TILA-RESPA Rule consolidates four disclosure forms that were required under TILA and RESPA for closed-end credit transactions secured by real property or cooperative unit into two forms: a **Loan Estimate** that must be delivered or placed in the mail no later than the third **business day** after receiving the consumer's **application**, and a **Closing Disclosure** that must be provided to the consumer at least three **business days** prior to **consummation**.

2.2 What transactions does the rule cover? (§ 1026.19(e) and (f))

The TILA-RESPA Rule applies to most closed-end consumer credit transactions secured by real property or a cooperative unit (regardless of whether state law classifies it as real property). Credit extended to certain trusts for tax or estate planning purposes is **not exempt** from the TILA-RESPA Rule. (Comment 3(a)-10). However, some specific categories of loans are excluded from the rule. Specifically, the TILA-RESPA Rule **does not apply to** HELOCs, reverse mortgages, or mortgages secured by a mobile home or by a dwelling (other than a cooperative unit) that is not attached to real property. (§ 1026.19(e) and (f)). For further discussion of coverage, see section 4 below.

2.3 What are the record retention requirements for the TILA-RESPA Rule? (§ 1026.25)

The creditor must retain copies of the **Closing Disclosure** (and all documents related to the **Closing Disclosure**) for **five years** after **consummation**.

The creditor, or servicer if applicable, must retain the post-consummation **Escrow Closing Notice and Partial Payment Policy Disclosure** for **two years**. For additional information, see section 16 below.

For all other evidence of compliance with the Integrated Disclosure provisions of Regulation Z (including the **Loan Estimate**) creditors must maintain records for **three years** after **consummation** of the transaction.

Creditors are obligated to obtain and retain a copy of the completed **Closing Disclosures** provided separately by a non-creditor settlement agent to a seller under 1026.38(t)(5), but are not obligated to collect underlying seller-specific documents and records from that third-party settlement agent to support these disclosures. To the extent the creditor does receive documentation related to the seller's disclosure, such as when the creditor is the settlement agent, or when seller-related documents are provided to the creditor by a third-party settlement agent along with the completed disclosure, the creditor should adhere to the record retention requirements that apply to the **Closing Disclosure**.

2.4 What are the record retention requirements if the creditor transfers or sells the loan? (§ 1026.25)

If a creditor sells, transfers, or otherwise disposes of its interest in a mortgage and does not service the mortgage, the creditor shall provide a copy of the **Closing Disclosure** to the new owner or servicer of the mortgage as a part of the transfer of the loan file.

Both the creditor and the new owner or servicer shall retain the **Closing Disclosure** for the **remainder of the five-year period**.

2.5 Is there a requirement on how the records are retained?

Regulations X and Z permit, but do not require, electronic recordkeeping. Records can be maintained by any method that reproduces disclosures and other records accurately, including computer programs. (Comment 25(a)-2)

3. Effective Date

3.1 When do I have to start following the TILA-RESPA Rule and using the Integrated Disclosures?

The TILA-RESPA Rule generally took effect on October 3, 2015 for applications received on or after October 3, 2015. The Integrated Disclosures (*i.e.*, the **Loan Estimate** and the **Closing Disclosure**) must be provided by a creditor or mortgage broker that receives an **application** from a consumer for a closed-end credit transaction secured by real property on or after October 3, 2015.⁵

Creditors were required to use the GFE, HUD-1, and Truth-in-Lending forms for **applications** received prior to October 3, 2015.

3.2 Are there any requirements that take effect regardless of when an application was received?

Yes. As discussed in section 13, below, the TILA-RESPA Rule includes some restrictions on certain activity prior to a consumer's receipt of the **Loan Estimate**. These restrictions took effect on the calendar date October 3, 2015, regardless of when an **application** was received. These activities include:

⁵ Beginning with applications received on or after October 1, 2018, the requirement includes loans for cooperative units that are not classified as real property under state law.

- Imposing fees on a consumer before the consumer has received the **Loan Estimate** and indicated an **intent to proceed** with the transaction (§ 1026.19(e)(2)(i));
 - Providing written estimates of terms or costs specific to consumers before they receive the **Loan Estimate** without a written statement informing the consumer that the terms and costs may change (§ 1026.19(e)(2)(ii)); and
 - Requiring the submission of documents verifying information related to the consumer's **application** before providing the **Loan Estimate**. (§ 1026.19(e)(2)(iii))
- A consumer may indicate an **intent to proceed** in any manner the consumer chooses, unless the creditor requires a particular manner of communication. (§ 1026.19(e)(2)(i)(A)). For further discussion on **intent to proceed**, see section 13.5 below.

Beginning on October 1, 2018, a creditor must provide the **Escrow Closing Notice** and **Partial Payment Policy Disclosure** when required, regardless of when the creditor or mortgage broker received the application.⁶ (Comment 1(d)(5)-1)

For example, for an application received on October 10, 2010, if the escrow account was cancelled on April 14, 2020, the creditor would be required to give the **Escrow Closing Notice**, because the cancellation occurred after October 1, 2018 and after that time, **Escrow Closing Notice** and **Partial Payment Policy Disclosure** are given regardless of when the application was received. (Comment 1(d)(5)-1.v.E)

For more information about the **Escrow Closing Notice** and **Partial Payment Policy Disclosure**, see section 16 of this Guide.

⁶ Prior to October 1, 2018, it is acceptable for a creditor to give the **Escrow Closing Notice** and **Partial Payment Policy Notice** only to transactions where the application was received on or after October 3, 2015. For example, for an application received on October 10, 2010, if the escrow account was cancelled on December 19, 2016, the creditor would not be required to provide the **Escrow Closing Notice** because the application was received before October 3, 2015 and the cancellation occurred prior to October 1, 2018.

3.3 Can a creditor use the Integrated Disclosures for applications received before October 3, 2015?

No. For transactions where the **application** is received prior to October 3, 2015, creditors will still need to follow the disclosure requirements under Regulations X and Z as they existed before the Integrated Disclosures were created by the TILA-RESPA Rule. A creditor will need to use the Truth-in-Lending disclosures, GFE, HUD-1, etc., as applicable, for those transactions.

4. Coverage

4.1 What transactions are covered by the TILA-RESPA Rule? (§§ 1024.5; 1026.3; and 1026.19)

The TILA-RESPA Rule applies to most closed-end consumer credit transactions secured by real property or a cooperative unit (regardless of whether state law classifies it as real property), but **does not apply to:**

- HELOCs;
- Reverse mortgages; or
- Chattel-dwelling loans, such as loans secured by a mobile home or by a dwelling (other than a cooperative unit) that is not attached to real property.

Consistent with existing rules under TILA, the TILA-RESPA Rule also generally does not apply to loans made by a person or entity that is not considered a **creditor under Regulation Z**. (§ 1026.2(a)(17))

There is also a partial exemption for certain transactions associated with housing assistance loan programs for low- and moderate-income consumers. (§ 1026.3(h))

However, certain types of loans that are subject to TILA but are not subject to RESPA **are subject to the TILA-RESPA Rule's integrated disclosure requirements**, including:

- Construction-only loans; and
- Loans secured by vacant land or by 25 or more acres.

Credit extended to certain trusts for tax or estate planning purposes also are covered by the TILA-RESPA Rule. (Comment 3(a)-10)

4.2 What are the disclosure obligations for transactions not covered by the TILA-RESPA Rule, like HELOCs and reverse mortgages?

The Integrated Disclosures will not be used to disclose information about reverse mortgages, HELOCs, chattel-dwelling loans, or other transactions not covered by the TILA-RESPA Rule. Creditors originating these types of mortgages must use, as applicable, the GFE, HUD-1, and Truth-in-Lending disclosures.

For transactions that satisfy the six criteria for the partial exemption associated with *certain* housing assistance loans for low- and moderate-income consumers (§ 1026.3(h)):

- Creditors are exempt from the requirement to provide the RESPA settlement cost booklet, GFE, settlement statement (HUD-1), and application servicing disclosure statement. (See §§ 1024.5(d)(2), 1024.6, 1024.7, 1024.8, 1024.10, and 1024.33)
- Creditors are exempt from the requirement to provide the Special Information Booklet. (§ 1026.3(h))
- Creditors are exempt from the requirement to provide the **Loan Estimate and Closing Disclosure** if they choose to provide the Truth-in-Lending disclosures in connection with the transaction. (§ 1026.3(h)(6)).

For more information on the partial exemption associated with *certain* housing assistance loans, see section 4.5 below.

4.3 Does a creditor have an option to use the new Integrated Disclosure forms for a transaction not covered by the TILA-RESPA Rule?

Creditors are not prohibited from using the Integrated Disclosure forms on loans that are not covered by the TILA-RESPA Rule. However, a creditor cannot use the Integrated Disclosure forms instead of the GFE, HUD-1, and Truth-in-Lending disclosures for transactions that are covered by TILA or RESPA that require those disclosures (e.g., reverse mortgages), unless the transaction qualifies for an exemption from those disclosure requirements (e.g., mortgages associated with *certain* housing assistance loans programs for low- and moderate-income consumers). (See §§ 1026.3(h) and 1024.5(d)(2)).

4.4 Are trusts for estate or tax planning purposes considered consumers under Regulation Z so as to be covered by the TILA-RESPA Rule? (Comments 2(a)(11)-3 and 3(a)-10)

Yes. Credit extended to trusts established for tax or estate planning purposes or to certain land trusts is considered credit extended to a consumer, and as a result, is covered by the TILA-RESPA Rule.

A trust and its trustee are considered to be the same person for purposes of Regulation Z. Where credit is extended to trusts established for tax or estate planning purposes, the **Loan Estimate** and **Closing Disclosure** may be provided to the trustee on behalf of the trust. However, in rescindable transactions, the **Closing Disclosure** must be given separately to each consumer who has the right to rescind. (Comments 2(a)(22)-3 and 17(d)-2). See section 11.8 for more information about giving a **Closing Disclosure** to consumers in rescindable transactions.

When disclosing the name of the consumer on the **Loan Estimate** for a trust, the creditor may opt to disclose the name and mailing address of the trust only, although nothing prohibits the creditor from additionally disclosing the names of the trustee or of other consumers applying for the credit. Further, on both the **Loan Estimate** and the **Closing Disclosure**, a creditor may include a signature line and insert the trustee's name below, along with a designation that the trustee is serving in its capacity as a trustee. (Comment 37(a)(5)-1) See the **TILA-RESPA Guide to Forms** for more information about disclosing the consumer's name and use of signature lines.

4.5 What is the partial exemption for certain housing assistance loans for low- and moderate-income consumers? (§ 1026.3(h))

Transactions that satisfy six criteria that are associated with *certain* housing assistance loans for low- and moderate-income consumers are eligible for an exemption from Regulation Z requirements pertaining to the **Loan Estimate**, **Closing Disclosure**, and **Special Information Booklet**.

These transactions are also eligible for an exemption from certain Regulation X disclosure requirements, as applicable. (§ 1026.3(h) and Comment 3(h)-3)

To qualify for the partial exemption, the transaction must meet **all** of the following criteria:

- The transaction is **secured by a subordinate-lien**.
- The transaction is for the **purpose of** down payment, closing costs, or other similar home buyer assistance, such as principal or interest subsidies; property rehabilitation assistance; energy efficiency assistance; or foreclosure avoidance or prevention.
- The credit contract provides that it does **not** require the **payment of interest**.
- The credit contract provides that **repayment** of the amount of credit extended is forgiven either incrementally or in whole, at a certain date **and** subject only to specified ownership and occupancy conditions, such as a requirement that the property be the consumer's principal dwelling for five years; deferred for a minimum of 20 years after

□ Regarding situations where changed circumstances effect the applicability of the partial exemption, review § 1026.17(e), which addresses the effect of subsequent events that cause a disclosure to become inaccurate.

consummation of the transaction; deferred until sale of the property; **or** deferred until the property securing the transaction is no longer the consumer's principal dwelling.

- The **total of costs** payable by the consumer in connection with the transaction include only recording fees, transfer taxes; a bona fide and reasonable application fee; and a bona fide and reasonable fee for housing counseling services. The application fee and housing counseling services fee must be less than one percent of the loan amount.
 - Recording fees and transfer taxes are as defined terms for purposes of Regulation Z. (Comments 3(h)-4 and -5)
- The creditor provides either the Truth-in-Lending disclosures or the **Loan Estimate and Closing Disclosure**. Regardless of which disclosures the creditor chooses to provide, the creditor must comply with all Regulation Z requirements pertaining to those disclosures.

The requirements that the loan is not conditioned on the payment of interest and that repayment of the loan amount is forgiven or deferred must be reflected in the loan contract. The other requirements for the partial exemption do not need to be reflected in the loan contract. However, Regulation Z requires that the creditor retain evidence of compliance with those provisions. Further, unless the itemization of the amount financed provided to the consumer sufficiently details that the costs payable by the consumer are limited to the allowable costs (and limited amounts of those costs, if applicable), the creditor is required to keep some other written document that establishes its compliance. (Comment 3(h)-2).

5. The Loan Estimate Disclosure

5.1 What are the general requirements for the Loan Estimate disclosure? (§§ 1026.19(e) and 1026.37)

For closed-end credit transactions secured by real property or a cooperative unit (other than reverse mortgages), the creditor is required to provide the consumer with good-faith estimates of credit costs and transaction terms on a form called the **Loan Estimate**. This form integrates and replaces the GFE and the initial TIL for these transactions. The creditor is generally required to provide the **Loan Estimate** to the consumer within **three business days** of the receipt of the consumer's loan **application**. (§ 1026.19(e)(1)). See section 6.1 below on the timing requirements of the **Loan Estimate**.

- **Loan Estimate must contain a good faith estimate of credit costs and transaction terms.** If any information necessary for an accurate disclosure is unknown, the creditor must make the disclosure based on the best information reasonably available at the time the disclosure is provided to the consumer, and use due diligence in obtaining the information. (§ 1026.19(e)(1)(i); Comment 19(e)(1)(i)-1)
- **Loan Estimate must be in writing and contain the information prescribed in § 1026.37.** The creditor must disclose only the specific information set forth in § 1026.37(a) through (n), as shown in the Bureau's form in appendix H-24. (§ 1026.37(o))
- **Delivery must satisfy the timing and method of delivery requirements.** The creditor is responsible for delivering the **Loan Estimate** or placing it in the mail no later than the third business day after receiving the **application**. (§ 1026.19(e)(1)(iii))

- **In certain situations, mortgage brokers may provide a Loan Estimate.** As discussed in more detail in section 6.3 below, if a mortgage broker receives a consumer's **application**, either the creditor or the mortgage broker may provide the **Loan Estimate**. (§ 1026.19(e)(1)(ii))

5.2 Does a creditor have to use the Bureau's Loan Estimate form? (§ 1026.37(o))

Generally, yes. For any loans subject to the TILA-RESPA Rule that are **federally related mortgage loans** subject to RESPA (which will include most mortgages), an appropriate blank **Loan Estimate** form (H-24(A) and (G) and H-28(A) and (I)) is a **standard form**, meaning creditors **must** use an appropriate blank form, including all of its elements such as various font sizes, bolding, shading, and underscoring. (§ 1026.37(o)(3)(i)). (See also § 1024.2(b) for definition of **federally related mortgage loan**).

- Use of an appropriate **Loan Estimate** sample form (H-24(B) through (F) and H-28(B) through (E)) for federally related mortgage loans or non-federally related mortgage loans provides a safe harbor if properly completed with accurate content.

For other loans subject to the TILA-RESPA Rule that are **not federally related mortgage loans**, an appropriate blank form is a **model form**, meaning creditors are not strictly required to use the form, but the disclosures must contain the exact same information and be made with headings, content, and format substantially similar to an appropriate blank form. (§ 1026.37(o)(3)(ii))

5.3 How must a creditor complete (*i.e.*, insert information into) the Loan Estimate form?

Creditors are not required to use any particular method to complete the **Loan Estimate**. It may be completed by hand, computer, typewriter, or word processor. The TILA-RESPA Rule only requires that:

- The information must be clear and legible; and

- The information must comply with the required formatting, including replicating bold font where required. (Comment 37(o)(5)-2)

5.4 What information goes on the Loan Estimate form?

The following is a brief, page-by-page overview of the **Loan Estimate**, generally describing the information creditors are required to disclose. For detailed instructions on the individual fields and calculations for the **Loan Estimate**, see the Bureau's companion guide, **TILA-RESPA Guide to Forms**.

5.5 Page 1: General information, loan terms, projected payments, and costs at closing

Save this Loan Estimate to compare with your Closing Disclosure.		
Loan Estimate		
DATE ISSUED APPLICANTS	LOAN TERM PURPOSE PRODUCT LOAN TYPE LOAN ID # RATE LOCK	<input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> _____ <input type="checkbox"/> NO <input type="checkbox"/> YES, until <i>Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on _____.</i>
PROPERTY SALE PRICE		
Loan Terms		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Monthly Principal & Interest <small>See Projected Payments below for your Estimated Total Monthly Payment</small>		
Prepayment Penalty	Does the loan have these features?	
Balloon Payment		
Projected Payments		
Payment Calculation		
Principal & Interest		
Mortgage Insurance		
Estimated Escrow <small>Amount can increase over time</small>		
Estimated Total Monthly Payment		
Estimated Taxes, Insurance & Assessments <small>Amount can increase over time</small>	This estimate includes <input type="checkbox"/> Property Taxes <input type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other: <small>See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.</small>	In escrow?
Costs at Closing		
Estimated Closing Costs	Includes _____ in Loan Costs + _____ in Other Costs – _____ in Lender Credits. See page 2 for details.	
Estimated Cash to Close	Includes Closing Costs. See Calculating Cash to Close on page 2 for details.	
<small>Visit www.consumerfinance.gov/mortgage-estimate for general information and tools.</small> <small>PAGE 1 OF 3 • LOAN ID # _____</small>		

Page 1 of the **Loan Estimate** includes general information, a **Loan Terms** table with descriptions of applicable information about the loan, a **Projected Payments** table, a **Costs at Closing** table, and a link for consumers to obtain more information at a website the Bureau maintains. (§§ 1026.37(a), (b), (c), (d), and (e))

Page 1 of the **Loan Estimate** includes the title “Loan Estimate” and the statement “Save this Loan Estimate to compare with your Closing Disclosure.” (§§ 1026.37(a)(1) and (a)(2)). The top

of page 1 also includes the name and address of the creditor. (§ 1026.37(a)(3)). A logo or slogan can be used along with the creditor's name and address, so long as the logo or slogan does not exceed the space provided for that information. (§ 1026.37(o)(5)(iii))

If there are multiple creditors, use only the name of the creditor completing the **Loan Estimate**. (Comment 37(a)(3)-1). If a mortgage broker is completing the **Loan Estimate**, use the name of the creditor if known. If not yet known, leave this space blank. (Comment 37(a)(3)-2)

5.6 Page 2: Closing cost details

Closing Cost Details		
Loan Costs	Other Costs	
A. Origination Charges % of Loan Amount (Points)	E. Taxes and Other Government Fees Recording Fees and Other Taxes Transfer Taxes	
B. Services You Cannot Shop For	F. Prepads Homeowner's Insurance Premium (months) Mortgage Insurance Premium (months) Prepaid Interest (per day for days @) Property Taxes (months)	
C. Services You Can Shop For	G. Initial Escrow Payment at Closing Homeowner's Insurance per month for mo. Mortgage Insurance per month for mo. Property Taxes per month for mo.	
D. TOTAL LOAN COSTS (A + B + C)	H. Other	
Adjustable Payment (AP) Table	Adjustable Interest Rate (AIR) Table	
Interest Only Payments? Optional Payments? Step Payments? Seasonal Payments? Monthly Principal and Interest Payments First Change/Amount Subsequent Changes Maximum Payment	Index + Margin Initial Interest Rate Minimum/Maximum Interest Rate Change Frequency First Change Subsequent Changes Limits on Interest Rate Changes First Change Subsequent Changes	
LOAN ESTIMATE PAGE 2 OF 3 • LOAN ID #		

Four main categories of charges are disclosed on page 2 of the **Loan Estimate**:

- A good-faith itemization of the **Loan Costs** and **Other Costs** associated with the loan. (§§ 1026.37(f) and (g))
- A **Calculating Cash to Close** table to show the consumer how the amount of cash needed at closing is calculated. (§ 1026.37(h))
- For transactions with adjustable monthly payments, an **Adjustable Payment (AP) Table** with relevant information about how the monthly payments will change. (§ 1026.37(i))
- For transactions with adjustable interest rates, an **Adjustable Interest Rate (AIR) Table** with relevant information about how the interest rate will change. (§ 1026.37(j))

The items associated with the mortgage loan are broken down into two general types, **Loan Costs** and **Other Costs**. **Loan Costs** are those costs paid by the consumer to the creditor and third-party providers of services the creditor requires to be obtained by the consumer, generally during the origination of the loan. (§ 1026.37(f)).

Other Costs include taxes, governmental recording fees, and certain other payments involved in the real estate closing process. (§ 1026.37(g))

□ Construction loan inspection and handling fees are **Loan Costs**. These fees are disclosed differently depending on whether they are collected at or before closing or after closing. See section 14.18 for more information about the disclosure of construction loan inspection and handling fees. (Comment 37(f)-3)

These two tables have additional specific requirements, as discussed below and in section 2.3 of the **TILA-RESPA Guide to Forms**.

Items that are a component of title insurance must include the introductory description of “Title” followed by a dash or hyphen and then a description of the specific title insurance component (e.g. “Title – Lender’s Title”). (§§ 1026.37(f)(2)(i) and (g)(4)(i))

If state law requires additional disclosures, those additional disclosures may be made on a document whose pages are separate from, and not presented as part of, the **Loan Estimate**. (Comments 37(f)(6)-1 and 37(g)(8)-1)

Subject to the terms of the legal obligation, both specific and general lender credits are included under **Lender Credits**. (Comment 37(g)(6)(ii)-1)

5.7 If there are more or fewer charges in a category of costs, can a creditor change the number of lines for that category? (§§ 1026.37(f)(6) and (g)(8))

No. A creditor cannot change the number of lines for costs on the **Loan Estimate**. The **Loan Estimate** has a prescribed number of lines for each category of **Loan Costs** and **Other Costs**. In the event that more lines are needed for a particular category, generally the charges in excess of that number are totaled, disclosed as an aggregate amount, and described as “additional charges.” (§§ 1026.37(f)(6) and (g)(8))

However, services disclosed as “additional charges” in the “consumer can shop for” section can be itemized on an addendum. (§ 1026.37(f)(6)(ii))

5.8 Can the designation “N/A” be used where no value is to be disclosed for a cost? (Comment 37-1)

No. The designation “N/A” cannot be used where no value is to be disclosed. The term “N/A” may not be used on the **Loan Estimate**. In general, when a disclosure is not applicable, that disclosure is either omitted from the **Loan Estimate** or left blank on the **Loan Estimate**.

