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August 30, 2017

2017 TILA-RESPA Rule: DETAILED SUMMARY OF CHANGES AND CLARIFICATIONS

On July 7, 2017, the Consumer Financial Protection Bureau (Bureau) issued a final rule (2017 TILA-RESPA Rule or 2017 Rule) clarifying and amending certain mortgage disclosure provisions implemented in Regulation Z.

This document summarizes most of the 2017 TILA-RESPA Rule's clarifications and changes, and provides relevant citations. Use of this summary is not a substitute for reviewing the 2017 TILA-RESPA Rule. The 2017 TILA-RESPA Rule is the definitive source regarding its requirements. Additional implementation resources are available at www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/.

Effective date and mandatory compliance date

The 2017 TILA-RESPA Rule is effective and will be incorporated into the Code of Federal Regulations on October 10, 2017. However, compliance is not mandatory on the effective date (see *Optional Compliance Period* below in this section).

Generally, compliance with the 2017 TILA-RESPA Rule 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 Closing Notice and Partial Payment disclosures provided post-consummation apply starting October 1, 2018 without regard to when the creditor or mortgage broker receives the application.

OPTIONAL COMPLIANCE PERIOD

The 2017 Rule includes 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 Rule is allowed, but not required.

🔍 **Where in the Rule:**
See comments 1(d)(5)-1 and -2.

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 disclosures).

The below example illustrates the optionality provided during the optional compliance period. The preexisting TILA-RESPA Rule required creditors to disclose the Total Interest Percentage (TIP) and provides that the TIP is the total amount of interest that the consumer will pay over the life of the loan, expressed as a percentage of the principal of the loan. Among other things, the 2017 Rule states that, if prepaid interest in a particular transaction has a negative value, then that prepaid interest must be included as a negative value when calculating the TIP. During the optional compliance period, a creditor may either:

- Include negative prepaid interest into the TIP calculation as a negative value; or
- Not include negative prepaid interest into the TIP calculation because the preexisting regulation and commentary did not restrict how a creditor factors negative prepaid interest into the TIP calculation.

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 Rule can be implemented all at once or phased in over this period. For example, if a creditor chooses to phase in the 2017 Rule changes, 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 Rule in a way that would violate provisions of Regulation Z that are not being changed. For example, during the optional compliance period, 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 12 CFR 1026.38(i), which requires that information that was disclosed on the Loan Estimate be included on the Closing Disclosure.

Coverage

COOPERATIVES

The 2017 Rule creates 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.**

🔍 **Where in the Rule:**

See § 1026.19(e), (f), and (g) and comments 19(e)(1)(i)-1 and -2, 19(f)(1)(i)-1, 19(f)(3)(ii)-3, and 19(f)(4)(i)-1. *See also* §§ 1026.1(d)(5), 1026.25(c)(1), and 1026.37(c)(5)(i), and comments 17(f)-1 and -2, 18-3, 18(g)-6, 18(s)-1 and -4, and 37(a)(7)-2.

TRUSTS

Under the 2017 Rule, for purposes of Regulation Z's definition of "consumer," credit extended to certain trusts established for tax or estate planning purposes is credit extended to a natural person.

🔍 **Where in the Rule:**

See comment 2(a)(11)-3.

The 2017 Rule explains that 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.

The 2017 Rule also explains that, on the Loan Estimate, a creditor must disclose the name and mailing address of each consumer to whom the Loan Estimate will be delivered. If the Loan Estimate is delivered to the trustee on behalf of the trust (and to no other consumer), a 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.

HOUSING ASSISTANCE LOANS

The 2017 Rule revises two of the six criteria for the exemption from the integrated disclosure requirements for *certain* low-cost, non-interest bearing, subordinate lien, housing assistance loans.

🔍 **Where in the Rule:**

See § 1026.3(h)(5) and (h)(6).

Regarding the costs payable by the consumer at consummation, under the 2017 Rule:

- Transfer taxes, in addition to recording, application, and housing counseling fees, may be payable by the consumer at consummation without losing eligibility for the partial exemption; and
- Recording fees and transfer taxes are excluded from the 1% cap on total costs payable by the consumer at consummation.

Additionally, the 2017 Rule revises the disclosures that must be provided to meet a condition for the partial exemption. The creditor may provide a Loan Estimate and Closing Disclosure as an alternative to providing a disclosure of the cost of credit under 12 CFR 1026.18. Disclosures must comply with all Regulation Z requirements pertaining to those disclosures.

The 2017 Rule explains that, assuming the other criteria for the partial exemption are satisfied, a creditor may provide either a compliant disclosure of the cost of credit under 12 CFR 1026.18 or a compliant Loan Estimate and Closing Disclosure, and does not need to provide the special information booklet or certain RESPA disclosures, including the Good Faith Estimate and HUD-1 settlement statement, as applicable.

Good faith requirement (i.e., tolerances) and revised disclosures

GOOD FAITH REQUIREMENT AND THE WRITTEN LIST OF SERVICE PROVIDERS

The 2017 Rule provides that the best information reasonably available standard (i.e., that there is no tolerance limit on charges so long as they are based on the best information reasonably available) applies to bona fide charges for third-party services if, based on the facts and circumstances:

- A consumer is permitted to shop for the service, and
- Selects a provider not listed on the written list of service providers issued to the consumer, and
- Those estimated charges are based on the best information reasonably available, even if the bona fide charge is paid to the creditor's affiliate.