5.9 Page 3: Additional information about the loan

Page 3 of the **Loan Estimate** contains **Contact Information**, a **Comparisons** table, an **Other Considerations** table, and, if desired, a **Signature Statement** for the consumer to sign to acknowledge receipt. (See § 1026.37(k), (l), (m), and (n))

Additional Information About This Loan

LENDER
NMLS/____ LICENSE ID
LOAN OFFICER
NMLS/____ LICENSE ID
EMAIL
PHONE

MORTGAGE BROKER
NMLS/____ LICENSE ID
LOAN OFFICER
NMLS/____ LICENSE ID
EMAIL
PHONE

Comparisons	Use these measures to compare this loan with other loans.
In 5 Years	Total you will have paid in principal, interest, mortgage insurance, and loan costs. Principal you will have paid off.
Annual Percentage Rate (APR)	Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Other Considerations

Appraisal	We may order an appraisal to determine the property's value and charge you for this appraisal. We will promptly give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.
Assumption	If you sell or transfer this property to another person, we <input type="checkbox"/> will allow, under certain conditions, this person to assume this loan on the original terms. <input type="checkbox"/> will not allow assumption of this loan on the original terms.
Homeowner's Insurance	This loan requires homeowner's insurance on the property, which you may obtain from a company of your choice that we find acceptable.
Late Payment	If your payment is more than ____ days late, we will charge a late fee of _____.
Refinance	Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan.
Servicing	We intend <input type="checkbox"/> to service your loan. If so, you will make your payments to us. <input type="checkbox"/> to transfer servicing of your loan.

Confirm Receipt

By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.

Applicant Signature

Date

Co-Applicant Signature

Date

LOAN ESTIMATE

PAGE 3 OF 3 • LOAN ID #

In transactions involving new construction, this page may include a clear and conspicuous statement that the creditor may issue a revised disclosure any time prior to 60 days before **consummation**, pursuant to § 1026.19(e)(3)(iv)(F), if the creditor reasonably expects that settlement will occur more than 60 days after the provision of the initial **Loan Estimate**. (See section 14 for more information about construction loans)

6. Delivery of the Loan Estimate

6.1 What are the general timing and delivery requirements for the Loan Estimate? (§ 1026.19(e)(1)(iii))

Generally, the creditor is responsible for ensuring that it delivers or places in the mail the **Loan Estimate** no later than the third **business day** after receiving the consumer's **application**.

Although see section 6.3 below regarding delivery of the **Loan Estimate** by a mortgage broker.

The **Loan Estimate** must also be delivered or placed in the mail no later than the seventh **business day** before **consummation** of the transaction. (See § 1026.19(e)(1)(iii)(B)). The **seven-business-day waiting period** is a TILA statutory waiting period that applies to the initial **Loan Estimate** provided after **application**, but does not apply to revised **Loan Estimates**. (See § 1026.19(e)(1)(iii)(B); Comment 19(e)(1)(iii)-2; and 1026.19(e)(4)(ii))

The creditor also is responsible for ensuring that the **Loan Estimate** and its delivery meet the content, delivery, and timing requirements discussed in sections 5, 6, 7, 8, and 9 of this Guide. (See §§ 1026.19(e) and 1026.37)

6.2 May a consumer waive the seven-business-day waiting period? (§ 1026.19(e)(1)(v))

The consumer may modify or waive the **seven-business-day waiting period** after receiving the **Loan Estimate** if the consumer has a **bona-fide personal financial emergency** that necessitates consummating the credit transaction before the end of the waiting period.

Whether a consumer has a **bona fide personal financial emergency** is determined by the facts surrounding the consumer's individual situation. (See § 1026.19(e)(1)(v); Comment 19(e)(1)(v)-1). An example of a **bona fide personal financial emergency** is the imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period.

To modify or waive the waiting period, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and is signed by all consumers primarily liable on the legal obligation. (§ 1026.19(e)(1)(v)). The creditor may not provide the consumer with a pre-printed waiver form. (§ 1026.19(e)(1)(v))

6.3 Can a mortgage broker provide a Loan Estimate on the creditor's behalf? (§ 1026.19(e)(i)(ii))

Yes. If a mortgage broker receives a consumer's **application**, the mortgage broker may provide the **Loan Estimate** to the consumer on the creditor's behalf. (§ 1026.19(e)(1)(ii))

The provision of a **Loan Estimate** by a mortgage broker satisfies the creditor's obligation to provide a **Loan Estimate**. However, any such creditor is expected to maintain communication with mortgage brokers to ensure that the **Loan Estimate** and its delivery satisfy the requirements described in this Guide, and the creditor is legally responsible for any errors or defects. (§ 1026.19(e)(1)(ii); Comment 19(e)(1)(ii) -1 and -2)

If a mortgage broker provides the **Loan Estimate** to a consumer, the mortgage broker must comply with the three year record retention requirement discussed in section 2.3 above. (§ 1026.19(e)(1)(ii)(B); Comment 19(e)(1)(ii)-1)

6.4 When does the creditor have to provide the Loan Estimate to the consumer? (§ 1026.19(e)(1)(iii)(A))

The **Loan Estimate** must be delivered or placed in the mail to the consumer no later than the third **business day** after the creditor receives the consumer's **application** for a mortgage loan. (§ 1026.19(e)(1)(iii)(A)). (See definitions of **application** and **business day** below at sections 6.6 and 6.14). If the **Loan Estimate** is not provided to the consumer in person, the

consumer is considered to have received the **Loan Estimate** three **business days** after it is delivered or placed in the mail. (§ 1026.19(e)(1)(iv))

For construction loans, the timing for delivering or placing the **Loan Estimate** in the mail depends on when the creditor receives the application for the construction phase, the permanent phase, or both phases. See section 14.3 for more information about when a creditor must provide the **Loan Estimate** for construction loans. (Comment 19(e)(1)(iii)-5)

6.5 How must the Loan Estimate be delivered? (§ 1026.19(e)(1)(iv))

The **Loan Estimate** may be:

- Provided to the consumer in person;
- Mailed to the consumer (Comment 19(e)(1)(iv)-1); or
- Provided by other delivery methods, including electronic delivery. Creditors and mortgage brokers may use electronic delivery methods subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*). (Comment 19(e)(1)(iv)-2)

6.6 What is an “application” that triggers an obligation to provide a Loan Estimate? (§ 1026.2(a)(3))

An **application** means the submission of a consumer’s financial information for purposes of obtaining an extension of credit. For transactions subject to § 1026.19(e), (f), or (g), an **application** consists of the submission of the following six pieces of information:

- The consumer’s name;
- The consumer’s income;
- The consumer’s social security number to obtain a credit report;
- The property address;
- An estimate of the value of the property; and
- The mortgage loan amount sought.

An **application** may be submitted in written or electronic format, and includes a written record of an oral application. (Comment 2(a)(3)-1)

- ❑ This definition of **application** is similar to the definition under Regulation X prior to the issuance of the TILA-RESPA Rule. (§ 1024.2(b)). The Bureau revised the definition of **application** to remove the seventh “catch-all” element of the definition under Regulation X, that is, “any other information deemed necessary by the loan originator.”
- ❑ The six pieces of information must be submitted for purposes of obtaining an extension of credit. The information is not deemed submitted for this purpose simply because it exists in a creditor’s files or on a creditor’s computer system.

6.7 What if a creditor receives these six pieces of information, but needs to collect additional information to proceed with an extension of credit? (Comment 2(a)(3)-1)

This definition of **application** does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit, and creditors have a degree of flexibility that enables them to collect additional information for

purposes of producing the **Loan Estimate**. (See section 6.8 for more information about collecting additional information prior to providing a **Loan Estimate**). However, once a creditor has received the six pieces of information discussed above, it has an **application** for purposes of the requirement for delivery of the **Loan Estimate** to the consumer, including the **three-business-day** timing requirement. (Comment 2(a)(3) -1)

The obligation to provide the **Loan Estimate** is not triggered until the consumer submits the six pieces of information that constitute an application under the TILA-RESPA Rule. Creditors may collect additional information, such as loan term or product, prior to producing the **Loan Estimate**, provided the consumer has not submitted all six pieces of information.

6.8 Are creditors allowed to require additional verifying information other than the six pieces of information that form an application from consumers before providing a Loan Estimate? (§ 1026.19(e)(2)(iii))

No. A creditor or other person may not condition providing the **Loan Estimate** on a consumer submitting documents verifying information related to the consumer's mortgage loan **application** before providing the **Loan Estimate**. (§ 1026.19(e)(2)(iii); Comment 19(e)(2)(iii)-1)

For example:

- A creditor may ask for the sale price and address of the property, but may not require the consumer to provide a purchase and sale agreement to support the information the consumer provides orally before the creditor provides the **Loan Estimate**.
- A mortgage broker may ask for the names, account numbers, and balances of the consumer's checking and savings accounts, but the mortgage broker may not require the consumer to provide bank statements or similar documentation to support the information orally provided by the consumer before the **Loan Estimate** is provided to the consumer.

6.9 May an online application system refuse to accept applications that contain the six elements of an application because other preferred information is not included? (§ 1026.2(a)(3))

No. An online application system designed to reject or refuse to accept **applications** on the basis that they lack other information that a creditor normally would prefer to have beyond the six elements does not comply with the TILA-RESPA Rule.

6.10 If the six pieces of information exist in the creditor's system or its file, does that trigger the requirement to provide a Loan Estimate? (§ 1026.2(a)(3))

No. The obligation to provide the **Loan Estimate** is only triggered upon **submission** of the six pieces of information for purposes of obtaining credit, and the information is not deemed submitted simply because it exists on a creditor's system or in its file.

For example, if the consumer starts filling out an **application** online, completes and saves the six pieces of information required, but does not submit the **application**, the obligation to provide a **Loan Estimate** is not triggered.

6.11 Can a creditor review detailed written documentation of income and assets prior to delivering a Loan Estimate? (Comment 2(a)(3)-1)

Yes. A creditor or other person can request, collect, and review documentation or additional information **voluntarily** provided by the consumer prior to providing a **Loan Estimate**. However, the TILA-RESPA Rule prohibits a creditor from requiring a consumer to submit documents verifying information related to the consumer's **application**, such as income and

asset information, before providing a **Loan Estimate**. Additionally, the creditor cannot explicitly or implicitly represent to the consumer that it will not provide a **Loan Estimate** without the consumer first providing verifying documentation. (See § 1026.19(e)(2)(iii); Comment 19(e)(2)(iii)-1)

If a consumer requests a pre-approval or pre-qualification and provides five of the six pieces of information that constitute an **application**, the creditor is not yet obligated to provide a **Loan Estimate**. (Comment 2(a)(3)-1.i). So long as the consumer does not provide that sixth element, for example, the property address, the creditor is not required to provide a **Loan Estimate** and may simply provide a pre-approval or pre-qualification in compliance with its current practice and other applicable law. However, if the consumer provides all six elements of the **application**, the TILA-RESPA Rule requires the creditor to provide a **Loan Estimate**. (Comment 2(a)(3)-1.ii). The fact that a consumer requests a pre-approval or pre-qualification will not change the creditor's obligation to provide a **Loan Estimate**.

6.12 What if the consumer withdraws the application or the creditor determines it cannot approve it? (Comment 19(e)(1)(iii)-3)

If the creditor determines within the **three-business-day** period that the consumer's **application** will not or cannot be approved on the terms requested by the consumer, or if the consumer withdraws the **application** within that period, the creditor does not have to provide the **Loan Estimate**. (Comment 19(e)(1)(iii)-3). However, if the creditor does not provide the **Loan Estimate**, it will not have complied with the **Loan Estimate** requirements under the TILA-RESPA rule if it later consummates the transaction on the terms originally applied for by the consumer. (Comment 19(e)(1)(iii)-3)

6.13 What if the consumer amends the application and the creditor can now proceed? (Comment 19(e)(1)(iii)-3)

If a consumer amends an **application** and a creditor determines the amended **application** may proceed, then the creditor is required to comply with the **Loan Estimate** requirements,

including delivering or mailing a **Loan Estimate** within three **business days** of receiving the amended or resubmitted **application**. (Comment 19(e)(1)(iii)-3)

6.14 What is considered a “business day” under the requirements for provision of the Loan Estimate? (Comment 19(e)(1)(iii)-1; § 1026.2(a)(6))

For purposes of providing the **Loan Estimate**, a **business day** is a day on which the creditor’s offices are open to the public for carrying out substantially all of its business functions.

(Comment 19(e)(1)(iii)-1, § 1026.2(a)(6))

Note that the term **business day** is defined differently for other purposes; including counting days to ensure the consumer receives the **Closing Disclosure** on time. (See §§ 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii)). For these other purposes, **business day** means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year’s Day, the Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (See § 1026.2(a)(6); Comment 2(a)(6)-2; Comment 19(f)(1)(ii)-1)

6.15 What if the creditor does not have exact information to calculate various costs at the time the Loan Estimate is delivered? (Comments 17(c)(2)(i)-1 and -2)

Creditors are required to act in **good faith** and exercise **due diligence** in obtaining information necessary to complete the **Loan Estimate**. (Comment 17(c)(2)(i)-1). Normally creditors may rely on the representations of other parties in obtaining information. (§ 1026.17(c)(2)(i))

However, there may be some information that is unknown (*i.e.*, not reasonably available to the creditor at the time the **Loan Estimate** is made). In these instances, the creditor may use estimates even though it knows that more precise information will be available by the point of

consummation. However, new disclosures may be required under § 1026.17(c) or § 1026.19.
(Comment 17(c)(2)(i)-1)

When estimated figures are used, they must be designated as such on the **Loan Estimate**.
(Comment 17(c)(2)(i)-2)

7. Good faith requirement and tolerances

7.1 What is the general accuracy requirement for the Loan Estimate disclosures? (§ 1026.19(e)(3)(iii))

Creditors are responsible for ensuring that the figures stated in the **Loan Estimate** are made in **good faith** and consistent with the best information reasonably available to the creditor at the time they are disclosed. (§§ 1026.17(c)(2)(i); 1026.19(e)(3) and Comments 19(e)(3)(iii)-1 through -3)

Whether or not a disclosure included in the **Loan Estimate** was made in **good faith** is determined by calculating the difference between the estimated charge or charges originally provided in the **Loan Estimate** and the actual charge or charges paid by or imposed on the consumer in the **Closing Disclosure**. (§§ 1026.19(e)(3)(i) and (e)(3)(ii)).

- If a creditor decreases a charge on a revised **Loan Estimate**, **Closing Disclosure**, or corrected **Closing Disclosure**, the creditor is not required to use the decreased estimate for purposes of determining **good faith**, but instead may rely on the amount originally disclosed.

For more information about what charges are paid or imposed on the consumer, see section 13.6 below.

Generally, if the charge paid by or imposed on the consumer **exceeds** the amount originally disclosed on the **Loan Estimate**, it is **not in good faith**, regardless of whether the creditor later discovers a technical error, miscalculation, or underestimation of a charge. A disclosure on the **Loan Estimate** is considered to be in **good faith** if the creditor charges the consumer **less** than the amount disclosed on the **Loan Estimate**, without regard to any tolerance limitations.

7.2 Are there circumstances where creditors are allowed to charge more than disclosed on the Loan Estimate?

Yes. A creditor may charge the consumer more than the amount disclosed in the **Loan Estimate** in specific circumstances, described below:

- Certain variations between the amount disclosed and the amount charged are expressly permitted by the TILA-RESPA Rule (See section 7.3 below for additional information on which variations are permitted) (§ 1026.19(e)(3)(iii));
- The amount charged falls within explicit **tolerance** thresholds (and the estimate is not for a **zero tolerance** charge where variations are never permitted) (§ 1026.19(e)(3)(ii)) (See sections 7.4 and 7.11 below); or
- **Changed circumstances** or another triggering event under § 1026.19(e)(3)(iv) permits the charge to be changed and a revised **Loan Estimate**, a **Closing Disclosure**, or a corrected **Closing Disclosure** is provided to the consumer in accordance with the TILA-RESPA Rule. (§ 1026.19(e)(3)(iv)) (See section 8.2 below)

7.3 What charges may change without regard to a tolerance limitation? (§ 1026.19(e)(3)(iii))

For certain costs or terms, creditors are permitted to charge consumers more than the amount disclosed on the **Loan Estimate** without any **tolerance** limitation.

These charges are:

- Prepaid interest; property insurance premiums; amounts placed into an escrow, impound, reserve or similar account. (§ 1026.19(e)(3)(iii)(A)-(C))
- For services required by the creditor if the creditor **permits the consumer to shop** and the consumer selects a third-party service provider not on the creditor's **written list of service providers**. (§ 1026.19(e)(3)(iii)(D))

- **Property taxes** and other charges paid to third-party service providers for services not required by the creditor. (§ 1026.19(e)(3)(iii)(E))

However, creditors may only charge consumers more than the amount disclosed when the original estimated charge, or lack of an estimated charge for a particular service, was based on the best information reasonably available to the creditor at the time the disclosure was provided. (§ 1026.19(e)(3)(iii)). Thus, these charges are subject to a “best information reasonably available” standard.

The charges listed above are permitted to increase, subject to the best information reasonably available standard, even if paid to the creditor or affiliate so long as they are **bona fide**. **Bona fide** charges are those that are lawful and for services actually performed. (Comment 19(e)(3)(iii)-4)

□ **Bona fide**, as used for tolerances under the TILA-RESPA Rule, may not mean the same thing as used in other places of Regulation Z or X. A creditor should check the respective definitions.

Property taxes and other charges paid to third-party service providers for services not required by the creditor are permitted to increase so long as the amount estimated (or omitted) for a particular service was based on the best information reasonably available at the time the creditor provided the disclosure. For example, if a creditor has reason to know that property taxes will be required at consummation, failure to estimate those taxes or providing an unreasonably low estimate of those taxes is not an estimate based on the best information reasonably available, and as a result, is subject to the zero tolerance standard. (Comment 19(e)(3)(iii)-3)

7.4 What charges are subject to a 10% cumulative tolerance? (§ 1026.19(e)(3)(ii))

Charges for third-party services and recording fees paid by or imposed on the consumer are grouped together and subject to a **10% cumulative tolerance**. This means the consumer may be charged more than the amount disclosed on the **Loan Estimate** for any of these charges so long as the total sum of the charges added together does not exceed the sum of all such charges disclosed on the **Loan Estimate** by more than 10%. (§ 1026.19(e)(3)(ii))

These charges are:

- Recording fees (Comment 19(e)(3)(ii)-4);
- Charges for third-party services where:
 - The charge is not paid to the creditor or the creditor's affiliate
(\$ 1026.19(e)(3)(ii)(B)); and
 - The consumer is permitted by the creditor to **shop** for the third-party service, and the consumer selects a third-party service provider on the creditor's **written list of service providers**, or the consumer is permitted by the creditor to **shop** (based on the facts and circumstances) for the third-party service, but the creditor fails to provide the **written list of service providers**. (§§ 1026.19(e)(3)(ii)(C); 1026.19(e)(1)(vi); Comments 19(e)(3)(ii)-3 and -6, 19(e)(3)(iii)-2, and 19(e)(1)(vi)-1 through 7)

 Remember, when a creditor allows a consumer to **shop** for a third-party service and the consumer chooses a third-party service provider not identified on the creditor's list, the charge is not subject to a **tolerance** limitation (See section 7.3 above).

7.5 When is a consumer permitted to shop for a service? (§ 1026.19(e)(1)(vi))

A consumer is permitted to shop for a service if the creditor permits the consumer to select the third-party service provider. (§ 1026.19(e)(1)(vi)(A)) Permission to shop is based on all the relevant facts and circumstances. (Comment 19(e)(1)(vi)-1)

The creditor may impose reasonable requirements on the third-party service provider's qualifications, such as that the settlement provider is appropriately licensed. However, a consumer is not considered able to shop if the creditor limits the third-party service provider choices to a list selected by the creditor. (Comment 19(e)(1)(vi)-1)

In addition to the **Loan Estimate**, if the consumer is permitted to shop for a settlement service, the creditor must provide the consumer with a **written list of services** for which the consumer can **shop**. See also section 7.6 below for additional information on providing the **written list of service providers**. This **written list of service providers** is separate from the **Loan Estimate**, but must be provided within the same time frame—that is, it must be provided to the consumer no later than three **business days** after the creditor receives the consumer's **application**—and the list must:

- Identify at least one available settlement service provider for each service; and

- State that the consumer may choose a different provider of that service.

(§ 1026.19(e)(1)(vi)(C))

The settlement service providers identified on the **written list** must correspond to the required settlement services for which the consumer can **shop** as disclosed on the **Loan Estimate**.

(Comment 19(e)(1)(vi)-3). There must be sufficient information in the **written list** for the consumer to contact a settlement service provider for each required settlement service for which the consumer can shop as disclosed on the **Loan Estimate**. This information can include the provider's business name, business address, and telephone number.

(Comment 19(e)(1)(vi)-4). The settlement service providers listed must be available to the consumer. For example, they must be in business at the time the **Loan Estimate** is provided to the consumer, and they must provide the services in the geographic area where the consumer or property is located. (Comment 19(e)(1)(vi)-4)

❑ While the **written list** must correspond to the required services for which the consumer can **shop** as disclosed on the **Loan Estimate**, the creditor is not required to provide a detailed breakdown of all related fees that are not themselves required by the creditor but that may be charged to the consumer by the settlement service provider. These fees could include notary fees, title search fees, or other services the settlement service provider needs to perform the service that the creditor requires.

See form H-27(A) of appendix H to Regulation Z for a model list. A creditor complies with the requirement to provide the **written list** if it properly uses this model list. (Comment 19(e)(1)(vi)-3). The creditor complies with the requirement even if it makes changes to the model list, so long as the changes do not affect the substance, clarity, or meaningful sequence of the form. For example, the creditor may delete the estimated fees column on the **written list** because the TILA-RESPA Rule does not require the disclosure of such estimated fees on the **written list**. (Comment 19(e)(1)(vi)-3)

A creditor is permitted to add language to the **written list** indicating that the inclusion of a third-party service provider on the **written list** is not an endorsement. (Comment 19(e)(1)(vi)-6). However, there is no specific language required to be provided when the creditor wishes to do so. The general requirement that the creditor must provide the information clearly and conspicuously on the disclosures under § 1026.17(a) would apply to any language the creditor adds to the **written list**.

The creditor may also identify on the **written list of service providers** those services for which the consumer is **not permitted to shop**, as long as those services are clearly and conspicuously distinguished from those services for which the consumer is **permitted to shop**. (Comment 19(e)(1)(vi)-6). See form H-27(C) of appendix H to Regulation Z for a sample of the inclusion of this information.

7.6 What tolerance standard applies if the written list of service providers is not provided to the consumer or if the list is incomplete? (Comments 19(e)(3)(ii)-6 and 19(e)(3)(iii)-2)

Generally, if the creditor permits the consumer to shop, provides a **written list**, and the consumer selects a third-party service provider on the list, the charges for the settlement services are subject to the **10% cumulative tolerance** standard. (§ 1026.19(e)(3)(ii)) If the consumer selects a third-party service provider that is not on the **written list** provided to the consumer, the charges for the settlement service may change without limitation as long as the charges disclosed on the **Loan Estimate** were based on the best information reasonably available to the creditor at the time of disclosure.

(Comment 19(e)(3)(iii)-2)

If a creditor fails to provide the **written list** to the consumer, but the facts and circumstances indicate the consumer was permitted to shop for the settlement service, the charges for which the consumer is permitted to shop are subject to the

10% cumulative tolerance standard. However, if those charges are paid to the creditor or an affiliate, they are subject to the **zero tolerance** standard. (Comments 19(e)(3)(ii)-6 and 19(e)(3)(iii)-2)

Even if the consumer is considered permitted to shop when the creditor fails to provide the written list, it would still be considered a violation of § 1026.19(e)(1)(vi)(C).

Errors or omissions on the **written list** or untimely delivery of the **written list** may impact the tolerance standard applicable to the settlement services required to be disclosed on the **written list**. If the error or omission does not prevent the consumer from shopping, the charges are not

paid to the creditor or an affiliate, and the consumer is otherwise considered to have shopped, the charges are subject to the **10% cumulative tolerance standard**. If the error or omission does prevent the consumer from shopping, the charges are subject to the **zero tolerance standard**. The determination of whether the error or omission prevents the consumer from shopping is based on all of the relevant facts and circumstances. For example, a typographical error in the name of a third-party service provider on the **written list** might not prevent the consumer from shopping if the error does not prevent identification of the service provider. (Comments 19(e)(3)(i)-1.iv and 19(e)(3)(ii)-6)

7.7 What happens to the sum of estimated charges if the consumer is permitted to shop and chooses his or her own service provider? (§ 1026.19(e)(3)(iii); Comment 19(e)(3)(ii)-3)

Where a consumer chooses a third-party service provider that is not on the creditor's **written list of service providers**, the amount that may be charged for the service is not limited. (§ 1026.19(e)(3)(iii)). See section 7.3 above, describing charges subject to no **tolerance** limitation. When this occurs for a service that otherwise would be included in the **10% cumulative tolerance** category, the charge is removed from consideration for purposes of determining the **10% tolerance** level. (Comment 19(e)(3)(ii)-3)

Remember, if the creditor **permits the consumer to shop**, based on the facts and circumstances, for a required settlement service but the consumer either does not select a settlement service provider, chooses a settlement service provider identified by the creditor on the **written list of service providers**, or the creditor fails to provide the **written list of service providers**, then the amount charged **is included** in the sum of all such third-party charges paid by the consumer, and also is subject to the **10% cumulative tolerance**. However, if the charge is paid to the creditor or an affiliate, it is subject to the **zero tolerance** standard. (Comment 19(e)(3)(ii)-3 and -6, and 19(e)(3)(iii)-2)

The TILA-RESPA Rule states that charges for property taxes and other charges paid to third-party service providers for services not required by the creditor, even those paid to affiliates of the creditor, are "variations permitted for certain charges" or charges that are not subject to a tolerance limitation so long as they are based on the best information reasonably available at the

time of disclosure and they are bona fide charges. (§ 1026.19(e)(3)(iii)(E); Comments 19(e)(3)(iii)-3 and -4). For example, owner's title insurance that is not required by the creditor will be a variation permitted charge that is not subject to tolerance as long as it is disclosed as optional.

7.8 What if the creditor estimates a charge for a service that is not actually performed? (Comment 19(e)(3)(ii)-5)

The creditor should compare the sum of the charges actually paid by or imposed on the consumer with the sum of the estimated charges on the **Loan Estimate** that are actually performed. If a service is not performed, the estimate for that charge should be removed from the total amount of estimated charges. (Comment 19(e)(3)(ii)-5)

7.9 What if a consumer pays more for a particular charge for a third-party service or recording fee than estimated, but the total charges paid are still within 10% of the estimate? (Comment 19(e)(3)(ii)-2)

Whether an individual estimated charge subject to § 1026.19(e)(3)(ii) is in **good faith** depends on whether the sum of all charges subject to the **10% cumulative tolerance** increases by more than 10%, even if a particular charge increases by more than 10%. A creditor may charge more than 10% in excess of an individual estimated charge in this category, so long as the sum of all charges is still within the **10% cumulative tolerance**. (Comment 19(e)(3)(ii)-2)

For example, if the creditor includes a \$300 estimate for a settlement agent, included in the **10% cumulative tolerance**, the creditor may not be outside the **10% cumulative tolerance** just because that single fee increases by 10%, unless the sum of all fees in the **10% cumulative tolerance** increases by more than 10%. (Comment 19(e)(3)(ii)-2)

7.10 What if the creditor does not provide an estimate of a particular fee that is later charged? (Comment 19(e)(3)(ii)-2)

Creditors are provided flexibility in disclosing individual fees by the focus on the aggregate amount of all charges. A creditor may charge a consumer for a fee that would fall under the **10% cumulative tolerance** but was not included on the **Loan Estimate** so long as the sum of all charges in this category does not exceed the sum of all estimated charges by more than 10%. (Comment 19(e)(3)(ii)-2). For example, if the creditor requires lender's title insurance, the creditor must disclose the service (*i.e.*, lender title's insurance) and the fee for the service. However, the creditor is not required to provide a detailed breakdown of all related fees that are not explicitly required by the creditor but that may be charged to the consumer, such as a notary fee, title search fee, or other ancillary and administrative services needed to perform or provide the settlement service required by the creditor.

7.11 What charges are subject to zero tolerance? (§ 1026.19(e)(3)(i))

For all other charges, creditors must not charge consumers more than the amount disclosed on the **Loan Estimate** unless there is a **changed circumstance** or other triggering event that permits a revised estimate, as discussed below in section 8.

These **zero tolerance** charges include:

- Fees paid to the creditor, mortgage broker, or an **affiliate** of either, where such fees do not fall within the exceptions for charges that may change without regard to a tolerance limitation.⁷ See sections 7.3 above and 7.12 below. (§ 1026.19(e)(3)(ii)(B); Comment 19(e)(3)(i)-1);

⁷ For example, fees that do not fall within the exceptions in § 1026.19(e)(3)(iii) include amounts paid by the consumer to the creditor to reduce the interest rate or fees paid to an affiliate if the creditor **did** permit the consumer to **shop** for that settlement service, based on the facts and circumstances, but failed to provide the **written list of service providers**. (See Comment 19(e)(3)(iii)-2 and section 7.5 above)

- Fees paid to an unaffiliated third party if the creditor **did not** permit the consumer to **shop**, based on the facts and circumstances, for a third-party service provider for a settlement service (§ 1026.19(e)(3)(ii)(C); Comment 19(e)(3)(i)-1.iv); or
- Transfer taxes. (Comments 19(e)(3)(i)-1 and -4)

7.12 When is a charge paid to a creditor, mortgage broker, or an affiliate of either?

A charge is **paid to** the creditor, mortgage broker, or an **affiliate** of either if it is retained by that person or entity. A charge is not **paid to** one of these entities when it receives money but passes it on to an unaffiliated third party. (Comment 19(e)(3)(i)-3)

The term **affiliate** is given the same meaning it has for purposes of determining Ability-to-Repay and HOEPA coverage: any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956. (12 U.S.C. 1841 et seq.) (§ 1026.32(b)(5))

7.13 Can lender credits change? (§ 1026.19(e)(3)(iv); Comments 19(e)(3)(i)-5 and -6)

Yes, in certain circumstances. Lender credits, both specific and general, may always increase or may decrease if there is an accompanying changed circumstance or other triggering event under § 1026.19(e)(3)(iv).

For purposes of determining good faith and whether a change in lender credits results in an increased charge to the consumer, the total amount of lender credits, whether specific or general, actually provided to the consumer is compared to the amount of the “lender credits” identified in the **Total Closing Costs** on the **Loan Estimate**. (Comments 19(e)(3)(i)-5 and -6). For example, if the creditor discloses a \$750 estimate for lender credits, but only \$500 of lender credits is actually provided to the consumer, the creditor has a **zero tolerance**

General lender credits are generalized payments from the creditor to the consumer that do not pay for a particular fee on the disclosures, whereas specific lender credits are attributed to a specific fee.

standard violation because the actual amount of lender credits provided is less than the estimated lender credits, and is therefore, an increased charge to the consumer. (Comment 19(e)(3)(i)-5)

Additionally, specific lender credits can impact the good faith tolerance analysis for their respective fees. For example, if the creditor discloses a \$750 estimate for lender credits on the **Loan Estimate** to cover the cost of a \$750 appraisal fee, and the appraisal fee subsequently increases by \$150, and the creditor increases the amount of the specific lender credit by \$150 to pay for the increase, the credit is not being revised in a way that violates the **good faith** tolerance requirements because, although the credit increased from the amount disclosed, the amount paid by the consumer did not. However, if the creditor subsequently reduces the specific lender credit by \$50 because the appraisal fee decreased by \$50, then the creditor has a **zero tolerance** standard violation because, although the amount of the appraisal fee decreased, the amount of the lender credit decreased. (Comment 19(e)(3)(i)-5)

But, if changed circumstances or other triggering events cause a lender credit to decrease, the lender would not be subject to a tolerance violation, assuming the other requirements for resetting tolerances are met and the legal obligation allows the decrease. For example, if the consumer enters into a rate lock agreement that causes the lender credit amount to decrease and the creditor provides a revised **Loan Estimate** reflecting the change no later than three **business days** afterwards, the lender credit decrease would not result in a **zero tolerance standard** violation. (Comment 19(e)(3)(iv)(D)-1). For the appraisal fee example above, if the reason the appraisal fee decreased by \$50 was due to a change in the loan program and the legal obligation stated the creditor would pay for the appraisal, but not the specific amount, the lender credit decrease would not result in a **zero tolerance standard** violation (assuming compliance with the requirements for providing a revised **Loan Estimate**). A creditor must retain evidence of compliance with the requirements for the **Loan Estimate**.

(§ 1026.25(c)(1)(i))

7.14 What must creditors do when the amounts paid at closing exceed the amounts disclosed on the Loan Estimate beyond the applicable tolerance thresholds? (§ 1026.19(f)(2)(v))

If the amounts paid by the consumer at closing exceed the amounts disclosed by more than the applicable **tolerance** threshold, the creditor must provide a corrected **Closing Disclosure** and provide a **cure** for a tolerance violation no later than **60 calendar days after consummation**. The refund need not be in the form of a cash refund to the consumer. (Comment 19(f)(2)(v)-1)

- For charges subject to **zero tolerance**, any amount charged beyond the amount disclosed on the **Loan Estimate** (or revised **Loan Estimate**, **Closing Disclosure**, or **corrected Closing Disclosure** if applicable) must be reimbursed to the consumer. (§ 1026.19(e)(3)(i))
- For charges subject to a **10% cumulative tolerance**, to the extent the total sum of the charges added together exceeds the sum of all such charges disclosed on the **Loan Estimate** (or revised **Loan Estimate**, **Closing Disclosure**, or **corrected Closing Disclosure**, if applicable) by more than 10%, the difference must be reimbursed to the consumer. (§ 1026.19(e)(3)(ii))

- Creditors can **cure** tolerance violations in many ways. For example, a **cure** for a tolerance violation can be provided by:
 - Providing a refund directly to the consumer;
 - Providing a principal reduction;
 - Providing lender credits, either specific or general, to the consumer.

See section 12.10 below for information about disclosing **cures** for tolerance violations on the **Closing Disclosure**.

8. Revisions to Loan Estimates

8.1 When are revisions permitted for Loan Estimates?

Generally, a creditor may revise a **Loan Estimate** at any time before it provides the **Closing Disclosure**. A revised **Loan Estimate** may be issued to reset tolerances for purposes of determining **good faith** or to update information for informational purposes. (Comment 19(e)(3)(iv)-4). Regardless of whether a revised **Loan Estimate** is used for resetting tolerances or for informational purposes, all of the disclosures on a revised **Loan Estimate** must be based on the best information reasonably available at the time the revised disclosure is provided. (Comment 19(e)(3)(iv)-5)

The creditor must ensure that the consumer receives the revised **Loan Estimate** no later than **four business days** prior to **consummation**. The creditor is permitted to rely on the charges disclosed in a revised **Loan Estimate** to reset tolerances in more limited circumstances.

Creditors generally are bound by the amounts in the **Loan Estimate** provided within three **business days** of the **application**. Creditors are permitted to provide and use revised estimates for purposes of determining **good faith** and resetting tolerances only in certain specific circumstances:

- **Changed circumstances** that occur after the **Loan Estimate** is provided to the consumer cause an estimated charge to increase more than is permitted under the TILA-RESPA Rule (§ 1026.19(e)(3)(iv)(A));
- **Changed circumstances** affect the consumer's creditworthiness or the value of the property securing the loan and cause a consumer to be ineligible for an estimated charge previously disclosed to the consumer (§ 1026.19(e)(3)(iv)(B));
- Changes to the credit terms or the settlement are requested by the consumer and those changes cause an estimated charge to increase (§ 1026.19(e)(3)(iv)(C));
- The interest rate was not locked when the **Loan Estimate** was provided, and locking the rate causes the points, lender credits and any other interest rate dependent charges or terms to change (§ 1026.19(e)(3)(iv)(D));
- The consumer indicates an **intent to proceed** with the transaction more than 10 **business days** after the **Loan Estimate** was originally provided, so long as the creditor has not established a longer expiration period (§ 1026.19(e)(3)(iv)(E); Comment 19(e)(3)(iv)(E)-2); or
- The loan is a new construction loan, and settlement is delayed by more than 60 calendar days, if the original **Loan Estimate** states clearly and conspicuously that at any time prior to 60 calendar days before **consummation**, the creditor may issue revised disclosures. (§ 1026.19(e)(3)(iv)(F))

When creditors revise estimated charges for these reasons, a creditor may determine **good faith** based on increased charges only to the extent actually justified by the reason for the revision. (Comment 19(e)(3)(iv)-2). Creditors must also retain records demonstrating compliance with the requirements of § 1026.19(e), in order to comply with the record retention requirements of the TILA-RESPA Rule. (Comment 19(e)(3)(iv)-3)

Additionally, if a creditor provides a revised **Loan Estimate** for informational purposes, any updated fees, although required to be updated based on the best information reasonably available requirement, cannot be used for determining **good faith** unless one of the above circumstances for resetting tolerances is also present. (Comment 19(e)(3)(iv)-5)

Revisions can also be provided on the **Closing Disclosure**. For information about providing **Closing Disclosures**, including providing a **Closing Disclosure** to reset tolerances, see sections 10, 11, and 12 below.

8.2 What is a “changed circumstance”? (§ 1026.19(e)(3)(iv)(A))

A **changed circumstance** for purposes of providing a revised estimate and resetting tolerances is:

- An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction (§ 1026.19(e)(3)(iv)(A)(1));
- Information specific to the consumer or transaction that the creditor relied upon when providing the disclosures and that was inaccurate or changed after the disclosures were provided (§ 1026.19(e)(3)(iv)(A)(2)); or
- New information specific to the consumer or transaction that the creditor did not rely on when providing the disclosures. (§ 1026.19(e)(3)(iv)(A)(3))

8.3 What are changed circumstances that affect settlement charges?

A **changed circumstance** affects settlement charges if it causes an estimated charge to increase by more than the applicable **tolerance** or, in the case of estimated charges subject to the **10% cumulative tolerance**, causes the sum of those charges to increase by more than the **10% tolerance**. (§ 1026.19(e)(3)(iv)(A); Comment 19(e)(3)(iv)(A)-1)

Examples of **changed circumstances** affecting settlement costs include (Comment 19(e)(3)(iv)(A)-2):

- A natural disaster, such as a hurricane or earthquake, damages the property or otherwise results in additional closing costs.
- The creditor disclosed a charge for title insurance, but the title insurer goes out of business during underwriting,

- New information not relied upon when providing the charges is discovered, such as a neighbor of the seller filing a claim contesting the boundary of the property to be sold.

NOTE: Creditors are not required to collect all six pieces of information constituting the consumer's **application**—*i.e.*, the consumer's name, monthly income, social security number to obtain a credit report, the property address, an estimate of the value of the property, or the mortgage loan amount sought—prior to issuing the **Loan Estimate**. However, creditors are presumed to have collected this information prior to providing the **Loan Estimate** and may not later collect it and claim a changed circumstance. For example, if a creditor provides a **Loan Estimate** prior to receiving the property address from the consumer, the creditor cannot subsequently claim that the receipt of the property address is a **changed circumstance**.

(Comment 19(e)(3)(iv)(A)-3)

8.4 What if the changed circumstance causes third-party charges subject to a cumulative 10% tolerance to increase?

It is possible that one of the events described above may cause one or more third-party charges subject to a **10% cumulative tolerance** to increase. Creditors are permitted to provide and rely upon a revised **Loan Estimate** and reset tolerances only when the cumulative effect of the **changed circumstance** results in an increase to the sum of all costs subject to the **tolerance** by more than 10%. (Comment 19(e)(3)(iv)(A)-1.ii)

A creditor may use a **Closing Disclosure** or corrected **Closing Disclosure** to reset tolerances as well. (§ 1026.19(e)(4)). For information about using **Closing Disclosures** to reset tolerances, see sections 10.3, 11.11, 12.2 and 12.3 below.

8.5 What are changed circumstances that affect eligibility? (§ 1026.19(e)(3)(iv)(B))

A creditor also may provide and use a revised **Loan Estimate** and reset tolerances if a **changed circumstance** affected the consumer's creditworthiness or the value of the security for the loan, and resulted in the consumer being ineligible for an estimated loan terms previously disclosed. (§ 1026.19(e)(3)(iv)(B); Comment 19(e)(3)(iv)(B)-1)

This may occur when a changed circumstance causes a change in the consumer's eligibility for specific loan terms disclosed on the **Loan Estimate**, which in turn results in increased cost for a settlement service beyond the applicable tolerance threshold. (Comment 19(e)(3)(iv)(A)-2)

For example:

- The creditor relied on the consumer's representation to the creditor of a \$90,000 annual income, but underwriting determines that the consumer's annual income is only \$80,000.
- There are two co-applicants applying for a mortgage loan and the creditor relied on a combined income when providing the **Loan Estimate**, but one applicant subsequently becomes unemployed.

A creditor may also use a **Closing Disclosure** or corrected **Closing Disclosure** to reset tolerances when changed circumstances affect eligibility. (§ 1026.19(e)(4)). For information about using **Closing Disclosures** to reset tolerances, see sections 10.3, 11.11, 12.2 and 12.3 below.

8.6 May a creditor use a revised Loan Estimate if the consumer requests revisions to the terms or charges? (§ 1026.19(e)(3)(iv)(C))

Yes. A creditor may use a revised **Loan Estimate** to reset tolerances if the consumer requests revisions to the credit terms or settlement that affect items disclosed on the **Loan Estimate** and cause an estimated charge to increase. (§ 1026.19(e)(3)(iv)(C); Comment 19(e)(3)(iv)(C)-1)

Remember, providing a revised **Loan Estimate** allows creditors to compare the updated figures for charges that have increased due to an event that allows for redisclosure to the amount actually charged for those services. If amounts decrease or increase only to an extent that does not exceed the applicable tolerance, the **Loan Estimate** is still deemed to be in **good faith**. Redisclosure is permissible in these circumstances, but will not reset the tolerances, and creditors must continue to measure the tolerances against the original **Loan Estimate**. (§ 1026.19(e)(4)(i))

A creditor may also use a **Closing Disclosure** or corrected **Closing Disclosure** to reset tolerances when a consumer requests revisions. (§ 1026.19(e)(4)). For information about using **Closing Disclosures** to reset tolerances, see sections 10.3, 11.11, 12.2 and 12.3 below.

8.7 May the written list of service providers be revised to reflect Loan Estimate revisions?

A creditor may update and re-disclose the **written list of service providers** to reflect a new service that is added as a result of a changed circumstance or borrower requested change.

When an event that would permit resetting of tolerances under § 1026.19(e)(3)(iv) occurs and an additional settlement service is required, the creditor may disclose third-party service providers of that additional service on the **written list** at the same time as issuing the revised **Loan Estimate**. If the creditor will permit the consumer to shop for this new service, there are two ways that a creditor may approach adding this new service to the **written list**.

- First, the creditor may include the additional service and provide an updated **written list**; or
- Second, the creditor may provide a **written list** showing only service providers of the additional service.

If, based on all the relevant facts and circumstances, the creditor allowed the consumer to shop for the additional service but fails to provide an updated or revised **written list of service providers**, the additional service is subject to **10% cumulative tolerance**, so long as the service is not provided by the creditor or its affiliate. (Comment 19(e)(3)(iii)-2)

8.8 May a creditor use a revised Loan Estimate if the rate is locked after the initial Loan Estimate is provided? (§ 1026.19(e)(3)(iv)(D))

If the interest rate for the loan was not locked when the **Loan Estimate** was provided and, upon being locked at some later time, the interest rate as well as points, lender credits and other interest rate dependent charges for the mortgage loan may change. The creditor is required to provide a revised **Loan Estimate** no later than three **business days** after the date the interest rate is locked, and may use the revised **Loan Estimate** to compare to points and lender credits charged.

The revised **Loan Estimate** must reflect the revised interest rate as well as any revisions to the points disclosed on the **Loan Estimate** pursuant to § 1026.37(f)(1), lender credits, and any other interest rate dependent charges and terms that have changed due to the new interest rate. It must also reflect the expiration date of the interest rate disclosed. The requirement to issue a revised **Loan Estimate** applies only once. Once the interest rate is subject to a rate lock agreement, the creditor is not required to provide a revised **Loan Estimate** again for rate lock agreement extensions or new agreements, so long as there are no changes to the charges or other terms. (§ 1026.19(e)(3)(iv)(D); Comment 19(e)(3)(iv)(D)-1)

A creditor may use a **Closing Disclosure** or corrected **Closing Disclosure** to reset tolerances as well. (§ 1026.19(e)(4)). For information on how to provide disclosures if the rate is locked after the **Closing Disclosure** is provided, see section 12.6 below.

8.9 May a creditor use a revised Loan Estimate if the initial Loan Estimate expires? (§ 1026.19(e)(3)(iv)(E))

Yes. If the consumer indicates an **intent to proceed** with the transaction more than 10 **business days** after the **Loan Estimate** was delivered or placed in the mail to the consumer, a creditor may use a revised **Loan Estimate**. (§ 1026.19(e)(3)(iv)(E); Comment 19(e)(3)(iv)(E)-1). No justification is required for the change to the original estimate of a charge other than the lapse of 10 **business days**.

- Creditors should count the number of **business days** from the date the **Loan Estimate** was delivered or placed in the mail to the consumer, and use the definition of **business day** that applies for purposes of providing the **Loan Estimate**.
(§ 1026.19(e)(1)(iii) and Comment 19(e)(1)(iii)-1; § 1026.2(a)(6))

The TILA-RESPA Rule identifies 10 **business days** as the period after which a **Loan Estimate** expires, and after which a creditor may change the original estimate of a charge without other justification. However, if the creditor voluntarily extends the expiration date beyond 10 business days, **either orally or in writing**, the extended date is the date that the **Loan Estimate** expires. Absent a permissible justification for changing the original estimate of a charge (*i.e.*, resetting tolerances), the creditor cannot change the amounts disclosed on the **Loan Estimate** until the extended expiration date has passed. (Comment 19(e)(3)(iv)(E)-2)

8.10 Are there any other circumstances where creditors may use revised Loan Estimates to reset tolerances?

Yes. In addition to the circumstances described above, creditors also may use a revised **Loan Estimate** where the transaction involves financing of new construction and the creditor reasonably expects that settlement will occur more than 60 calendar days after the original **Loan Estimate** has been provided.

(§ 1026.19(e)(3)(iv)(F))

Creditors may use revised **Loan Estimates** in this circumstance only when the original **Loan Estimate** clearly and conspicuously stated that at any time prior to 60 days before **consummation** the creditor may issue revised disclosures.

(Comment 19(e)(3)(iv)(F)-1)

□ A new construction loan is a loan for the purchase of a home that is not yet constructed or the purchase of a new home where construction is currently underway, not a loan for financing home improvement, remodeling, or adding to an existing structure. Nor is it a loan on a home for which a use and occupancy permit has been issued prior to the issuance of a **Loan Estimate**.

9. Timing for Revisions to Loan Estimate

9.1 What is the general timing requirement for providing a revised Loan Estimate? (§ 1026.19(e)(4)(i))

The general rule is that the creditor must deliver or place in the mail the revised **Loan Estimate** to the consumer no later than **three business days** after receiving the information sufficient to establish that one of the reasons for the revision described in section 8.1 above has occurred. (§ 1026.19(e)(4)(i); Comment 19(e)(4)(i)-1)

9.2 Are there any restrictions on how many days before consummation a revised Loan Estimate may be provided? (§ 1026.19(e)(4))

Yes.

- The creditor may not provide a revised **Loan Estimate** on or after the date it provides the **Closing Disclosure**. (§ 1026.19(e)(4)(ii))
- The creditor must ensure that the consumer **receives** the revised **Loan Estimate** no later than **four business days** prior to **consummation**.

If the creditor is mailing the revised **Loan Estimate** and relying upon the three **business day** mailbox rule, the creditor would need to place in the mail the **Loan Estimate** no later than

seven business days before **consummation** of the transaction to allow three **business days** for receipt. (§ 1026.19(e)(4); Comment 19(e)(4)(i)-2)

As discussed in section 11.2 below regarding the **Closing Disclosure**, when a revised **Loan Estimate** is provided in person, it is considered received by the consumer on the day it is provided. If it is mailed or delivered electronically, the consumer is considered to have received it three **business days** after it is delivered or placed in the mail. (Comments 19(e)(1)(iv)-1 and -2)

However, if the creditor has evidence that the consumer received the revised **Loan Estimate** earlier than three **business days** after it is mailed or delivered, it may rely on that evidence and consider it to be received on that date. (Comments 19(e)(1)(iv)-1 and -2). See also discussion below in section 11.3 of this Guide on similar receipt rule under § 1026.19(e)(1)(iv) and commentary regarding the **Closing Disclosure**.

9.3 What definition of “business day” applies to redisclosure rules?

For purposes of providing a revised **Loan Estimate** within three **business days** of receiving information sufficient to establish that an event permitting redisclosure has occurred, the standard definition of **business day** applies. (See section 6.14 above)

However, for purposes of the **four-business-day** period prior to **consummation**, “business day” means all calendar days except Sundays and legal public holidays specified in 5 U.S.C. 6103(a) such as New Year’s Day, the Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (Comment 19(e)(4)(ii)-1; § 1026.2(a)(6) and Comment 2(a)(6)-2)

9.4 May a creditor revise a Loan Estimate after a Closing Disclosure already has been provided? (§ 1026.19(e)(4)(ii))

No. The creditor may not provide a revised **Loan Estimate** on or after the date the creditor provides the consumer with the **Closing Disclosure**. (§ 1026.19(e)(4)(ii); Comment 19(e)(4)(ii)-1.ii). (See also section 11.1 below, discussing timing requirements for the **Closing**

Disclosure). Because the **Closing Disclosure** must be provided to the consumer no later than **three business days** before **consummation** (see section 10.2 below), this means the consumer must receive a revised **Loan Estimate** no later than **four business days** prior to **consummation**. (§ 1026.19(e)(4)(ii); Comment 19(e)(4)(ii)-1.ii)

If a **Closing Disclosure** has already been provided to the consumer, the creditor must use a corrected **Closing Disclosure** to reset tolerances, not a revised **Loan Estimate**. For more information on using a **Closing Disclosure** or corrected **Closing Disclosure** to reset tolerances, see sections 10.3, 11.11, 12.2 and 12.3 below.

10. Closing Disclosures

10.1 What are the general requirements for the Closing Disclosure? (§§ 1026.19(f) and 1026.38)

For loans that require a **Loan Estimate** and that proceed to closing, creditors must provide a **Closing Disclosure**, which is a final disclosure reflecting the actual terms of the transaction. The form integrates and replaces the HUD-1 and the final TIL disclosure for these transactions. The creditor is generally required to ensure that the consumer receives the **Closing Disclosure** no later than **three business days** before **consummation** of the loan. (§ 1026.19(f)(1)(ii))

- **The Closing Disclosure generally must contain the actual terms and costs of the transaction.** (§ 1026.19(f)(1)(i)). Creditors may estimate disclosures using the best information reasonably available when the actual term or cost is not reasonably available to the creditor at the time the disclosure is made. However, creditors must act in **good faith** and use **due diligence** in obtaining the information. The creditor normally may rely on the representations of other parties in obtaining the information, including, for example, the settlement agent. The creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before **consummation**. (Comments 19(f)(1)(i)-2, -2.i, and -2.ii)
- **The Closing Disclosure must be in writing and contain the information prescribed in § 1026.38.** The creditor must disclose only the specific information set forth in § 1026.38(a) through (s), as shown in the Bureau's form in appendix H-25. (§ 1026.38(t))
- **If the actual terms or costs of the transaction change prior to consummation,** the creditor must provide a corrected disclosure that contains the

actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements, and requirements for providing corrected disclosures due to subsequent changes. (Comment 19(f)(1)(i)-1)

- **New three-day waiting period.** If the creditor provides a corrected disclosure, it may also be required to provide the consumer with an additional **three-business-day waiting period** prior to **consummation**. (§ 1026.19(f)(2)). (See section 12 below for a discussion of the redisclosure requirements for the **Closing Disclosure**)

10.2 The rule requires creditors to provide the Closing Disclosure three business days before consummation. Is “consummation” the same thing as closing or settlement? (§ 1026.2(a)(13))

No, **consummation** may commonly occur at the same time as closing or settlement, but it is a legally distinct event. **Consummation** occurs when the consumer becomes contractually obligated to the creditor on the loan, not, for example, when the consumer becomes contractually obligated to a seller on a real estate transaction.

The point in time when a consumer becomes contractually obligated to the creditor on the loan depends on applicable State law. (§ 1026.2(a)(13); Comment 2(a)(13)-1). Creditors and settlement agents should verify the applicable State laws to determine when **consummation** will occur, and make sure delivery of the **Closing Disclosure** occurs at least **three business days** before this event.

10.3 Are creditors permitted to use a Closing Disclosure to reset tolerances? (§ 1026.19(e)(4); Comment 19(e)(4)(ii)-1)

Yes. Like with a revised **Loan Estimate**, a creditor can use a **Closing Disclosure** to reset tolerances when there is a **changed circumstance** or other triggering event. (Comment 19(e)(4)(ii)-1)

See section 8.1 and 8.2 above for more information about what events qualify as a **changed circumstance** or other triggering event that allows a creditor to reset tolerances.

10.4 Does a creditor have to use the Bureau's Closing Disclosure form? (§ 1026.38(t))

Generally, yes. For any loans subject to the TILA-RESPA Rule that are **federally related mortgage loans** subject to RESPA (which will include most mortgages), an appropriate blank **Closing Disclosure** form (H-25(A) and (H) through (J) and H-28(F) and (J)) is a **standard form**, meaning creditors **must** use an appropriate blank form, including all of its elements such as font sizes, bolding, shading, and underscoring. (§ 1026.38(t)(3)(i)). (See also § 1024.2(b) for definition of **federally related mortgage loan**).

For other transactions subject to the TILA-RESPA Rule that are **not federally related mortgage loans**, an appropriate blank form is a **model form**, meaning creditors are not strictly required to use the form, but the disclosures must contain the exact same information and be made with headings, content, and format substantially similar to an appropriate blank form. (§ 1026.38(t)(3)(ii))

- Use of an appropriate **Closing Disclosure** sample form(H-25(B) through (G) and H-28(G) and (H)) for federally related mortgage loans or non-federally related mortgage loans provides a safe harbor if properly completed with accurate content.

10.5 Are creditors required to use any particular method to complete (*i.e.*, insert information into) the Closing Disclosure form?

Creditors are not required to use any particular method to complete the **Closing Disclosure**. It may be completed by hand, computer, typewriter, or word processor. The TILA-RESPA Rule only requires that:

- The information must be clear and legible; and

- The information must comply with the required formatting, including replicating bold font where required. (Comment 38(t)(5)-2)

10.6 What information goes on the Closing Disclosure form?

The following is a brief, page-by-page overview of the **Closing Disclosure** form, generally describing the information creditors are required to disclose. For detailed instructions on how to determine the contents of each of these fields, see the **TILA-RESPA Guide to Forms**.

10.7 Page 1: General information, loan terms, projected payments, and costs at closing

Closing Disclosure																										
<p><i>This form is a statement of final loan terms and closing costs. Compare this document with your Loan Estimate.</i></p>																										
<table border="0"> <tr> <td>Closing Information</td> <td>Transaction Information</td> <td>Loan Information</td> </tr> <tr> <td>Date Issued</td> <td>Borrower</td> <td>Loan Term</td> </tr> <tr> <td>Closing Date</td> <td></td> <td>Purpose</td> </tr> <tr> <td>Disbursement Date</td> <td>Seller</td> <td>Product</td> </tr> <tr> <td>Settlement Agent</td> <td></td> <td></td> </tr> <tr> <td>File #</td> <td>Lender</td> <td>Loan Type <input type="checkbox"/> Conventional <input type="checkbox"/> FHA</td> </tr> <tr> <td>Property</td> <td></td> <td><input type="checkbox"/> VA <input type="checkbox"/></td> </tr> <tr> <td>Sale Price</td> <td></td> <td>Loan ID # _____ MIC # _____</td> </tr> </table>			Closing Information	Transaction Information	Loan Information	Date Issued	Borrower	Loan Term	Closing Date		Purpose	Disbursement Date	Seller	Product	Settlement Agent			File #	Lender	Loan Type <input type="checkbox"/> Conventional <input type="checkbox"/> FHA	Property		<input type="checkbox"/> VA <input type="checkbox"/>	Sale Price		Loan ID # _____ MIC # _____
Closing Information	Transaction Information	Loan Information																								
Date Issued	Borrower	Loan Term																								
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Property		<input type="checkbox"/> VA <input type="checkbox"/>																								
Sale Price		Loan ID # _____ MIC # _____																								
Loan Terms		Can this amount increase after closing?																								
Loan Amount																										
Interest Rate																										
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>																										
Does the loan have these features?																										
Prepayment Penalty																										
Balloon Payment																										
Projected Payments																										
Payment Calculation																										
Principal & Interest																										
Mortgage Insurance																										
Estimated Escrow <i>Amount can increase over time</i>																										
Estimated Total Monthly Payment																										
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time See page 4 for details</i>	This estimate includes <input type="checkbox"/> Property Taxes <input type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other: <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>	In escrow? <input type="checkbox"/>																								
Costs at Closing																										
Closing Costs	Includes	in Loan Costs + in Lender Credits. <i>See page 2 for details.</i>																								
Cash to Close	Includes Closing Costs. <i>See Calculating Cash to Close on page 3 for details.</i>																									

General information, the **Loan Terms** table, the **Projected Payments** table, and the **Costs at Closing** table are disclosed on the first page of the **Closing Disclosure**. (§§ 1026.38(a), (b), (c), and (d))

10.8 Page 2: Loan costs and other costs

Closing Cost Details					
Loan Costs	Borrower-Paid		Seller-Paid		Paid by Others
	At Closing	Before Closing	At Closing	Before Closing	
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					
D. TOTAL LOAN COSTS (Borrower-Paid)					
Loan Costs Subtotals (A + B + C)					
Other Costs					
E. Taxes and Other Government Fees					
01 Recording Fees Deed: Mortgage:					
02					
F. Prepads					
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					
08 Aggregate Adjustment					
H. Other					
01					
02					
03					
04					
05					
06					
07					
08					
I. TOTAL OTHER COSTS (Borrower-Paid)					
Other Costs Subtotals (E + F + G + H)					
J. TOTAL CLOSING COSTS (Borrower-Paid)					
Closing Costs Subtotals (D + I)					
Lender Credits					
CLOSING DISCLOSURE					
PAGE 2 OF 5 • LOAN ID #					

The **Loan Costs** and **Other Costs** tables are disclosed under the heading Closing Cost Details on page 2 of the **Closing Disclosure**. (§§ 1026.38(f), (g), and (h)). The number of items in the **Loan Costs** and **Other Costs** tables can be expanded and deleted to accommodate the disclosure of additional line items and keep the **Loan Costs** and **Other Costs** tables on page 2 of the **Closing Disclosure**. (§ 1026.38(t)(5)(iv)(A); Comment 38(t)(5)(iv)-2). See 10.12 below for further discussion.

However, items that are required to be disclosed even if they are not charged to the consumer (such as Points in the Origination Charges subheading) cannot be deleted. (Comment 38(t)(5)(iv)-1)

Seller-paid **Loan Costs** and **Other Costs** are required to be disclosed on the consumer's **Closing Disclosure**, regardless of whether a separate **Closing Disclosure** is provided to the seller. Seller-paid real estate commissions are one example of seller-paid costs that may not be omitted from and must be included on the consumer's **Closing Disclosure**. (§ 1026.38(g)(4); Comment 38(g)(4)-4). Additionally, non-commission real estate brokerage or agent charges for services to the seller or consumer are required to be itemized separately, with a description of the service and an identification of the person ultimately receiving the payment. (Comment 38(g)(4)-1 and -4; § 1026.2(a)(11) and (a)(22)). See section 11.7 for more information about the modifications allowed when separating the seller and consumer's **Closing Disclosures**.

The **Loan Costs** and **Other Costs** tables can be disclosed on two separate pages of the **Closing Disclosure**, but only if the page cannot accommodate all of the costs required to be disclosed on one page. (§ 1026.38(t)(5)(iv)(B); Comment 38(t)(5)(iv)-2). When used, these pages are numbered page 2a and 2b. (Comment 38(t)(5)(iv)-2). For an example of this permissible change to the **Closing Disclosure**, see form H-25(H) of appendix H to Regulation Z.

Construction loan inspection and handling fees are **Loan Costs**. These fees are disclosed differently depending on whether they are collected at or before closing or after closing. (Comment 38(f)-2). See section 14.18 of this Guide for more information about construction loan inspection and handling fees.

10.9 Page 3: Calculating cash to close, summaries of transactions, and alternatives for transactions without a seller

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.		
		Loan Estimate	Final	Did this change?
Total Closing Costs (J)				
Closing Costs Paid Before Closing				
Closing Costs Financed (Paid from your Loan Amount)				
Down Payment/Funds from Borrower				
Deposit				
Funds for Borrower				
Seller Credits				
Adjustments and Other Credits				
Cash to Close				

Summaries of Transactions		Use this table to see a summary of your transaction.		
BORROWER'S TRANSACTION	SELLER'S TRANSACTION			
K. Due from Borrower at Closing	M. Due to Seller at Closing			
01 Sale Price of Property	01 Sale Price of Property			
02 Sale Price of Any Personal Property Included in Sale	02 Sale Price of Any Personal Property Included in Sale			
03 Closing Costs Paid at Closing (J)	03			
04	04			
Adjustments	Adjustments for Items Paid by Seller in Advance			
05	09 City/Town Taxes to			
06	10 County Taxes to			
07	11 Assessments to			
08 City/Town Taxes to	12			
09 County Taxes to	13			
10 Assessments to	14			
11	15			
12	16			
13				
14				
15				
L. Paid Already by or on Behalf of Borrower at Closing	N. Due from Seller at Closing			
01 Deposit	01 Excess Deposit			
02 Loan Amount	02 Closing Costs Paid at Closing (J)			
03 Existing Loan(s) Assumed or Taken Subject to	03 Existing Loan(s) Assumed or Taken Subject to			
04	04 Payoff of First Mortgage Loan			
05 Seller Credit	05 Payoff of Second Mortgage Loan			
Other Credits	06			
06	07			
07	08 Seller Credit			
Adjustments	09			
08	10			
09	11			
10	12			
11	13			
Adjustments for Items Unpaid by Seller	Adjustments for Items Unpaid by Seller			
12 City/Town Taxes to	14 City/Town Taxes to			
13 County Taxes to	15 County Taxes to			
14 Assessments to	16 Assessments to			
15	17			
16	18			
17	19			
CALCULATION	CALCULATION			
Total Due from Borrower at Closing (K)	Total Due from Seller at Closing (M)			
Total Paid Already by or on Behalf of Borrower at Closing (L)	Total Due from Seller at Closing (N)			
Cash to Close <input type="checkbox"/> From <input type="checkbox"/> To Borrower	Cash <input type="checkbox"/> From <input type="checkbox"/> To Seller			

CLOSING DISCLOSURE

PAGE 3 OF 5 • LOAN ID #

On page 3 of the **Closing Disclosure**, the **Calculating Cash to Close** table and **Summaries of Transactions** tables are disclosed. (§ 1026.38(i), (j), and (k)). For

transactions without a seller and for simultaneous subordinate-lien loans where the first-lien **Closing Disclosure** discloses the entirety of the seller's transaction, a **Payoffs and Payments** table may be substituted for the **Summaries of Transactions** table and placed before the alternative **Calculating Cash to Close** table. (§ 1026.38(e)(4) and (t)(5)(vii)(B)). For example, see page 3 of form H-25(J) of appendix H to Regulation Z.

Creditors disclose principal reductions in the **Summaries of Transactions** table on the standard **Closing Disclosure** or in the **Payoffs and Payments** table on the alternative **Closing Disclosure**. Principal reductions can be provided for, among other things, **curing** a tolerance violation or reducing the cash back provided to the consumer at closing. Disclosure of principal reductions may vary depending on whether the principal reduction is paid with or without closing funds. (Comment 38-4)

10.10 Page 4: Additional information about this loan

Additional Information About This Loan																																								
Loan Disclosures																																								
<p>Assumption If you sell or transfer this property to another person, your lender <input type="checkbox"/> will allow, under certain conditions, this person to assume this loan on the original terms. <input type="checkbox"/> will not allow assumption of this loan on the original terms.</p> <p>Demand Feature Your loan <input type="checkbox"/> has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details. <input type="checkbox"/> does not have a demand feature.</p> <p>Late Payment If your payment is more than _____ days late, your lender will charge a late fee of _____.</p> <p>Negative Amortization (Increase in Loan Amount) Under your loan terms, you <input type="checkbox"/> are scheduled to make monthly payments that do not pay all of the interest due that month. As a result, your loan amount will increase (negatively amortize), and your loan amount will likely become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property. <input type="checkbox"/> may have monthly payments that do not pay all of the interest due that month. If you do, your loan amount will increase (negatively amortize); and, as a result, your loan amount may become larger than your original loan amount. Increases in your loan amount lower the equity you have in this property. <input type="checkbox"/> do not have a negative amortization feature.</p> <p>Partial Payments Your lender <input type="checkbox"/> may accept payments that are less than the full amount due (partial payments) and apply them to your loan. <input type="checkbox"/> may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan. <input type="checkbox"/> does not accept any partial payments. If this loan is sold, your new lender may have a different policy.</p> <p>Security Interest You are granting a security interest in _____.</p> <p>You may lose this property if you do not make your payments or satisfy other obligations for this loan.</p>																																								
<p>Escrow Account For now, your loan <input type="checkbox"/> will have an escrow account (also called an "impound" or "trust" account) to pay the property costs listed below. Without an escrow account, you would pay them directly, possibly in one or two large payments a year. Your lender may be liable for penalties and interest for failing to make a payment.</p> <table border="1"> <thead> <tr> <th colspan="3">Escrow</th> </tr> </thead> <tbody> <tr> <td>Escrowed Property Costs over Year 1</td> <td></td> <td>Estimated total amount over year 1 for your escrowed property costs:</td> </tr> <tr> <td>Non-Escrowed Property Costs over Year 1</td> <td></td> <td>Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.</td> </tr> <tr> <td>Initial Escrow Payment</td> <td></td> <td>A cushion for the escrow account you pay at closing. See Section G on page 2.</td> </tr> <tr> <td>Monthly Escrow Payment</td> <td></td> <td>The amount included in your total monthly payment.</td> </tr> <tr> <td colspan="3"><input type="checkbox"/> will not have an escrow account because <input type="checkbox"/> you declined it <input type="checkbox"/> your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.</td> </tr> <tr> <td colspan="3"> <table border="1"> <thead> <tr> <th colspan="2">No Escrow</th> </tr> </thead> <tbody> <tr> <td>Estimated Property Costs over Year 1</td> <td>Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.</td> </tr> <tr> <td>Escrow Waiver Fee</td> <td></td> </tr> </tbody> </table> </td> </tr> </tbody> </table> <p>In the future, Your property costs may change and, as a result, your escrow payment may change. You may be able to cancel your escrow account, but if you do, you must pay your property costs directly. If you fail to pay your property taxes, your state or local government may (1) impose fines and penalties or (2) place a tax lien on this property. If you fail to pay any of your property costs, your lender may (1) add the amounts to your loan balance, (2) add an escrow account to your loan, or (3) require you to pay for property insurance that the lender buys on your behalf, which likely would cost more and provide fewer benefits than what you could buy on your own.</p>			Escrow			Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your escrowed property costs:	Non-Escrowed Property Costs over Year 1		Estimated total amount over year 1 for your non-escrowed property costs: You may have other property costs.	Initial Escrow Payment		A cushion for the escrow account you pay at closing. See Section G on page 2.	Monthly Escrow Payment		The amount included in your total monthly payment.	<input type="checkbox"/> will not have an escrow account because <input type="checkbox"/> you declined it <input type="checkbox"/> your lender does not offer one. You must directly pay your property costs, such as taxes and homeowner's insurance. Contact your lender to ask if your loan can have an escrow account.			<table border="1"> <thead> <tr> <th colspan="2">No Escrow</th> </tr> </thead> <tbody> <tr> <td>Estimated Property Costs over Year 1</td> <td>Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.</td> </tr> <tr> <td>Escrow Waiver Fee</td> <td></td> </tr> </tbody> </table>			No Escrow		Estimated Property Costs over Year 1	Estimated total amount over year 1. You must pay these costs directly, possibly in one or two large payments a year.	Escrow Waiver Fee												
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Adjustable Payment (AP) Table																																								
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CLOSING DISCLOSURE PAGE 4 OF 5 • LOAN ID # _____																																								

On page 4 of the **Closing Disclosure, Loan Disclosures, Adjustable Payment, and Adjustable Interest Rate (AIR) tables** are shown with the heading **Additional Information About This Loan.** (§§ 1026.38(l), (m), and (n))

10.11 Page 5: Loan calculations, other disclosures and contact information

Loan Calculations		Other Disclosures			
Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.		Appraisal If the property was appraised for your loan, your lender is required to give you a copy at no additional cost at least 3 days before closing. If you have not yet received it, please contact your lender at the information listed below.			
Finance Charge. The dollar amount the loan will cost you.		Contract Details See your note and security instrument for information about <ul style="list-style-type: none"> • what happens if you fail to make your payments, • what is a default on the loan, • situations in which your lender can require early repayment of the loan, and • the rules for making payments before they are due. 			
Amount Financed. The loan amount available after paying your upfront finance charge.					
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.					
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.		Liability after Foreclosure If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan, <ul style="list-style-type: none"> <input type="checkbox"/> state law may protect you from liability for the unpaid balance. If you refinance or take on any additional debt on this property, you may lose this protection and have to pay any debt remaining even after foreclosure. You may want to consult a lawyer for more information. <input type="checkbox"/> state law does not protect you from liability for the unpaid balance. 			
Questions? If you have questions about the loan terms or costs on this form, use the contact information below. To get more information or make a complaint, contact the Consumer Financial Protection Bureau at www.consumerfinance.gov/mortgage-closing		Refinance Refinancing this loan will depend on your future financial situation, the property value, and market conditions. You may not be able to refinance this loan. Tax Deductions If you borrow more than this property is worth, the interest on the loan amount above this property's fair market value is not deductible from your federal income taxes. You should consult a tax advisor for more information.			
Contact Information					
Name	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Address					
NMLS ID					
License ID					
Contact					
Contact NMLS ID					
Contact License ID					
Email					
Phone					
Confirm Receipt					
By signing, you are only confirming that you have received this form. You do not have to accept this loan because you have signed or received this form.					
Applicant Signature	Date	Co-Applicant Signature	Date	PAGE 5 OF 5 • LOAN ID #	
CLOSING DISCLOSURE					

Disclose Loan Calculations, Other Disclosures, Questions Notice, Contact Information, and, if desired by the creditor, Confirm Receipt tables on page 5 of the Closing Disclosure. (§§ 1026.38(o), (p), (q), and (r))

For a description and instructions for calculations of amounts for the information and amounts required on the **Closing Disclosure**, please see the **Closing Disclosure** section of the **TILA-RESPA Guide to Forms**.

10.12 What tolerance standard applies to the Total of Payments on the Closing Disclosure? (§§ 1026.23(g) and (h); 1026.38(o)(1))

Generally, the **Total of Payments** is considered accurate if it:

- Is understated by no more than \$100; or
- Is greater than the amount required to be disclosed. (§ 1026.38(o)(1))

There are separate tolerances that apply to the disclosure of the **Total of Payments** for purposes of the right of rescission for certain refinance transactions, including after the initiation of foreclosure on the consumer's principal dwelling that secures the credit obligation.

(§§ 1026.23(g)(1)(ii), (g)(2)(ii) and (h)(2)(ii))

The **Total of Payments** calculation does not include charges for principal, interest, mortgage insurance, or **Loan Costs** that are offset by another party through a specific credit, such as a specific lender or seller credit. However, general credits may not be used to offset amounts for purposes of calculating the **Total of Payments**. (Comment 38(o)(1)-1)

□ In addition to the **Total of Payments** tolerances, Regulation Z's preexisting finance charge tolerance extends to any disclosure affected by the finance charge, including the **Total of Payments**, as long as a misdisclosure of the **Total of Payments** resulted from a misdisclosure of the finance charge. Conversely, a misdisclosure of the **Total of Payments** that does not result from a misdisclosure of the finance charge is **not** subject to the finance charge tolerances (but the **Total of Payments** tolerances still apply).

10.13 What should be done if the information required to be disclosed does not fit in the space allotted on the Closing Disclosure form?

In some cases, additional information that does not fit in a particular section of the **Closing Disclosure** may be disclosed on a separate page with the **Closing Disclosure**. However, one must look to the particular subsection in § 1026.38 to determine if the TILA-RESPA Rule permits or requires the information to be provided in an additional pages (*i.e.*, an addendum).

There is no required form for an addendum. Additionally, the information that is included on the addendum will depend on the requirements for the original disclosure of that information on the **Closing Disclosure**. For example, if a creditor or settlement agent is using an additional page to list several other sellers that could not fit onto the first page of the **Closing Disclosure**, the name and address of the sellers that would not fit would be included on an addendum with the label, “Sellers.”

The creditor or settlement agent may want to include information or statements to indicate that the addendum or additional pages relate to the **Closing Disclosure** so that the additional pages are clear and conspicuous to the consumer. (§ 1026.17(a)(1))

Generally, information that is required or permitted to be disclosed on a separate page with the **Closing Disclosure** should be formatted similarly to the **Closing Disclosure** itself. The additional pages should not affect the substance, clarity, or meaningful sequence of the **Closing Disclosure**. (Comment 38(t)(5)-5)

10.14 The HUD-1 has a comparison chart to show the applicable tolerance levels and how the charges compare. Where is the equivalent chart on the Closing Disclosure?

There is no chart on the **Closing Disclosure** equivalent to the HUD-1 comparison chart. The creditor is responsible for tracking charges off sheet to ensure that the amounts disclosed on the **Loan Estimate** were made in **good faith** and that the charges at closing do not exceed the applicable tolerances. If provided in the form of a lender credit, a **cure** for a tolerance violation should be itemized in a manner as shown in form H-25(F) of appendix H.

For more information about providing cures for a tolerance violation, see section 12.10 below.

- See Form H-25(F) from appendix H.

J. TOTAL CLOSING COSTS (Borrower-Paid)	\$5,977.57	
Closing Costs Subtotals (D + I)	\$5,822.57	\$655.00
Lender Credits (Includes \$200 credit for increase in Closing Costs above legal limit)	-\$500.00	

Calculating Cash to Close		Use this table to see what has changed from your Loan Estimate.		
		Loan Estimate	Final	Did this change?
Loan Amount		\$150,000.00	\$150,000.00	NO
Total Closing Costs (J)				YES • See Total Loan Costs (D) and Total Other Costs (I) • Increase exceeds legal limits by \$200. See Lender Credits on page 2 for credit of excess amount.
		-\$5,099.00	-\$5,977.57	
Closing Costs Paid Before Closing		\$0	\$655.00	YES • You paid these Closing Costs before closing
Total Payoffs and Payments (K)		-\$120,000.00	-\$115,000.00	YES • See Payoffs and Payments (K)
Cash to Close		\$24,001.00	\$29,677.43	
		<input type="checkbox"/> From [X] To Borrower	<input type="checkbox"/> From [X] To Borrower	Closing Costs Financed (Paid from your Loan Amount) \$5,322.57



11. Delivery of Closing Disclosure

11.1 What are the general timing and delivery requirements for the Closing Disclosure? (§ 1026.19(f))

Generally, the creditor is responsible for ensuring that the consumer receives the **Closing Disclosure** form no later than **three business days** before **consummation**.

(§ 1026.19(f)(1)(ii)(A); Comment 19(f)(1)(v)-3).

(Although see section 10.1 above regarding the good faith and due diligence requirements and see section 11.4 below regarding delivery of the **Closing Disclosure** by a settlement agent.)

☐ If a creditor is providing a **Closing Disclosure** with estimated terms or costs, it must act in good faith and exercise due diligence in obtaining the information (§ 1026.19(f)(1)(i); 1026.17(c)(2)(i)). See section 10.1 for more information.

The creditor also is responsible for ensuring that the **Closing Disclosure** meets the content, delivery, and timing requirements discussed in sections 10, 11, and 12 of this Guide.

(§§ 1026.19(f) and 1026.38)

11.2 How must the Closing Disclosure be delivered? (§ 1026.19(f)(1)(iii))

To ensure the consumer receives the **Closing Disclosure** on time, creditors must arrange for delivery as follows:

- By providing it to the consumer in person;

- By mailing or by other delivery methods, including email. Creditors may use electronic delivery methods, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.*). (Comment 19(f)(1)(iii)-2; § 1026.38(t)(3)(iii))
- Creditors must ensure that the consumer receives the **Closing Disclosure** at least three **business days** prior to **consummation**. (§ 1026.19(f)(1)(ii)(A))

11.3 When is the Closing Disclosure considered to be received if it is delivered in person or if it is mailed? (§ 1026.19(f)(1)(iii))

If the **Closing Disclosure** is provided in person, it is considered received by the consumer on the day it is provided. If it is mailed or delivered electronically, the consumer is considered to have received the **Closing Disclosure** three **business days** after it is delivered or placed in the mail. (§ 1026.19(f)(1)(iii); Comment 19(f)(1)(ii)-2)

However, if the creditor has evidence that the consumer received the **Closing Disclosure** earlier than three **business days** after it is mailed or delivered, it may rely on that evidence and consider it to be received on that date. (Comments 19(f)(1)(iii)-1 and -2). (See also the discussion above in section 6.4 of this Guide on similar receipt rule under § 1026.19(e)(1)(iv) and commentary regarding the **Loan Estimate**.)

11.4 Can a settlement agent provide the Closing Disclosure on the creditor's behalf? (§ 1026.19(f)(1)(v))

Yes. Creditors may contract with settlement agents to have the settlement agent provide the **Closing Disclosure** to consumers on the creditor's behalf. (§ 1026.19(f)(1)(v)). Creditors and settlement agents also may agree to divide responsibility with regard to completing the **Closing Disclosure**, with the settlement agent assuming responsibility to complete some or all the **Closing Disclosure**. (Comment 19(f)(1)(v)-4)

Any such creditor must maintain communication with the settlement agent to ensure that the **Closing Disclosure** and its delivery satisfy the requirements of the TILA-RESPA Rule. The creditor is legally responsible for any errors or defects. (§ 1026.19(f)(1)(v); Comment 19(f)(1)(v)-3)

11.5 Who is responsible for providing the Closing Disclosure to a seller in a purchase transaction? (§ 1026.19(f)(4)(i))

The settlement agent is required to provide the seller with the **Closing Disclosure** reflecting the actual terms of the seller's transaction. (§ 1026.19(f)(4)(i))

The settlement agent may comply with this requirement by providing the seller with a copy of the **Closing Disclosure** provided to the consumer (buyer) if it also contains information relating to the seller's transaction. (Comment 19(f)(4)(i)-1)

However, the TILA-RESPA Rule affords flexibility in providing the seller those disclosures that relate to the seller's transaction, and does not require that the seller receive the same version of the **Closing Disclosure** provided to the customer. Therefore, the settlement agent may also provide the seller with a separate disclosure, including only the information applicable to the seller's transaction from the **Closing Disclosure** (§ 1026.38(t)(5)(v) or (vi), as applicable). (See form H-25(I) of appendix H to Regulation Z for a model form).

Note, in a purchase transaction that involves a subordinate-lien loan, if the **Closing Disclosure** for the first-lien loan has all the required disclosures related to the seller, a settlement agent may provide the seller with only the first-lien **Closing Disclosure** (that relates to the seller's transaction reflecting the actual terms of the seller's transaction) instead of also providing the seller with the **Closing Disclosure** for the subordinate-lien loan. (Comment 19(f)(4)(i)-2). See section 13.9 below for information about simultaneous subordinate-lien loans.

11.6 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?

Yes. If the seller's disclosure is provided in a separate document, the settlement agent must provide the creditor with a copy of the disclosure provided to the seller. (§ 1026.19(f)(4)(iv))

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

(§§ 1026.38(t)(5)(v) and (t)(5)(vi))

When separate disclosures are provided, the seller must be provided with the disclosures in section 1026.38 that relate to the seller's transaction reflecting the actual terms of the seller's transaction. Model form H-25(I) of appendix H to Regulation Z illustrates the seller's modified **Closing Disclosure**, which is required to disclose the summary of the seller's transaction, contact information for the real estate brokers and settlement agent, and **Loan Costs** and **Other Costs** paid by the seller at or before closing. (§§ 1026.38(t)(5)(v) and (t)(5)(vi))

To provide separate disclosures for the consumer or seller, a creditor may:

- Leave the applicable disclosure blank on the form provided to the other party;
- Omit tables or labels, as applicable, for the form provided to the other party; or
- Provide the seller with a modified version of the form provided in appendix H.
(Comment 38(t)(5)(v)-1)

11.8 What if there is more than one consumer involved in a transaction? (§ 1026.17(d))

In rescindable transactions, the **Closing Disclosure** must be given separately to each consumer who has the right to rescind under TILA (see § 1026.23), although the disclosures required for adjustable rate mortgages need only be provided to the consumer who expresses an interest in a variable-rate loan program. (§ 1026.19(b)) See Comment 2(a)(12)-2 for more information about which parties are considered consumers in rescindable transactions.

Under the label **Borrower** on the **Closing Disclosure**, only the names and mailing addresses of the person or persons to whom the credit is extended are listed. If the form does not provide enough space to include the required information, a separate addendum can be added. (Comments 38(a)(4)-1 and -4)

In transactions that are not rescindable, the **Closing Disclosure** may be provided to any consumer with primary liability on the obligation. (§ 1026.17(d); Comment 17(d)-2)

11.9 When does the creditor have to provide the Closing Disclosure to the consumer? (§ 1026.19(f)(1)(ii))

Creditors must ensure that consumers receive the **Closing Disclosure** no later than **three business days** before **consummation**. (§ 1026.19(f)(1)(ii)(A))

- **Consummation** is the time that a consumer becomes contractually obligated on the credit transaction, and may not necessarily coincide with the settlement or closing of the entire real estate transaction. (§ 1026.2(a)(13))
- For timeshare transactions, the creditor must ensure that the consumer receives the **Closing Disclosure** no later than **consummation**. (§ 1026.19(f)(1)(ii)(B))

Remember that **business day** is given a different meaning for purposes of providing the **Closing Disclosure** than it is for purposes of providing the **Loan Estimate** after receiving a consumer's **application**. (See section 6.14 above describing definition of **business day**). For purposes of providing the **Closing Disclosure**, the term **business day** means all calendar

days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (See §§ 1026.2(a)(6); 1026.19(f)(1)(ii)(A) and (f)(1)(iii))

This requirement imposes a **three-business-day waiting period**, meaning that the loan may not be consummated less than three **business days** after the **Closing Disclosure** is received by the consumer. If a settlement is scheduled during the waiting period, the creditor generally must postpone settlement, unless a settlement within the waiting period is necessary to meet a **bona fide personal financial emergency**. (§ 1026.19(f)(1)(iv))

11.10 May a consumer waive the three-business-day waiting period? (§ 1026.19(f)(1)(iv))

Yes. Like the **seven-business-day waiting period** after receiving the **Loan Estimate** (see section 6.2 above), consumers may waive or modify the **three-business-day waiting period** when:

- The extension of credit is needed to meet a **bona fide personal financial emergency**. (§ 1026.19(f)(1)(iv));
 - The consumer has received the **Closing Disclosure**; and
 - The consumer gives the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all consumers who are primarily liable on the legal obligation. (§ 1026.19(f)(1)(iv))
- For example, the imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, may be considered a **bona fide personal financial emergency**. (Comment 19(f)(1)(iv)-1)

The creditor is prohibited from providing the consumer with a pre-printed waiver form. (§ 1026.19(f)(1)(iv))

11.11 Are there timing requirements for providing a Closing Disclosure to reset tolerances? (§ 1026.19(e)(4))

Yes. Like providing a revised **Loan Estimate**, in order to use the **Closing Disclosure** to reset tolerances, the **Closing Disclosure** must be provided within three **business days** of receiving information sufficient to establish that a changed circumstance or another triggering event has occurred.

Additionally, the other timing requirements for a **Closing Disclosures** also apply. See the rest of section 11 for more information.

11.12 Does the three-business-day waiting period apply when corrected Closing Disclosures must be issued to the consumer? (§ 1026.19(f)(2)(i) and (ii))

Yes, in some circumstances. The **three-business-day waiting period** requirement applies to a corrected **Closing Disclosure** that is provided when:

- The loan's disclosed APR becomes inaccurate;
- There are changes to the loan product; or
- A prepayment penalty is added to the loan. (§ 1026.19(f)(2)(ii))

If other types of changes occur, creditors must ensure that the consumer receives a corrected **Closing Disclosure** at or before **consummation**. (§ 1026.19(f)(2)(i))

For more information on providing a corrected **Closing Disclosure**, see section 12 below.

11.13 When must the settlement agent provide the Closing Disclosure to the seller? (§ 1026.19(f)(4)(ii))

The settlement agent must provide the seller its copy of the **Closing Disclosure** no later than the day of **consummation**. (§ 1026.19(f)(4)(ii))

11.14 Are creditors ever allowed to impose average charges on consumers instead of the actual amount received? (§ 1026.19(f)(3)(i)-(ii))

In general, the amount imposed on the consumer for any settlement service must not exceed the amount the settlement service provider actually received for that service. However, an **average charge** may be imposed instead of the actual amount received for a particular service, as long as the **average charge** satisfies certain conditions. (§ 1026.19(f)(3)(i)-(ii); Comment 19(f)(3)(i)-1)

An **average charge** may be used if the following conditions are satisfied (§ 1026.19(f)(3)(ii)):

- The **average charge** is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions;
- The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan;
- The creditor or settlement service provider uses the same **average charge** for every transaction within the defined class; and
- The creditor or settlement service provider does not use an **average charge**:
 - For any type of insurance;
 - For any charge based on the loan amount or property value; or
 - If doing so is otherwise prohibited by law.

If the creditor develops representative samples of specific settlement costs for a particular class of transactions, the creditor may charge the average cost for that settlement service instead of the actual cost for such transactions. An **average-charge** program may not be used in a way that inflates the cost for settlement services overall. (Comment 19(f)(3)(ii)-1)

Creditors should consult the commentary to § 1026.19(f)(3)(ii) for additional guidance on using **average-charge** pricing. (Comments 19(f)(3)(ii)-1 through -9)

12. Corrections to Closing Disclosures

12.1 When are creditors required to correct Closing Disclosures? (§ 1026.19(f)(2))

Creditors must redisclose terms or costs on the **Closing Disclosure** if certain changes occur to the transaction after the **Closing Disclosure** was provided that cause the disclosures to become inaccurate. (Comment 19(f)(1)(i)-1). There are three categories of changes that require a corrected **Closing Disclosure** containing all changed terms. (§ 1026.19(f)(2))

- Changes that occur before **consummation** that require a new **three-business-day waiting period**. (§ 1026.19(f)(2)(ii))
- Changes that occur before **consummation** and do **not** require a new **three-business-day waiting period**. (§ 1026.19(f)(2)(i))
- Changes that occur after **consummation**. (§ 1026.19(f)(2)(iii))

12.2 Are creditors permitted to use a corrected Closing Disclosure to reset tolerances? (§ 1026.19(e)(4); Comment 19(e)(4)(ii)-1)

Yes. Like with a revised **Loan Estimate**, a creditor can use a corrected **Closing Disclosure** to reset tolerances when there is a **changed circumstance** or other triggering event. (Comment 19(e)(4)(ii)-1)

See section 8.1 and 8.2 above for more information about what events qualify as a **changed circumstance** or other triggering event that allows a creditor to reset tolerances.

12.3 Are there timing requirements for providing a corrected Closing Disclosure to reset tolerances? (§ 1026.19(e)(4))

Yes. Like providing a revised **Loan Estimate**, in order to use the a corrected **Closing Disclosure** to reset tolerances, the corrected **Closing Disclosure** must be provided within three **business days** of receiving information sufficient to establish that a changed circumstance or another triggering event has occurred.

Other **Closing Disclosure** general timing and delivery requirements also apply. For example, when providing a corrected **Closing Disclosure** before **consummation** due to inaccuracy., the creditor must ensure that the consumer receives a corrected **Closing Disclosure** at or before **consummation**. Additionally, the new **three-business-day-waiting period** may apply (see section 12.4 below). For more information on the general timing requirements, see section 11 above and section 12 below.

12.4 What changes before consummation require a new waiting period? (§ 1026.19(f)(2)(ii))

If one of the following occurs after delivery of the **Closing Disclosure** and before **consummation**, the creditor must provide a corrected **Closing Disclosure** containing all changed terms and ensure that the consumer receives it no later than three **business days** before **consummation**. (§ 1026.19(f)(2)(ii); Comment 19(f)(2)(ii)-1)

- **The disclosed APR becomes inaccurate.** If the annual percentage rate (APR) previously disclosed becomes inaccurate, the creditor must provide a corrected **Closing Disclosure** with the corrected APR disclosure and all other

□ This period may be waived if the consumer is facing a **bona fide personal financial emergency**. (§ 1026.19(f)(1)(iv))

terms that have changed. The APR's accuracy is determined according to § 1026.22. (§ 1026.19(f)(2)(ii)(A))

- **The loan product changes.** If the loan product previously disclosed becomes inaccurate, the creditor must provide a corrected **Closing Disclosure** with the corrected loan product and all other terms that have changed. (§ 1026.19(f)(2)(ii)(B))
- **A prepayment penalty is added.** If a prepayment penalty is added to the transaction, the creditor must provide a corrected **Closing Disclosure** with the prepayment penalty provision disclosed and all other terms that have changed. (§ 1026.19(f)(2)(ii)(C))

12.5 Is a new three-day waiting period required if the APR decreases? (§ 1026.19(f)(2)(ii)(A))

The TILA-RESPA Rule requires an additional **three-business-day-waiting period** if the APR becomes inaccurate as defined in § 1026.22(a). It is possible that an overstated APR would be inaccurate under § 1026.22(a) of Regulation Z. The TILA-RESPA Rule did not change this section of Regulation Z. For additional information on when the APR becomes inaccurate, see § 1026.22(a), noting that § 1026.22(a)(4) contains special APR accuracy rules for mortgage loans. Additional guidance on the accuracy of overstated APR is available in the Federal Reserve's *Consumer Compliance Outlook*, First Quarter 2011 at www.consumercomplianceoutlook.org/2011/first-quarter/mortgage-disclosure-improvement-act/.

12.6 What changes do not require a new three-day waiting period? (§ 1026.19(f)(2)(i))

For any other changes before **consummation** that do not fall under the three categories in § 1026.19(f)(2)(ii) (*i.e.*, related to the APR, loan product, or the addition of a prepayment penalty), the creditor still must provide a corrected **Closing Disclosure** with any terms or costs that have changed and ensure that the consumer receives it.

For these changes, there is no additional **three-business-day waiting period** required. The creditor must ensure only that the consumer receives the revised **Closing Disclosure at or before consummation**. (§ 1026.19(f)(2)(i); Comment 19(f)(2)(i)-1 through -2)

12.7 What if a consumer asks for the corrected Closing Disclosure before consummation? (§ 1026.19(f)(2)(i))

For changes other than to the APR, loan product, or the addition of a prepayment penalty, the creditor is not required to provide the consumer with the corrected **Closing Disclosure** until the day of **consummation**. However, a consumer has the right to **inspect** the **Closing Disclosure** during the **business day before consummation**. (§ 1026.19(f)(2)(i))

If a consumer asks to inspect the **Closing Disclosure** the **business day before consummation**, the **Closing Disclosure** presented to the consumer must reflect any adjustments to the costs or terms that are known to the creditor at the time the consumer inspects it. (§ 1026.19(f)(2)(i))

Creditors may arrange for settlement agents to permit consumers to inspect the **Closing Disclosure**. (§ 1026.19(f)(1)(v); Comment 19(f)(2)(i)-2)

An example of a post-consummation event that would require a new **Closing Disclosure** is a discovery that a recording fee paid by the consumer is different from the amount that was disclosed on the **Closing Disclosure**. (Comment 19(f)(2)(iii)-1.i). However, other post-consummation events that are not related to settlement, such as tax increases, do not require a revised **Closing Disclosure**. (Comment 19(f)(2)(iii)-1.iii). For guidance on when a creditor receives information sufficient to establish that an event has occurred after consummation, see Comment 19(e)(4)(i)-1.

12.8 Is a corrected Closing Disclosure required if the interest rate is locked after the initial Closing Disclosure is provided? (Comment 19(e)(3)(iv)(D)-2)

If the interest rate is locked after the creditor provides the **Closing Disclosure** to the consumer, the creditor must provide a corrected **Closing Disclosure** if the charges or terms become inaccurate as a result of locking the rate. In that case, the creditor must provide the corrected **Closing Disclosure at or before consummation.**

If the rate lock triggers a new **three-business-day waiting period** (e.g., the previously disclosed APR becomes inaccurate), the creditor must provide the corrected **Closing Disclosure** at least three **business days** before consummation.

The corrected **Closing Disclosure** must be updated to accurately disclose all interest dependent charges and terms. Additionally, as with all corrected **Closing Disclosures**, all of the disclosed terms and conditions must be updated based on the best information reasonably available to the creditor at the time that it provides the corrected **Closing Disclosure**, even if the creditor is not resetting tolerances for those charges.

12.9 Are creditors required to provide corrected Closing Disclosures if terms or costs change after consummation? (§ 1026.19(f)(2)(iii))

Yes, in some circumstances. Creditors must provide a corrected **Closing Disclosure** if an **event in connection with the settlement** occurs during the **30-calendar-day** period after **consummation** and that event causes the **Closing Disclosure** to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed. (§ 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1). When a post-consummation event requires a corrected **Closing Disclosure**, the creditor must deliver or place in the mail a corrected

 If the charges or terms on the **Closing Disclosure** do not become inaccurate because of the rate lock, a corrected **Closing Disclosure** is not required for the rate lock.

Closing Disclosure not later than **30 calendar days** after receiving information sufficient to establish that such an event has occurred. (§ 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1)

However, a creditor is not required to provide a corrected **Closing Disclosure** if the only change that caused an inaccuracy is the per-diem interest and any disclosures affected by the change in per-diem interest. But, if a creditor is providing a corrected **Closing Disclosure** for any other reason, and the per-diem interest is also inaccurate, the creditor must provide the corrected per-diem interest (and any disclosures affected by the change in per-diem interest) as well as the other updated disclosures. (Comment 19(f)(2)(iii)-2)

12.10 Is a corrected Closing Disclosure required if a post-consummation event affects an amount paid by the seller? (§ 1026.19(f)(4)(ii))

Yes, in some circumstances. Settlement agents must provide a corrected **Closing Disclosure** if an **event related to the settlement** occurs during the 30-day period after **consummation** that causes the **Closing Disclosure** to become inaccurate and results in a change to an amount actually **paid by the seller** from what was previously disclosed.

The settlement agent must deliver or place in the mail a corrected **Closing Disclosure** not later than **30 calendar days** after receiving information sufficient to establish that such an event has occurred. (§ 1026.19(f)(4)(ii))

12.11 Are clerical errors discovered after consummation subject to the redisclosure obligation? (§ 1026.19(f)(2)(iv); Comment 19(f)(2)(iv)-1)

Yes. Creditors also must provide a corrected **Closing Disclosure** to correct non-numerical **clerical errors** and document **cures** for tolerance violations no later than **60 calendar days after consummation**. (§ 1026.19(f)(2)(iv)-(v))

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). (Comment 19(f)(2)(iv)-1)

For example:

- If the **Closing Disclosure** identifies the incorrect settlement service provider as the recipient of a payment, the error would be considered clerical because it is non-numerical and does not affect any of the delivery requirements set forth in § 1026.19(e) or (f).
- However, if the **Closing Disclosure** lists the wrong property address, which affects the delivery requirement imposed by § 1026.19(e) or (f), the error would not be considered clerical.

12.12 Do creditors need to provide corrected Closing Disclosures when they cure tolerance violations? (§ 1026.19(f)(2)(v))

Yes. If the creditor cures a tolerance violation by providing a reimbursement to the consumer, the creditor must deliver or place in the mail a corrected **Closing Disclosure** that reflects the reimbursement no later than **60 calendar days after consummation**. (§ 1026.19(f)(2)(v)). See additional discussion above in section 12.6 of this Guide.

Depending on how the **cure** for the tolerance violation is provided, additional disclosures may apply. If the creditor is providing the **cure** for the tolerance violation in the form of a principal reduction, the creditor will need to provide the accompanying principal reduction disclosures. (§§ 1026.38(e)(2)(iii)(A)(3) and 38(i)(1)(iii)(A)(3); Comment 38-4). If the creditor is providing the **cure** for the tolerance violation in the form of a lender credit, the creditor will need to disclose the credit within the **Lender Credits** disclosure in the closing costs totals section, along with a statement that such amount of **Lender Credits** includes a credit for an amount that exceeds legal limits. (§§ 1026.38(e)(2)(iii)(A)(3) and 38(i)(1)(iii)(A)(3); Comment 38(h)(3)-2). See the **TILA-RESPA Guide to Forms** for more information about how to make these disclosures.

13. Additional requirements and prohibitions

- ## 13.1 Are there exceptions to the disclosure requirements for loans secured by a timeshare interest?
- (§§ 1026.19(e)(1)(iii)(C)) and
(f)(1)(ii)(B))

Yes. Loans secured by interests in timeshare plans are still subject to the TILA-RESPA Rule, but the Bureau recognizes that these loans may commonly be consummated within a few days of the consumer's **application**. The Bureau thus adopted abbreviated timing, delivery, and disclosure obligations for these loans when **consummation** occurs **within three business days of the application**. For these loans, creditors may forego a **Loan Estimate** and provide only the **Closing Disclosure**. (§§ 1026.19(e)(1)(iii)(C) and (f)(1)(ii)(B); Comment 19(e)(1)(iii)-4 and Comment 19(f)(1)(ii)-3)

In addition, the waiting periods and timing requirements applicable to most loans subject to the TILA-RESPA Rule are inapplicable to loans secured by timeshare interests. Rather, creditors are required to ensure only that the consumer receives the **Closing Disclosure no later than consummation**. (§ 1026.19(f)(1)(ii)(B)). For details relating to the timing requirements for the **Closing Disclosure** in timeshare transactions, see Comment 19(f)(1)(iii)-3.

13.2 Are there any limits on fees that may be charged prior to disclosure or application?

Yes. A creditor or other person may not **impose any fee** on a consumer in connection with the consumer's **application** for a mortgage transaction until the consumer has received the **Loan Estimate** and has indicated **intent to proceed** with the transaction. (§ 1026.19(e)(2)(i)(A))

This restriction includes limits on imposing:

- Application fees;
- Appraisal fees;
- Underwriting fees; and
- Other fees imposed on the consumer.

The only exception to this exclusion is for a **bona fide and reasonable fee for obtaining a consumer's credit report**. (§ 1026.19(e)(2)(i)(B); Comments 19(e)(2)(i)(A)-1 through -5 and Comment 19(e)(2)(i)(B)-1)

13.3 Is there a required naming convention used for charges on the Loan Estimate or Closing Disclosure?

Generally, the TILA-RESPA Rule does not prescribe a uniform naming convention outside of the general labels set forth in the rule (*i.e.*, taxes and other government fees, prepaids). It did not create a standard or prescribed list of fee names.

However, there are some specific types of charges that must be identified in a prescribed manner on the form. For example, creditors must itemize and label points paid to the creditor to reduce the interest rate separately and as a percentage of the loan amount. (§ 1026.37(f)(1)-(3); Comment 37(f)(1)-3). There are also specific rules that apply to disclosure of fees related to title services. For example, the TILA-RESPA Rule requires the description fee to be preceded by the word "title" and a dash or a hyphen. (Comment 37(f)(2)-3). Additionally, the name of a particular fee should be consistent on both the **Loan Estimate** and the **Closing Disclosure**.

and should reasonably describe the service performed in exchange for payment of the fee. (See §§ 1026.37(f)(5) and (g)(7))

13.4 How does the creditor disclose charges for third-party administrative and processing fees?

The TILA-RESPA Rule requires some charges to be disclosed in a specific manner. For example, points charged as a percentage of the loan and loan-level pricing adjustments charged to or passed onto the consumer as a flat fee must be itemized. (§ 1026.37(f)(1)(i); Comment 37(f)(1)-5).

Similarly, if the creditor requires the consumer to pay for a third-party settlement service in order to originate the loan, the settlement service and charge must be itemized. The question of whether the third- party settlement services and the related charge must be separately itemized depends on whether the creditor requires the consumer to pay for that charge. If the creditor treats the charge as a normal business overhead expense, such as rent, utilities, wages, etc., the charge should not be separately itemized. (Comment 37(f)(1)-1). Additionally, the creditor is not required to provide a detailed breakdown of all administrative and processing fees that are not required by the creditor, but may be charged to the consumer. For example, if a creditor requires lender's title insurance, the creditor must disclose this service (*i.e.*, lender's title insurance) and the related fee, but the creditor is not required to provide a detailed breakdown of related fees that are not explicitly required by the creditor but may be charged to the consumer (*i.e.*, notary fee, title search fee, or fees for other administrative services related to title insurance).

13.5 How does a consumer indicate an intent to proceed with a transaction? (§ 1026.19(e)(2)(i)(A))

A consumer indicates **intent to proceed** with the transaction when the consumer communicates, in any manner, that the consumer chooses to proceed after the **Loan Estimate** has been delivered, unless a particular manner of communication is required by the creditor. (§ 1026.19(e)(2)(i)(A))

This may include:

- Oral communication in person immediately upon delivery of the **Loan Estimate**; or
- Oral communication over the phone, written communication, communication via email, or signing a pre-printed form after receipt of the **Loan Estimate**.

A consumer's silence is not indicative of **intent to proceed**. (Comment 19(e)(2)(i)(A)-2)

The creditor must document this communication to satisfy the record retention requirements of § 1026.25.

13.6 What does it mean to impose a fee? (Comment 19(e)(2)(i)(A)-5)

A fee is **imposed** by a person if the person requires a consumer to provide a method for payment, even if the payment is not made at that time. (Comment 19(e)(2)(i)(A)-5)

This would include, for example:

- A creditor or mortgage broker requiring the consumer to provide a check to pay for a processing fee before the consumer receives the **Loan Estimate**, even if the check is not to be cashed until after the **Loan Estimate** is received and the consumer has indicated an **intent to proceed**.
- A creditor or mortgage broker requiring the consumer to provide a credit card number for a processing fee before the consumer receives the **Loan Estimate**, even if the credit card will not be charged until after the **Loan Estimate** is received and the consumer has indicated an **intent to proceed**.

□ As discussed above, a creditor or other person may impose a bona fide and reasonable fee before the consumer receives the **Loan Estimate**, if the fee is for purchasing a credit report on the consumer. (§ 1026.19(e)(2)(i)(B))

13.7 Can creditors provide estimates of costs and terms to consumers before the Loan Estimate is provided? (§ 1026.19(e)(2)(ii))

The TILA-RESPA Rule does not prohibit a creditor or other person from providing a consumer with estimated terms or costs prior to the consumer receiving the **Loan Estimate**.

However, if a person (such as a creditor or broker) provides a consumer with a written estimate of terms or costs specific to that consumer before the consumer receives the **Loan Estimate**, it must clearly and conspicuously state at the top of the front of the first page of the written estimate “**Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan.**” (§ 1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1)

There are other restrictions on the form of this statement to assure it is not confused with the **Loan Estimate**:

- Must be in font size no smaller than 12-point font.
- May not have headings, content, and format substantially similar to the **Loan Estimate** or the **Closing Disclosure**. (§ 1026.19(e)(2)(ii); Comment 19(e)(2)(ii)-1)

The Bureau has provided a model of the required statement in form H-26 of appendix H to Regulation Z.

13.8 Is the creditor able to share the Loan Estimate or Closing Disclosure with third parties under federal law?

Yes, if the method of sharing the **Loan Estimate** or **Closing Disclosure** complies with the requirements under the Gramm Leach Bliley Act (GLBA) and Regulation P, as well as other state and federal laws. GLBA and Regulation P generally provide that a financial institution (*i.e.*, creditor or settlement agent) may not share its customer’s (*i.e.*, **consumer** or seller) nonpublic personal information with a nonaffiliated third party without providing notice to the customer of

such information sharing and an opportunity to opt-out of such sharing. However, there are several exceptions to these notice and opt-out requirements.

For example, **a customer** (i.e., the **consumer** and seller) **may consent to the sharing**. Creditors and settlement agents may disclose customer information with the consent or at the direction of the customer provided that the customer has not revoked the consent or direction. (12 CFR § 1016.15(a)(1))

As another example, GLBA section 502(e)(8) provides an exception that applies if a creditor or settlement agent shares its customer's nonpublic personal information to comply with federal, state, or local laws, rules and other applicable legal requirements. Regulation Z requires the use of the **Closing Disclosure** by the creditor to provide the required disclosures under § 1026.38 concerning the transaction to the consumer under § 1026.19(f)(1)(i), requires the settlement agent to provide to the creditor a copy of the disclosures provided to the seller under § 1026.19(f)(4)(iv) when the consumer's and seller's disclosures are provided in separate documents, and requires the settlement agent to 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 under § 1026.19(f)(4)(i). GLBA section 502(e)(8) and Regulation P § 1016.15(a)(7)(i) permit this required sharing of information without providing notice of such information sharing and an opportunity to opt-out of such sharing.

- The section-by-section analysis for § 1026.38(t)(5)(v) in the Bureau's 2017 amendments to the TILA-RESPA Rule provides more examples of how GLBA and Regulation P exceptions might apply.

Other state or federal laws may also apply. Creditors, mortgage brokers, settlement agents, and others are encouraged to complete an analysis under the GLBA and Regulation P, as well as other applicable state and federal laws, if they are sharing a consumer or seller's personal information on the **Loan Estimate** or **Closing Disclosure**.

See section 11.7 above for the optionality allowed if separate **Closing Disclosures** need to be provided to the **consumer** and seller.

13.9 Are there special disclosure rules available for transactions with simultaneous subordinate-lien loans?

Yes. Creditors may have options for disclosing transactions with simultaneous subordinate-lien loans. Those options apply to the disclosures for both the subordinate and first-lien loans.

Some of these options include:

- **Use of alternative forms for the subordinate-lien disclosures.** If the first-lien **Closing Disclosure** discloses the entirety of the seller's transaction, subordinate-lien creditors are allowed to use the alternative **Loan Estimate** and **Closing Disclosure** when disclosing a subordinate-lien loan. If the subordinate-lien creditor uses the alternative **Loan Estimate** for the subordinate lien loan, it must also use the alternative **Closing Disclosure** for the subordinate lien loan. (§§ 1026.37(d)(2), 37(h)(2) and 1026.38(e); Comments 37(d)(2)-1, 37(h)(2)-1, 38(d)(2)-1, and 38(e)-1)
- **Modifications for the simultaneous subordinate-lien loan's disclosures.** If the **Closing Disclosure** for the first-lien loan discloses the entirety of the seller's transaction, creditors are permitted to leave certain disclosures, such as the seller's name and address, blank on the **Closing Disclosure** for the subordinate-lien loan. (See, for example, § 1026.38(t)(5)(vii) and Comments 37(a)(9)-1, 38(a)(4)-2, 38(k)-1, 38(t)(5)(vii)(B)-1, and 38(t)(5)(vii)(B)-2)
- **Special instructions when a simultaneous subordinate-lien loan is involved.** Additionally, in all cases, even if the **Closing Disclosure** for the first-lien loan does not disclose the entirety of the seller's transaction, there are still special instructions for how to disclose particular items on the **Closing Disclosure** subordinate-lien loan. There are also specific instructions for how to include the proceeds from the subordinate-lien funding in the **Cash to Close Table** on the first-lien loan's **Loan Estimate**, as well as how to disclose the proceeds from subordinate-lien funding on the first-lien loan's **Closing Disclosure**, including use of positive and negative numbers in these calculations. (See, for example, §§ 1026.37(h)(1)(iii)(A)(2), 38(e)(2)(ii), 38(e)(4)(ii), 38(i)(4)(ii)(A)(2), and Comments 19(f)(4)(i)-2, 37(h)(1)-2, 37(h)(1)(iii)-2, 37(h)(2)(iii)-2, 38(a)(3)(iii)-1, 38(d)(2)-1, 38(e)-1)

For more information about which disclosures a creditor can leave blank, modify, or have additional instructions for the subordinate-lien **Loan Estimate** or **Closing Disclosure**, see the **TILA-RESPA Guide to Forms**.

13.10 How are seller credits disclosed on the Loan Estimate or Closing Disclosure? (Comments 37(h)(1)(vi)-1 and -2, and 38(i)(7)(iii)(A)-1)

On the **Loan Estimate**, seller credits are disclosed as follows:

- General seller credits are disclosed in the **Calculating Cash to Close** table.
- If the seller credit is a specific seller credit (*i.e.*, it is being used to offset all or part of a specific fee) it may reflected in the total amounts disclosed for those specific fees in **Loan Costs and Other Costs** or it may be disclosed in the **Calculating Cash to Close** table. (Comments 37(h)(1)(vi)-1 and -2)

On the **Closing Disclosure**, seller credits are disclosed:

- In the **Seller-Paid** column for specific seller credits; or
- In the **Calculating Cash to Close** and **Summary of Transactions** tables for general seller credits. (§§ 1026.38(i)(7) and 38(j)(2)(v))

If there is a difference between the amount of seller credits disclosed on the **Loan Estimate** and those disclosed on the **Closing Disclosure**, not attributed to rounding, there must be a statement on the **Closing Disclosure** that the consumer should see the details of the credits. (Comment 38(i)(7)(iii)(A)-1)

If the seller agrees to cover the entire charge for a service and the creditor is aware of that agreement at the time it provides the **Loan Estimate**, the creditor may chose not to disclose the charge in the **Loan Costs** or **Other Costs** section of the **Loan Estimate**. However, if the creditor chooses to omit the charge in the **Loan Estimate** and the seller later renegotiates with the buyer to not provide the seller credit or if the charge increases, the creditor may have a **good faith** tolerance violation. For example, assume the creditor is aware of a specific seller credit of \$500 for an appraisal, and that the creditor choses, relying on the specific seller credit, not to disclose a charge for the appraisal in the **Loan Costs** section. If the appraisal charge then increases to \$750, the creditor would not be able to reset the tolerances for purposes of determining **good faith** (unless the creditor could otherwise establish a changed circumstance or other triggering event under § 1026.19(e)(3)(iv)). If the creditor discloses the increased \$750 appraisal fee on the **Closing Disclosure**, with these facts the creditor would have a tolerance

violation for the increased appraisal amount because appraisals have a **zero tolerance** standard. (Comment 37(h)(1)(vi)-2)

On the other hand, assume a seller offers to provide a \$500 credit to the consumer to cover the anticipated cost of the appraisal and that the terms of the legal obligation between the creditor and consumer indicate that the consumer has agreed to be charged for any amount above the estimated \$500 for the appraisal. The creditor, deciding the charge is one imposed on the consumer, discloses an appraisal fee of \$500 on the **Loan Estimate** in the **Loan Costs** table and includes a seller credit of \$500 in the **Seller Credits** on the **Calculating Cash to Close** table. However, the creditor later learns that the actual cost of the appraisal is \$750. In these circumstances, the creditor can reset the tolerance and issue a revised **Loan Estimate** for the appraisal fee, assuming the other requirements for resetting tolerances are met and a revised **Loan Estimate** is provided timely.

However, assume the creditor neither disclosed the appraisal fee on the **Loan Estimate** nor included the \$500 seller credit in the **Calculating Cash to Close** table because the creditor assumed the appraisal fee would be covered by the \$500 seller credit for the appraisal. In these circumstances, an increase in the appraisal fee would result in a **zero tolerance** violation, unless a change in circumstance or borrower requested change is present.

For more information about how to disclose general and specific seller credits, including the amount of any difference in seller credits, see the **TILA-RESPA Guide to Forms**.

14. Construction loans

14.1 What construction loans are covered by the TILA-RESPA Rule? (§ 1026.19(e) and (f))

Generally, construction loans that are closed-end consumer credit transactions secured by real property or a cooperative unit are subject to the **TILA-RESPA Rule**. A construction loan that is not a closed-end transaction (is an open-end transaction, such as HELOC), that is not primarily for a personal, family, or household purpose (*i.e.*, is primarily for a business purpose), or that is not extended to a consumer is not subject to the TILA-RESPA Rule. (§§ 1026.3(a) and 19(e)(1)(i)).

For more information on the coverage of the TILA-RESPA Rule, see Section 4, above.

14.2 What options are available for disclosing construction loans? (§ 1026.17(c)(6)(ii))

When providing Integrated Disclosures for construction loans under the TILA-RESPA Rule, Regulation Z's long standing construction provisions, § 1026.17(c)(6)(ii) and appendix D to Regulation Z (**appendix D**), as amended by the TILA-RESPA Rule, apply.

A creditor may use **appendix D**, which provides methods to estimate interest and disclose the terms of multiple-advance construction loans when the amounts or timing of advances is unknown at **consummation**.

The creditor may choose whether to disclose a construction-permanent loan as **one transaction** or as **two separate transactions**. (§ 1026.17(c)(6)(ii); Comment 17(c)(6)(ii)-2)

- If the creditor chooses to disclose the loan as **one transaction**, a single set of disclosures (**Loan Estimate** and **Closing Disclosure**) covers both phases of the transaction.
- If the creditor chooses to disclose the loan as **two separate transactions**, the construction phase has its own **Loan Estimate** and **Closing Disclosure**, while the permanent phase has its own **Loan Estimate** and **Closing Disclosure**.

The fact that the creditor chooses to disclose the construction-permanent loan as **two separate transactions** does not necessarily require two separate closings or two separate promissory notes, loan agreements, or loan contracts. Instead, it means that, for the purposes of the TILA-RESPA Rule, the creditor can consider the loan as two separate phases for purposes of providing the Integrated Disclosures.

Similarly, the TILA-RESPA Rule permits a creditor to disclose a construction-permanent loan as a single transaction even if there are separate closings for the construction phase and permanent phase of the loan.

14.3 What are the timing requirements for providing the Loan Estimate in a construction-permanent loan? (Comment 19(e)(1)(iii)-5)

If the construction-permanent loan is disclosed as two separate transactions, a creditor must provide a **Loan Estimate**, by delivering or placing it in the mail, to a consumer no later than the third **business day** after receipt of the **application** for the construction or permanent phase. For example, if a consumer applies for both construction and permanent financing, but on separate days, the creditor must provide the **Loan Estimate** for the construction phase within three **business days** of receipt of the **application** for the construction phase and the **Loan Estimate** for the permanent phase within three **business days** of receipt of the **application** for the permanent phase. (Comment 19(e)(1)(iii)-5). If a consumer applies for both construction and permanent financing at the same time, the creditor must provide the **Loan Estimate** for both the construction and permanent phases within three **business days** of receipt of the **application**, using either a separate disclosure for each phase or a single, combined disclosure for both phases.

If the creditor receives a single application for both phases and chooses to conduct separate closings and provide separate disclosures for the construction phase and permanent phase, it provides the separate **Loan Estimate** for the permanent phase within **3 business days** of receipt of such application, and may proceed with a separate closing and **Closing Disclosure** for the permanent phase upon completion or near-completion of the construction phase if a revised **Loan Estimate** is not needed. Using a separate disclosure for the permanent phase also allows a revised permanent phase **Loan Estimate** to be provided at any time prior to 60 days before consummation. (§ 1026.19(e)(3)(iv)(F))

For example, assume a creditor receives a consumer's application for construction-only financing on Monday, June 1. The creditor must deliver or place in the mail the **Loan Estimate** for the construction financing no later than Thursday, June 4. If on June 1, it receives an application for both the construction and permanent financing, it must place the **Loan Estimates** for the construction financing and permanent financing (either as one **Loan Estimate** or two separate **Loan Estimates**) no later than Thursday, June 4. If it receives the application for the permanent financing at a later date, for example, Monday, June 8, it must deliver or place in the mail the **Loan Estimate** for the permanent financing no later than Thursday, June 11.

If the creditor conducts separate closings, providing separate **Loan Estimates** allows the creditor to provide separate **Closing Disclosures** for the separate closings. For example, assume the consumer applies for both construction and permanent financing on Monday, June 1, and the creditor anticipates that closing for the construction phase will be on July 1, but closing for the permanent phase will be one year later on June 1. If the creditor provides separate **Loan Estimates**, the creditor may provide separate **Closing Disclosures**, providing the **Closing Disclosure** for the construction phase at least **three business days** before the construction consummation on July 1, and then later providing the **Closing Disclosure** for the permanent phase at least **three business days** before the permanent phase consummation on June 1 of the next year. If the creditor provides the appropriate language on the **Loan Estimate** indicated that it may issue a revised **Loan Estimate** any time prior to 60 days before consummation and complied with all other requirements, the creditor could also issue a revised **Loan Estimate** prior to the June 1 consummation. (§ 1026.19(e)(3)(iv)(F))

For more information about providing the consumer with the **Loan Estimate**, see section 6 above.

14.4 How does a creditor allocate costs between the disclosures for the construction and permanent phases when a construction-permanent loan is disclosed as two separate transactions? (Comment 17(c)(6)-5)

If the creditor discloses a construction-permanent loan as **two separate transactions**, the creditor must allocate to the construction phase amounts for finance charges and points and fees that would not be imposed but for the construction financing. Finance charges and points and fees are those defined in Regulation Z, 12 CFR 1026.4 (finance charge) and 1026.32(b)(1) (points and fees).

For example, inspection and handling fees for the staged disbursement of construction loan proceeds **must be** included in the disclosures for the construction phase and **may not be** included in the disclosures for the permanent phase because they are not charged “but for” the construction financing.

If the creditor charges separate finance charges and points and fees for the construction phase and the permanent phase, such fees and charges must be allocated to the phase for which they are charged. All other finance charges and points and fees not imposed but for the construction financing are included in the permanent financing disclosures.

For example, if the finance charges and points and fees for construction-only financing are \$750, but are \$1,000 for the construction-permanent financing, \$750 is allocated to the construction financing (the amount charged for construction-only financing) and \$250 is allocated to the permanent financing.

Fees that are not finance charges or points and fees may be allocated between the construction phase and permanent phase in any manner the creditor chooses. For example, an appraisal fee, if excluded from the finance charge and points and fees, may be allocated to either phase, even if the appraisal is used for both phases.

14.5 How is the Disbursement Date disclosed on the Closing Disclosure for construction loans? (§ 1026.38(a)(3)(iii))

When disclosing the disbursement date on the **Closing Disclosure** for a construction loan, or on the separate **Closing Disclosure** for the construction phase, the disbursement date is the date that some or all of the loan amount is paid to the consumer, seller, or a third party other than the settlement agent. (§ 1026.38(a)(3)(iii))

The disbursement date may be, for example, the date closing costs are paid with loan proceeds, the date some of the loan amount is paid to the seller in a purchase transaction that involves construction, or the date of the first scheduled draw in a loan that involves construction but not purchase or refinance. If the date is not known at the time the **Closing Disclosure** is provided, a creditor may estimate the date using the best information reasonably available.

14.6 Is the creditor required to disclose the sale price or appraised value or estimated value for construction loans? (§§ 1026.37(a)(7) and 1026.38(a)(3)(vii))

The requirement to disclose a sale price or appraised value or estimated value if loan proceeds are used to finance construction costs depends upon:

- Whether the transaction involves a seller, and
- Whether the sale price is known at the time the disclosure is made.

In transactions where there is a seller, the creditor is required to disclose the contract sale price of the property. (§§ 1026.37(a)(7)(i) and 1026.38(a)(3)(vii)(A)). For the **Loan Estimate**, if the sale price is not yet known, the creditor may disclose the estimated or appraised value of

In the context of construction loans, **a transaction without a seller** includes, for example, instances where the consumer already owns the land on which the consumer will construct a dwelling.

the property that it used as the basis for the disclosures in the **Loan Estimate**. (Comment 37(a)(7)-1)

In transactions without a seller, the creditor discloses the appraised value if the creditor has obtained an appraisal or valuation of the property, or the estimated value of the property if there is no appraisal or valuation of the property. (§§ 1026.37(a)(7)(ii) and 1026.38(a)(3)(vii)(B); Comments 37(a)(7)-1 and 38(a)(3)(vii)-1)

When disclosing an estimated or appraised value on the **Loan Estimate**: the creditor **may**, at its option, include the value of improvements to be made on the property. (Comment 37(a)(7)-1)

When disclosing an estimated or appraised value on the **Closing Disclosure**: the creditor **must** disclose the value of the property used to determine the approval of the credit transaction, including the value of the improvements to be made on the property, if the value of those improvements were used in determining the approval of the credit transaction. (Comment 38(a)(3)(vii)-1)

Absent its own estimate, the creditor may use an estimate provided by the consumer at application. (Comment 37(a)(7)-1 and 38(a)(3)(vii)-1)

14.7 How is the Loan Product disclosed for construction loans when the interest rates for both phases are known? (§ 1026.37(a)(10); Comment app.D-7.ii)

When the loan is disclosed as **one transaction**, the construction and permanent phases are considered a single transaction in which the contract terms of each of the phases are combined. The analysis to determine what the creditor must disclose as the **Loan Product** for this combined, single transaction is the same as it would be for any other single transaction.

For example:

- When a single disclosure is used for both the construction and permanent phases and each phase has a different fixed rate, the creditor must disclose the **Loan Product** as

“**step rate.**” This is because the interest rate will change after **consummation**, and the rates and the periods for which the rates will apply are known at **consummation**.

(§ 1026.37(a)(10)(i)(B))

- When a single disclosure is used for both the construction and permanent phases and one phase of a construction- permanent transaction has an **adjustable rate**, and the other phase has a **fixed rate**, the creditor must disclose the **Loan Product** as “**adjustable rate.**” The loan is disclosed as “adjustable rate” because the interest rate may increase after **consummation**, and one or more of the rates that will apply are not known at **consummation**. (§ 1026.37(a)(10)(i)(A); Comment 37(a)(10)-1.i)

When the loan is disclosed as **two separate transactions**, the creditor discloses the **Loan Product** that describes each phase. For example, when separate disclosures are used for the construction and permanent phases and each phase has a different **fixed rate**, the creditor would disclose the product for each phase as “fixed rate,” even if each phase has a different rate. **Regardless of whether the construction-permanent loan is disclosed as one or two transactions**, each disclosure must follow the requirement that if a transaction has more than one loan payment feature, the creditor only discloses the first feature in the order that the features are listed in the TILA-RESPA Rule. (§ 1026.37(a)(10)(iii)). For example, when separate disclosures are used for the construction and permanent phases, both an **interest only** feature and a **balloon payment** feature may be present in the construction phase. Because the **interest only** feature is listed before the **balloon payment** feature in the TILA-RESPA Rule, the creditor must disclose the **interest only** feature but **not the balloon payment** feature. (§ 1026.37(a)(10)(ii))

14.8 How is the Loan Product disclosed if the interest rate that will apply to the permanent phase is not known at consummation? (Comment app. D-7.ii)

If the interest rate that will apply to the permanent phase is not known at consummation and the construction-permanent loan is disclosed as **one transaction**, the Loan Product for the transaction is disclosed as an **adjustable rate** product. If the interest rate that will apply to the permanent phase is unknown and the construction-permanent loan is disclosed as a **two separate transactions**, the Loan Product for the permanent phase is disclosed as an

adjustable rate product. This is true even if, once set at the later date, the interest rate for the permanent phase would not change again. (Comment app. D-7.ii)

The loan payment features required in the Loan Product disclosure are also included in the disclosures if the interest rate that will apply to the permanent phase is not known at consummation. For example, if the loan is disclosed using a single disclosure for a combined construction-permanent financing, the introductory period disclosure would be the term of the construction phase and then the term of the permanent phase, e.g. “**1/30 Adjustable Rate**,” provided the construction phase has a fixed rate. If, however, the permanent phase is disclosed separately, assuming the permanent phase is a fixed rate upon conversion from the construction phase, the introductory rate disclosure would be zero followed by the term of the permanent phase, e.g., “**0/30 Adjustable Rate**.” These introductory rate or payment period disclosures are disclosed even if the construction phase and the permanent phase (once the interest rate is later set for the permanent phase) individually are **fixed rate**. (§§ 1026.37(a)(10)(iv) and 1026.38(a)(5)(iii)) As stated above, each disclosure must follow the requirement that if a transaction has more than one loan payment feature, the creditor only discloses the first feature in the order that the features are listed in the TILA-RESPA Rule.

Additionally, other adjustable rate disclosures are applicable, such as the **AIR Table** (§§ 1026.37(j) and 1026.38(n)).

14.9 What interest rate is disclosed when the creditor does not know the rate that will apply to the permanent phase? (§§ 1026.37(b)(2), 19(e)(1)(i), and Comment app D-7.iii)

Because the permanent phase may begin months after a creditor is required to provide disclosures, the creditor may not know at the time the disclosures are provided what interest rate will apply to the permanent phase. To disclose the interest rate on the **Loan Estimate** for the permanent phase when the loan is disclosed as **two separate transactions**, the creditor must determine if the permanent phase has an **adjustable rate** or a **fixed rate**.

- If the permanent phase has an **adjustable rate** and the interest rate that will apply at **consummation** is **not** known when the **Loan Estimate** is provided, the creditor is required to disclose the fully indexed rate, which is the interest rate calculated using the index value and margin at the time of **consummation**. If the index value and margin that will be in effect at consummation must be provided, the fully-indexed rate disclosed may be based on the index in effect at the time the disclosure is delivered. (§ 1026.37(b)(2); Comment 37(b)(2)-1)
 - Under § 1026.19(e)(3)(iv)(F), a revised **Loan Estimate** may be provided for the permanent phase at any time prior to 60 days before consummation. See sections 8.10 and 14.3, above.
- If the permanent phase has a **fixed rate**, the creditor should use the best information reasonably available to the creditor at the time the disclosure is provided to the consumer. (Comment 19(e)(1)(i)-1; see also § 1026.17(c)(2)(i); Comment 17(c)(2)(i)-1)

If the construction-permanent loan is secured by the consumer's principal dwelling, and if the permanent phase interest rate is unknown at consummation because the rate will be set or modified upon conversion from the construction phase, (making the loan an **adjustable rate** product), creditors are required to provide ARM Payment Change disclosure in § 1026.20(c) (required for products converting from an adjusting rate to a fixed rate) at least 60 days and no more than 120 before the first payment for the permanent phase is due.

However, the adjustable rate disclosures required by § 1026.20(d) are not required by the conversion.

If the permanent phase interest rate is unknown at consummation because the creditor reserves the right to modify the permanent phase interest rate upon conversion from the construction phase, the loan product is an **adjustable rate** product because the interest rate may increase after consummation, and the interest rate is disclosed as such. For more information on how to disclose the loan product information for this type of loan, see above in section 14.8 (§ 1026.37(a)(10)(i)(A); Comment app D-7.iii)

14.10 What amount does the creditor disclose as the initial payment for the construction phase in the Loan Terms table of the Loan Estimate? (§ 1026.37(b)(3))

When the loan is disclosed as **one transaction**, the initial monthly principal and interest payment disclosed in the **Loan Terms** table of the **Loan Estimate** will be the first payment made during the construction phase of the transaction.

Similarly, when the loan is disclosed as **two separate transactions**, the initial monthly principal and interest payment disclosed in the **Loan Terms** table of the **Loan Estimate** for the construction phase is also the initial payment made during the construction phase.

To disclose the initial payment for the construction phase, the creditor uses the interest rate that will apply to the transaction at **consummation**, and applies that interest rate to the principal that is owed at **consummation**. (§ 1026.37(b)(2); Comment 37(b)(3)-2)

However, with a construction loan, the creditor may not know the principal amount to which this interest rate is applied. This is because the actual draw schedule, which generally determines the amount on which the actual interest payment will be based, may not be known. The longstanding provisions of **appendix D** specifically address this situation, and provide special procedures that may be used to estimate interest and make disclosures for construction loans when the actual schedule of advances is not known.

Appendix D provides two options, based on the commitment amount on which interest is payable, for estimating the interest payable during the construction period.

Option one provides that if, under the terms of the legal obligation, interest is payable only on the amount actually advanced for the time it is outstanding, the creditor may assume one-half of the commitment amount is outstanding at the contract interest rate for the entire construction period. This option is available for loans disclosed as **one transaction** under Part II.A.1 and for loans disclosed as **two separate transactions** under Part I.A.1 of **appendix D**.

- For example, assume the creditor originates a 12 month, interest only construction loan for \$100,000 at 5 percent with interest payable only on the amount actually advanced for

the time it's outstanding. Under option one in **appendix D**, the creditor may assume \$50,000 is outstanding (one-half of the \$100,000 commitment) for the entire construction period, and after applying the interest rate by multiplying \$50,000 by .05, would obtain a total estimated interest payment of \$2,500. When divided by 12, this would yield an initial periodic payment of \$208.33 for the 12 month, interest only construction loan phase.

Option two provides that if interest is payable on **the entire commitment amount without regard to the dates or amounts of actual disbursement**, the creditor may assume that the entire commitment amount is outstanding at the contract interest rate for the entire construction period. This option is available for loans disclosed as **one transaction** under Part II.A.2 and for loans disclosed as **two separate transactions** under Part I.B.1 of **appendix D**.

- For example, assume the creditor originates a 12 month, interest only construction loan for \$100,000 at 5 percent with interest payable on the entire commitment amount. Using option two in **appendix D**, the creditor would multiply \$100,000 (the entire commitment amount) by the interest rate, producing a total annual estimated interest payment of \$5000. When divided by 12, the initial periodic payment is \$416.66 for the 12 month, interest only construction loan phase.

Minor variations in calculating the initial periodic payment can be disregarded when making the disclosure. For example, the effect of the fact that months have different numbers of days may be disregarded in making the disclosure. (§ 1026.17(c)(3)). Similarly, the creditor can disregard irregularity in the first payment period. (§ 1026.17(c)(4)). Finally, a creditor may use daily, or other, unit-periods for calculation purposes under **appendix D**, as long as the period used is not inconsistent with the terms of the legal obligation.

14.11 If using appendix D to calculate the periodic payments, how does the creditor disclose “Can this Amount Increase after Closing?” (§ 1026.37(b)(6))

If the amounts or timing of construction phase advances are unknown at or before consummation, and a creditor uses **Option One** under **appendix D** to calculate the payment, the creditor discloses “YES” in response to the question “Can this amount increase after closing?”. The creditor discloses “YES” even if the **appendix D** calculation produces payments of equal amount. (Comment app D-7.iv). While the calculations in **Option One of appendix D** will provide one equal amount for purposes of disclosure, this is not the actual amount the consumer will pay each month. The periodic payment amount will change, and will increase as the consumer makes draws. Thus, the creditor discloses “Yes,” even though the payments amounts are not known at consummation and **appendix D** calculations disclose one equal amount for the construction phase monthly payment.

When the creditor uses **appendix D** to calculate the monthly payment and discloses “Yes” in response to the question “Can this amount increase after Closing?” the other **Loan Terms** table disclosures are still required. The creditor can disclose months or years when disclosing how often the payment may adjust in the **Loan Terms** table. The creditor similarly will base the maximum payment amount disclosure in the **Loan Terms** table on the maximum principal balance available to the consumer during the construction phase. The creditor discloses month 1 as the month when the payment adjustment might first occur.

Additionally, disclosures in the **Adjustable Payments Table** will also be required when the creditor uses **appendix D** to calculate the monthly payment and discloses “Yes” in the **Loan Terms** table. The creditor may omit and leave blank the amount and range of the first periodic principal and interest payment that may change. However, the timing of the first change is still disclosed, and is disclosed as the first payment, given the drawn loan balance for the first payment will likely not be the same as the balance used to calculate under **appendix D**. The other disclosures in the **Adjustable Payments Table** are also included (Comment app D-7.iv)

For loans that are **adjustable rate**, the creditor also discloses the **Adjustable Interest Rate Table**.

14.12 How does the creditor disclose the construction phase of a construction-permanent loan in the Projected Payments table? (§ 1026.37(c)(1))

If the amounts or timing of construction phase advances for a construction-permanent loan are unknown at or before consummation, and the creditor uses **Option One** under **appendix D** to calculate the interest-only payments, the creditor discloses the periodic payments for the construction phase in the **Projected Payments** table as follows:

1. Loan disclosed as two separate transactions. The creditor discloses the construction phase in the **Projected Payments** table as it would for any other loan. It cannot omit the number and amounts of any interest-only payments. If the amount of an interest-only payment is unknown at the time of the disclosure, the creditor should use **appendix D** to estimate the monthly payment amounts.

If the interest rate of the construction phase is a **fixed rate**, the amount disclosed using **appendix D** is a single amount, and is **not** disclosed as a range from \$0 to the interest-only payment amount based on the full principal balance available to the consumer during the construction phase.

If the construction phase has an **adjustable rate**, the creditor discloses in the first column of the **Projected Payments** table a range of payments, (§§ 1026.37(c)(1)(iii) and (c)(2)(i)(A)). The maximum possible interest rate and the minimum possible interest rate under the terms of the legal obligation are applied to either one-half the commitment amount or the entire commitment amount, depending on the **appendix D** calculation option chosen. (§ 1026.37(c)(2)(i)(A)).

When the construction phase is disclosed as a separate transaction, the **Projected Payments** table must also disclose the balloon payment feature, as the payments made during the construction phase would not repay the principal balance. (Comment app D-7.v.A). See section 14.13 below for the balloon payment disclosures required for the construction phase.

2. Loan disclosed as a single transaction. If the construction phase is less than one year, the creditor discloses the construction phase payments in the first column of the **Projected Payments** table. The first column also reflects any amortizing payments, mortgage insurance

and escrow payments for the permanent phase if the construction phase is not a full year. The remaining columns reflect the payments for the permanent phase. (Comment app D-7.v.B). See section 14.16 below for how to disclose the escrow items during the construction phase.

14.13 How does the creditor disclose a balloon payment in the Loan Terms table (§ 1026.37(b)(7)(ii)) and Projected Payments table (§ 1026.37(c)(1)(ii)(A))?

When a creditor discloses the construction phase of a construction-permanent transaction separately from the permanent phase, the balloon payment due at the end of the construction phase must be disclosed in the **Loan Terms** table pursuant to § 1026.37(b)(7)(ii). In addition, a creditor would disclose the **balloon payment** in its own column as a separate periodic payment or range of payments in the **Projected Payments** table. (§ 1026.37(c)(1)(ii)(A))

For example, assuming the construction phase requires interest-only payments:

- In a one-year, construction loan with a **fixed interest rate**, if the final balance of the construction phase corresponds to the twelfth or final monthly payment, the balloon payment will include the interest that has accumulated since the eleventh payment was made.
 - When disclosing the balloon payment in the **Loan Terms** table of the **Loan Estimate**, the creditor discloses the balloon payment as the loan amount plus the final amount of interest that accrued between the eleventh payment and the final balance of the construction phase.
 - In the **Projected Payments** table, the balloon payment disclosed is the same amount as disclosed in the **Loan Terms** table. (Comment app. D-7.i; § 1026.37(b)(7)(ii) and § 1026.37(c)(1)(ii)(A))
- In a one-year construction loan with an **adjustable interest rate**, if the final balance of the construction phase corresponds to the twelfth or final monthly payment, the balloon payment will include the interest that has accumulated since the eleventh payment was made.

- When disclosing the balloon payment in the **Loan Terms** table of the **Loan Estimate**, the amount disclosed is the “maximum amount” and is based upon the loan amount plus the maximum payment of interest in the range of payments that would be disclosed in the **Projected Payments** table.
- In the **Projected Payments** table, the balloon payment range disclosed is the loan amount plus the minimum amount of the interest payment on the low end of the range and the loan amount plus the maximum amount of the interest payment on the high end of the range disclosed in the first column of the **Projected Payments** table. (Comment app. D-7.i; § 1026.37(b)(7)(ii) and § 1026.37(c)(1)(ii)(A))

14.14 If the creditor discloses the loan as one transaction, how are the mortgage insurance and estimated escrow disclosed in the Projected Payments table? (§ 1026.37(c)(2))

When the loan is disclosed as **one transaction** and the terms of the legal obligation for the permanent phase, but not the construction phase, require mortgage insurance or escrow, the way the creditor discloses the escrow and mortgage insurance depends on whether the first column of the **Projected Payments** table exclusively discloses the construction phase.

If the first column of the **Projected Payments** table **exclusively discloses the construction phase**:

- **Mortgage insurance:** the creditor discloses “0” in the first column of the **Projected Payments** table for mortgage insurance. (Comments 37(c)(2)(ii)-1 and 37(c)(2)(iii)-1)
- **Escrow:** the creditor discloses a hyphen or dash in the first column of the **Projected Payments** table for escrow.

(Comment 37(c)(2)(iii)-1)

However, if the first column discloses **both the construction phase and the permanent phase** payments, the amount of the mortgage insurance premium or

❑ Mortgage insurance premiums are disclosed on the same periodic basis that payments for principal and interest are disclosed, even if mortgage insurance premiums are actually paid on some other periodic basis.

(Comment 37(c)(2)(ii)-2)

escrow payment (if any) for the permanent phase is disclosed in the first column. (Comments 37(c)(2)(ii)-2, 37(c)(2)(iii)-1, and app D-7.v.C)

14.15 Does the creditor indicate there will be an escrow account in the Projected Payments table for the construction phase? (§ 1026.37(c)(4))

When both phases of a construction-permanent loan are disclosed as **one transaction**, if there will be an escrow account only during the permanent phase, the creditor discloses “YES” to indicate the estimated taxes, insurance, and assessments will be in escrow, as applicable. (§ 1026.37(c)(4)(iv)). The amounts are calculated based on the creditor’s due diligence to obtain the best information reasonably available at the time of the disclosure is made to the consumer. (Comments 17(c)(2)(i)-1 and 19(e)(1)(i)-2)

When the loan is disclosed as **two separate transactions**, if an escrow account will be established for the permanent phase, but not the construction phase, the disclosure for the construction phase is “NO” and the disclosure for the permanent phase is “YES.” (§ 1026.37(c)(4)(iv))

14.16 How does the creditor calculate the estimated taxes, insurance, and assessments in the Projected Payments table? (§ 1026.37(c)(5))

When disclosing the estimated taxes, insurance, and assessments for a construction-permanent loan as either one transaction or two separate transactions, the amount of estimated taxes, insurance or assessments are disclosed as a monthly amount, even if no escrow account is established. The amounts must reflect the taxable assessed value of the real property or a cooperative unit securing the transaction after **consummation**.

The items are calculated as follows

- **Estimated property taxes:** The amount of the estimated property taxes to be disclosed includes the value of any improvements on the property or to be constructed

on the property, if known, regardless of whether the construction will be financed from the proceeds of the loan. (§ 1026.37(c)(5)(i))

- **Estimated homeowner's insurance:** The amount of the estimated homeowner's insurance must reflect the replacement costs during the initial year after the transaction. (§ 1026.37(c)(5)(ii))

For more information about how to disclose the estimated property taxes, insurance and assessments, see section 2.2.3.F of the **TILA-RESPA Guide to Forms**.

14.17 How does the creditor disclose construction costs? (Comment app D-7.vi)

Construction costs are costs for improvement that the consumer contracts for to be made to the property in connection with the financing transaction and that will be paid in whole or in part with loan proceeds. For example, construction costs include the portion of a construction loan's proceeds that is placed in a reserve or other account at consummation. The portion of the proceeds that is held in such an account is sometimes referred to as a "construction holdback."

For a construction-permanent loan disclosed as either a **single transaction or as two separate transactions**, the creditor discloses the costs as follows:

- **Loan Estimate.** On the **Loan Estimate**, the creditor factors the construction costs into the **funds for borrower** calculation in the **Calculating Cash to Close** table. They are included as part of the existing debt in the calculation. (§ 1026.37(h)(1)(iii) and (h)(1)(v)).
- **Closing Disclosure.** On the **Closing Disclosure**, the creditor also factors the construction costs into the **funds for borrower** calculation. They are included as part of the existing debt in the calculation. They are also disclosed in the **Summaries of Transactions** table. (§ 1026.38(i)(4), (i)(6), and (j)(1)(v))

If the creditor is using the optional alternative **Loan Estimate** and alternative **Closing Disclosure**, for example for a subordinate-lien loan, these costs are factored into the **Payoffs and Payments** calculations and disclosures. (§§ 1026.37(h)(2)(iii) and 1026.38(t)(5)(vii)(B))

Construction holdbacks can be disclosed separately from the other construction costs in the **Summaries of Transaction** table or in the **Payoffs and Payments** calculations and

disclosures. If the creditor chooses to disclose the construction holdbacks separately, it can disclose the amount as a separate itemized cost in the same manner as the other construction costs discussed above, and would exclude the construction holdback amount from the balance of the construction costs to avoid double-counting. The amount must be labeled in a clear and conspicuous manner to make clear it is for construction holdbacks. (Comment app D-7.vi.D)

14.18 How are construction inspection and handling fees disclosed? (Comments 37(f)-3, 38(f)-2, and app D-7.vii)

Construction inspection and handling fees are disclosed on the **Loan Estimate** and **Closing Disclosure** differently depending on when they are collected. Construction inspection and handling fees are disclosed either:

- **Collected at or before consummation.**

If collected at or before consummation, the total of such fees is disclosed in the **Loan Costs** table, and is included in the **Calculating Cash to Close** table. A fee collected at consummation includes a loan proceeds advance taken at consummation to cover inspection and handling fees.

- **Collected after consummation.**

If collected after consummation, the total of such fees is disclosed in a separate addendum, and the fees are not counted for purposes of the **Calculating Cash to Close** table. (Comments 37(f)-3 and 37(f)(6)-3)



Construction inspection and handling fees are **Loan Costs** and are subject to the **good faith** tolerances for the category in which they fall, regardless of whether they are collected at or before consummation or after consummation. If the fees are **collected after consummation**, and become inaccurate due to **an event that occurs after the disclosures are provided**, the inaccuracy is not a tolerance violation. (§ 1026.17(e))

In either case, inspection and handling fees are included in the loan cost charges added to the **In 5 Years** disclosure as well as the **Total of Payments** disclosure. (Comment app D-7.vii)

If the inspection and handling fees are unknown at the time the disclosures are provided, the creditor uses the best information reasonably available to disclose the amount. For fees collected after consummation, if subsequent events cause the **Loan Estimate** and **Closing Disclosure** to become inaccurate, this does not necessarily cause a **good faith** tolerance violation. (§ 1026.17(e))

If the inspection and handling fees are **collected after consummation**, requiring disclosure on an addendum, the addendum follows the formatting requirements of other addendums to the disclosures. It may be a separate addendum, or included on other required addendums. (Comments 37(f)(6)-3 and 38(t)(5)-5)

14.19 Is the Adjustable Payment (AP) table completed for a construction loan? (§ 1026.37(i))

When a construction-permanent loan is disclosed as one transaction, the **Adjustable Payment (AP)** table must be disclosed if the construction phase permits interest-only payments. The table is required to be disclosed because the transition from interest-only payments to payments of principal and interest will be present. The **Adjustable Payment (AP)** is disclosed as it would be for any other loan, but the creditor may omit and leave blank the amount or range corresponding to the first periodic principal and interest payment that may change.

For example, because the interest-only period during the 12-month construction phase has a total amount advanced upon which the interest-only payments are based that adjusts monthly, the creditor would make the following disclosures in the **Adjustable Payment (AP)** table:

- The “Interest Only Payments” must state “Yes for your first 12 payments”.
(§ 1026.37(i)(1))
- Under the “Monthly Principal and Interest Payments” portion of the **Adjustable Payment (AP)** table:
 - The **First Change/Amount** must disclose the timing of the first change, which is the number of the earliest possible payment (e.g., 1st payment) that may change under the terms of the legal obligation. The creditor may omit and leave blank the amount or range corresponding to the first periodic principal and interest payment that may change (§ 1026.37(i)(5)(i); comment app. D-7.iv.B)

- The **Subsequent Changes** discloses the “smallest period of adjustments that may occur.” (Comment 37(i)(5)-3). In this example it is disclosed as “Every payment.”
- For purposes of determining the number of the periodic payment that can first reach the **Maximum Payment, the creditor begins counting from** the first payment under the construction phase, which is the first payment of the combined transaction. (§ 1026.37(i)(5)(iii))

For more information on this topic, see section 2.3.5 of the **TILA-RESPA Guide to Forms**.

14.20 Does the creditor disclose the Adjustable Interest Rate (AIR) table for construction loans? (§ 1026.37(j))

When the construction-permanent loan is disclosed as **one transaction**, if the construction phase has one fixed rate while the permanent phase has a different fixed rate, it is disclosed as a step rate product and the **Adjustable Interest Rate (AIR)** table is required. The disclosures would be similar to other step rate products. If either or both phases have an adjustable rate, the **Adjustable Interest Rate (AIR)** table is also required. Similarly, if the interest rate for the permanent phase is unknown because the creditor reserves the right to set the rate upon conversion from the construction phase, making the loan an **adjustable rate** product, the **Adjustable Interest Rate (AIR)** table is also required. (§ 1026.37(j); Comment 37(j)-1)

When the construction-permanent loan is disclosed as two separate transactions, the **Adjustable Interest Rate (AIR)** table is required for either phase where the interest rate of the phase may increase after **consummation**. If the creditor does not know the interest rate for the permanent phase of the loan, for example if the interest rate will be set upon conversion or the permanent phase has an adjustable rate, the rate disclosed is the fully indexed rate, which is the interest rate calculated using the index value and margin at the time of **consummation**. If the index value and margin that will apply at the time of **consummation** are not known at the time the disclosure must be made, the fully-indexed rate disclosed may be based on the index in effect at the time the disclosure is delivered. (§§ 1026.37(j)(3) and 37(b)(2); Comment 37(b)(2)-1). For more information on determining the interest rate for adjustable rate construction loans used in the disclosures for the **Adjustable Interest Rate (AIR)** table, see section 14.9 above.

14.21 How is the “In 5 Years” amount calculated when the construction phase is disclosed as a separate transaction and its term is 12 months or less? (Comment 37(l)(1)-1)

When the construction phase of a construction-permanent loan is disclosed as a separate transaction and is less than 60 months in duration, as it typically is, the creditor discloses the amounts paid through the end of the loan term in the Total of Payments table. The amount disclosed would be the full amount of the total principal, interest, mortgage insurance, and loan costs scheduled to be paid through the end of the construction phase. (Comment 37(l)(1)-1)

14.22 How is the Total Interest Percentage (TIP) calculated? (Comment 37(l)(3)-2)

The **Total Interest Percentage (TIP)** for the construction phase of a construction-permanent loan is calculated using the interest payment amount based on the applicable **appendix D** assumption for the outstanding balance to which the contract interest rate applies. (Parts I.A.1 and II.A.1 of appendix D)

When the construction-permanent loan is disclosed as **one transaction** and is a step rate product, the creditor computes the **Total Interest Percentage (TIP)** in accordance with § 1026.17(c)(1) and its associated commentary. (§ 1026.37(l)(3); Comment 37(l)(3)-2)

Whether the construction-permanent loan is disclosed as a single transaction or as **two separate transactions**, if any transaction is disclosed as an adjustable rate product, comment 37(l)(3)-2 provides that for adjustable rate products, the creditor computes the **Total Interest Percentage (TIP)** according to comment 17(c)(1)-10. For more information on calculating and disclosing the **Total Interest Percentage (TIP)**, see section 2.4.2 of the **TILA-RESPA Guide to Forms**.

15. Special Information Booklet (Your Home Loan Toolkit: A step-by-step guide)

15.1 When must creditors deliver the special information booklet? (§ 1026.19(g))

Creditors must provide a copy of the **special information booklet** to consumers who apply for a consumer credit transaction secured by real property or a cooperative unit, except in certain circumstances (see below). The **special information booklet** is required pursuant to Section 5 of RESPA (12 U.S.C. 2604) and is published by the Bureau to help consumers applying for federally related mortgage loans understand real estate transactions. (§ 1026.19(g)(1))

- If the consumer is applying for a HELOC subject to § 1026.40, the creditor (or mortgage broker) can provide a copy of the brochure entitled “When Your Home is On the Line: What You Should Know About Home Equity Lines of Credit” instead of the **special information booklet**. (§ 1026.19(g)(1)(ii))
- The creditor need not provide the **special information booklet** if the consumer is applying for a transaction that does not have the purpose of purchasing a one-to-four family residential property, such as a refinancing, a closed-end loan secured by a subordinate lien, or a reverse mortgage. (§ 1026.19(g)(1)(iii))

Creditors must deliver or place in the mail the **special information booklet** not later than three **business days** after receiving the consumer’s loan **application**. (§ 1026.19(g)(1)(i))

In April 2015, the Bureau released the most recent version, titled *Your home loan toolkit: a step-by-step guide* (“Toolkit”), which is designed to be used in connection with the **Loan Estimate** and **Closing Disclosure** forms that became effective on October 3, 2015. This Toolkit replaced the document titled *Shopping For Your Home Loan: Settlement Cost Booklet*, originally published by HUD.



Multiple versions of the Toolkit, including a Spanish language version, are available at www.consumerfinance.gov/learnmore/#respa. There is an electronic version designed for web posting and interactivity as well as print ready PDFs. Copies can also be ordered from the Government Printing Office (www.gpo.gov). There are two formatted versions available, an 8-1/2" x 11" version as well as an envelope size version.

15.2 What happens if the consumer withdraws the application or the creditor determines it cannot approve it? (§ 1026.19(g)(1)(i))

If the creditor denies the consumer’s **application** or if the consumer withdraws the application before the end of the three-business-day period, the creditor need not provide the **special information booklet**. (§ 1026.19(g)(1)(i); Comment 19(g)(1)(i)-3)

15.3 What if there are multiple applicants?

When two or more persons apply together for a loan, the creditor may provide a copy of the **special information booklet** to just one of them. (Comment 19(g)(1)-2)

15.4 If the consumer is using a mortgage broker to apply for the loan, can the broker provide the booklet?

If the consumer uses a mortgage broker, the mortgage broker must provide the **special information booklet** and the creditor need not do so. (§ 1026.19(g)(1)(i))

15.5 Are creditors allowed to change or tailor the booklet to their own preferences and business needs?

Creditors generally are required to use the booklets designed by the Bureau and may make only limited changes to the **special information booklet**. (§ 1026.19(g)(2)). Nevertheless, the cover of the booklet may be in any form and may contain any drawings, pictures or artwork, provided that the title appearing on the cover shall not be changed. Names, addresses, and telephone numbers of the creditor or others and similar information may appear on the cover, but no discussion of the matters covered in the booklet shall appear on the cover.

The Bureau may issue revised or alternative versions of the **special information booklet** from time to time in the future. Creditors should monitor the *Federal Register* for notice of updates. (Comment 19(g)(1)-1)

15.6 Can market participants place their logo on the special information booklet cover?

Yes. Instructions and a required disclaimer are available at
www.consumerfinance.gov/learnmore/#respa.

15.7 If a creditor makes the special information booklet available on its website, does that satisfy the rule's delivery requirement?

No. Making the **special information booklet** available on a web site does not satisfy the TILA-RESPA Rule's delivery requirement. The creditor must deliver or place the **special information booklet in the mail** not later than three **business days** after receiving the consumer's application.

16. Other disclosures

16.1 Does the TILA-RESPA Rule require disclosures besides the Loan Estimate and Closing Disclosure?

Yes. In addition to the Integrated Disclosures discussed above, the TILA-RESPA Rule also changes some other **post-consummation** disclosures provided to consumers by creditors and servicers: the **Escrow Closing Notice** (§ 1026.20(e)) and **Partial Payment Policy Disclosure** (§ 1026.39(a) and (d)).

Additionally, certain notices in Regulation Z may still be required in addition to the Integrated Disclosures, such as interest rate adjustment notices required by § 1026.20.

16.2 When must the Escrow Closing Notice be provided? (§ 1026.20(e))

For loans subject to the **Escrow Closing Notice** requirement, the creditor or servicer must provide consumers with a notice no later than **three business days before** the consumer's escrow account is canceled. (§ 1026.20(e)(5))

16.3 What transactions are subject to the Escrow Closing Notice requirement?

The **Escrow Closing Notice** must be provided prior to cancelling an escrow account to any consumers for whom an escrow account was established in connection with a closed-end consumer credit transaction secured by a first-lien on real property or a dwelling, except for reverse mortgages. As defined by Regulation Z, a dwelling includes, but is not limited to, a mobile home or a cooperative unit. (§§ 1026.20(e)(1), 1026.2(a)(19))

There are two exceptions to the requirement to provide the notice:

- Creditors and servicers are not required to provide the notice if the escrow account that is being cancelled was established solely in connection with the consumer's delinquency or default on the underlying debt obligation. (Comment 20(e)(1)-2)
- Creditors and servicers are not required to provide the notice when the underlying debt obligation for which an escrow account was established is terminated, including by repayment, refinancing, rescission, and foreclosure. (Comment 20(e)(1)-3)

For purposes of this requirement, the term **escrow account** has the same meaning given to it as under Regulation X, 12 CFR § 1024.17(b), and the term **servicer** has the same meaning given to it as under Regulation X, 12 CFR § 1024.2(b).

16.4 What information must be on the Escrow Closing Notice? (§ 1026.20(e)(1))

Creditors and servicers must disclose certain information on the **Escrow Closing Notice** and may optionally disclose certain additional information. (§ 1026.20(e)(1))

The creditor or servicer must disclose (§ 1026.20(e)(2)):

- The date on which the account will be closed;
- That an escrow account may also be called an impound or trust account;
- The reason why the escrow account will be closed;
- That without an escrow account, the consumer must pay all property costs, such as taxes and homeowner's insurance, directly, possibly in one or two large payments a year;
- A table, titled "**Cost to you**," that contains an itemization of the amount of any fee the creditor or servicer imposes on the consumer in connection with the closure of the consumer's escrow account, labeled "**Escrow Closing Fee**," and a statement that the fee is for closing the escrow account;
- Under the reference "**In the future**:

- The consequences if the consumer fails to pay property costs, including the actions that a state or local government may take if property taxes are not paid and the actions the creditor or servicer may take if the consumer does not pay some or all property costs;
- A telephone number that the consumer can use to request additional information about the cancellation of the escrow account;
- Whether the creditor or servicer offers the option of keeping the escrow account open and, as applicable, a telephone number the consumer can use to request that the account be kept open; and
- Whether there is a cut-off date by which the consumer can request that the account be kept open.

The creditor or servicer may also, at its option, disclose (§ 1026.20(e)(3)):

- The creditor or servicer's name or logo;
- The consumer's name, phone number, mailing address and property address;
- The issue date of the notice; or
- The loan number, or the consumer's account number.

In addition, the disclosures must:

- Contain a required heading that is more conspicuous than and precedes the required disclosures discussed above. (§ 1026.20(e)(4))
- Be clear and conspicuous. This standard generally requires that the disclosures in the **Escrow Closing Notice** be in a reasonably understandable form and readily noticeable to the consumer. (Comment 20(e)(2)-1)
- Be written in 10-point font, at a minimum. (§ 1026.20(e)(4))
- Be grouped together on the front side of a one-page document. The disclosures must be separate from all other materials, with the headings, content, order and format substantially similar to model form H-29 in appendix H to Regulation Z. (§ 1026.20(e)(4))

16.5 When must the creditor send the Escrow Closing Notice before the escrow account is closed?

When the consumer requests cancellation. The creditor or servicer must ensure that the consumer receives the **Escrow Closing Notice** no later than **three business days** before the consumer's escrow account is closed. (§ 1026.20(e)(5)(i))

Cancellation for any other reason. The creditor or servicer must ensure that the consumer receives the **Escrow Closing Notice** no later than **30 business days** before consumer's escrow account is closed. (§ 1026.20(e)(5)(ii))

The mailbox rule applies in any case the creditor must send the **Escrow Closing Notice**. If the notice is not provided to the consumer in person, the consumer is considered to have received the disclosures **three business days** after they are delivered or placed in the mail. (§ 1026.20(e)(5)(iii))

- **Business day** is given the meaning it has for purposes of providing the **Closing Disclosure**—*i.e.*, all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. (See §§ 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii))

16.6 What does the rule on disclosing the Partial Payment Policy in mortgage transfer notices require? (§ 1026.39(a) and (d))

If a creditor is required by existing Regulation Z to provide mortgage transfer notices when the ownership of a mortgage loan is being transferred, the creditor must include in the notice information related to the partial payment policy that will apply to the mortgage loan.

This post-consummation **Partial Payment Policy Disclosure** is required for a closed-end consumer credit transaction secured by a dwelling or real property, other than a reverse mortgage. As defined by Regulation Z, a dwelling includes, but is not limited to, a mobile home or a cooperative unit. (§ 1026.2(a)(19))

16.7 What information must be included in the Partial Payment Policy Disclosure and what must the disclosure look like? (§ 1026.39(d)(5))

The **Partial Payment Policy Disclosure** must include:

- The heading “**Partial Payment**” over all of the following, additional information:
 - If periodic payments that are less than the full amount due are accepted, a statement that the covered person, using the term “**lender**,” may accept partial payments and apply such payments to the consumer’s loan;
 - If periodic payments that are less than the full amount due are accepted but not applied to a consumer’s loan until the consumer pays the remainder of the full amount due, a statement that the covered person, using the term “**lender**,” may hold partial payments in a separate account until the consumer pays the remainder of the payment and then apply the full periodic payment to the consumer’s loan;
 - If periodic payments that are less than the full amount due are not accepted, a statement that the covered person, using the term “**lender**,” does not accept any partial payments; and
 - A statement that, if the loan is sold, the new covered person, using the term “**lender**,” may have a different policy.

The creditor may use the format of the **Partial Payment Policy Disclosure** illustrated by form H-25 of appendix H to Regulation Z. The text illustrating the disclosure in form H-25 may be modified by the creditor to suit the format of the mortgage transfer notice. (See Comment 39(d)(5)-1)

17. Practical implementation and compliance issues

You should consult with legal counsel or your compliance officer to understand your obligations under the TILA-RESPA Rule and to devise the policies and procedures you will need to have in place to comply with the TILA-RESPA Rule's requirements.

When mapping out your compliance plan, in addition to understanding your obligations under the TILA-RESPA Rule, you should consider practical implementation issues. Your implementation and compliance plan may include the following elements as described below in sections 17.1 through 17.4.

17.1 Identifying affected products, departments, and staff

How you comply with the TILA-RESPA Rule may depend on your business model. You may find it useful to identify all affected products, departments, and staff.

Origination, processing, closing and post-closing departmental staff and processes are likely to be most broadly impacted by the TILA-RESPA Rule. However, certain groups within servicing operations may be implicated by the **Escrow Closing Notice** and **Partial Payment Policy Disclosure** during servicing transfers.

Also, you may originate certain products for which the separate RESPA and TILA disclosure regime (*i.e.*, GFE, HUD-1, and the Truth-in-Lending forms) will persist following the TILA-RESPA Rule's effective date. Be certain to closely consider the coverage of the TILA-RESPA Rule to different types of mortgage products.

17.2 Identifying the business-process, operational, and technology changes that will be necessary for compliance

Fully understanding the implications of the TILA-RESPA Rule may involve a review of your existing business processes, as well as the hardware and software that you, your agents, settlement services providers, or other business partners use. Gap analyses may be a helpful output of such a review and can help to inform a robust implementation plan. You should review your technology platforms and determine which version of MISMO is currently supported. The data standards to support the new **Loan Estimate** and **Closing Disclosure** forms will exist in MISMO version 3.3 and later. Also, it is recommended that you evaluate the integrations between your technology platforms and those of your relevant third-party service providers, such as document generators and settlement service providers, to determine required updates, as needed.

17.3 Identifying impacts on key service providers or business partners

Third-party updates may be necessary to: update transaction coverage and calculations; obtain required information or verifications; incorporate new disclosures; and to make sure your software, compliance, quality-control, and recordkeeping protocols comply with the TILA-RESPA Rule.

Software providers, or other vendors and business partners, may offer compliance solutions that can assist. These key partners may depend on your business model. For example, smaller banks and credit unions may find it helpful to talk to their correspondent banks, secondary market partners, and technology vendors. All creditors will likely need to carefully coordinate compliance with the network of settlement services providers on whom they rely for closing services. In some cases, you may want to negotiate revised or new contracts with these parties, or seek a different set of services. In addition, creditors should be in close touch with all key business partners and vendors to ensure that their process and technology changes will meet your business and compliance needs and are scheduled to occur on a timeline that supports collaborative compliance efforts. Make sure you understand the extent of the assistance that vendors, settlement services providers and other business partners provide. For example, if vendors provide software that calculates tolerances to determine which cost changes at

settlement require re-disclosure to the consumer, do they guarantee the accuracy of their conclusions?

The Bureau expects supervised banks and nonbanks to have an effective process for managing the risks of service provider relationships. For more information on this, view [CFPB Bulletin 2012-03 - Service Providers](#).

17.4 Identifying training needs

Consider the training that will be necessary for your loan officer, processor, closing, compliance, and quality-control staff, as well as anyone else who accepts applications, processes loans, or monitors transaction compliance. Training may also be required for other individuals that you, your agents, or your business partners employ.

18. Where can I find a copy of the TILA-RESPA Rule and get more information about it?

You will find the **TILA-RESPA Rule** on the Bureau's website at www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/.

In addition to a complete copy of the TILA-RESPA Rule, that web page also contains:

- The section-by-section analysis or preamble, which explains why the Bureau issued the rule, the legal authority and reasoning behind the rule, responses to comments, and analysis of the benefits, costs, and impacts of the rule;
- Official Interpretations of the rule;
- The **TILA-RESPA Guide to Forms**; and
- Other implementation support materials (including proposed rule amendments, if applicable).

Useful resources related to mortgage rule implementation are also available at www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/.

For email updates about when additional TILA-RESPA Rule or other mortgage rule implementation resources become available, please submit your email address within the “Email updates about mortgage rule implementation” box [here](#).