Where in the Rule:

See the various changes to § 1026.19, including § 1026.19(e)(3)(iii) and (e)(3)(iv)(E), and comments 19(e)(3)(i)-1, 19(e)(3)(ii)-1, 19(e)(3)(ii)-2, 19(e)(3)(ii)-6, 19(e)(3)(iii)-2, 19(e)(3)(iii)-3, 19(e)(3)(iii)-4, 19(e)(3)(iv)-2, 19(e)(3)(iv)-4, 19(e)(3)(iv)-5, 19(e)(3)(iv)(D)-1, 19(e)(3)(iv)(D)-2, 19(e)(3)(iv)(E)-1, 19(e)(3)(iv)(E)-2, 19(f)(2)(iii)-2, 37(a)(13)-2 and -4, and 38(e)(2)(iii)(A)-2 and 38(i)(1)(iii)(A)-2.

The 2017 Rule provides that the 10% cumulative tolerance standard applies to a required third-party, non-affiliate settlement service charge, even if the creditor has failed to disclose on the written list of service providers that required service or the written list was not provided at all, as long as the creditor permitted the consumer to shop for the service.

The 2017 Rule provides that the zero tolerance standard applies to required settlement service charges paid to anyone, if, based on the relevant facts and circumstances, the consumer was not permitted to shop.

In all cases, the 2017 Rule provides that whether a creditor permits a consumer to shop is based on the relevant facts and circumstances.

The 2017 Rule indicates creditors are not prohibited from issuing revised written lists of service providers for informational purposes.

OTHER GOOD FAITH REQUIREMENTS

The 10% cumulative tolerance standard applies to the aggregate of the charges subject to that standard, not a particular charge. The 2017 Rule explains that, if an individual charge that is subject to the 10% cumulative tolerance standard was omitted from the Loan Estimate but charged at consummation, it may still be in good faith if the sum of all charges subject to the 10% cumulative tolerance is in good faith. 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.

The 2017 Rule also provides that the best information reasonably available standard applies to property taxes, property insurance premiums (including homeowner's insurance premiums), amounts placed in escrow, impound, reserve or similar accounts, prepaid interest, and third-party services not required by the creditor, so long as the charges (or omission of charges) were estimated based on the best information reasonably available.

The best information reasonably available standard applies to these specified charges even if the charge is paid to the creditor or its affiliate as long as the charge is bona fide. To be considered bona fide, charges must be lawful and for services actually performed.

REVISED LOAN ESTIMATES

The 2017 Rule permits a creditor to provide a revised Loan Estimate for informational purposes as well as to reset tolerances. For example, if a changed circumstance, consumer requested change or

other specified reason for revision allowed by the TILA-RESPA Rule has occurred, but it does not increase the sum of all costs subject to the 10% cumulative tolerance standard by more than 10%, a creditor is not prohibited from issuing a revised Loan Estimate for informational purposes.

A revised Loan Estimate must be based on the best information reasonably available to the creditor, even if the revised disclosures may not be used for purposes of determining good faith. For example, if the creditor issues a revised Loan Estimate reflecting a new rate lock extension fee for purposes of determining good faith under the zero tolerance standard, other charges unrelated to the rate lock extension should be reflected on the revised Loan Estimate based on the best information reasonably available to the creditor at the time the revised Loan Estimate is provided even though these other updated charges will not be used to determine good faith.

A creditor may not provide a revised Loan Estimate after it issues a Closing Disclosure even if the interest rate is locked on or after the date the Closing Disclosure is provided to the consumer. If a rate is locked or changes after a Closing Disclosure is provided to the consumer, the creditor must provide a corrected Closing Disclosure at or before consummation to reflect the changes. If the changes trigger a new 3 day requirement, the creditor must provide the corrected Closing Disclosure at least 3 business days before consummation.

If a revised Loan Estimate is issued after the consumer indicates an intent to proceed, the expiration date and time are left blank on the revised Loan Estimate.

A creditor may voluntarily extend the expiration date of a Loan Estimate, either orally or in writing. If the creditor does so, it must allow the consumer to rely on the charges and other terms disclosed in the Loan Estimate and to indicate an intent to proceed until the extended expiration date.

CORRECTED CLOSING DISCLOSURES

The 2017 Rule provides that a post-consummation corrected Closing Disclosure is not required if the only changes that would be required to be disclosed are changes to per-diem interest and disclosures affected by per-diem interest. However, if a creditor is providing a post-consummation corrected Closing Disclosure for reasons other than changes in per-diem interest but the per-diem interest has also changed, the creditor must disclose the corrected per-diem interest in the corrected disclosures. Additionally, the creditor must provide corrected disclosures for any disclosures that are affected by the change in per-diem interest.

It also provides that a corrected Closing Disclosure must be based on the best information reasonably available to the creditor, even if the corrected disclosures may not be used for purposes of determining good faith.

Shopping for settlement services

The 2017 TILA-RESPA Rule provides that whether a consumer is permitted to shop is determined by the relevant facts and circumstances.

The itemization of the settlement service providers need not include all settlement services that may be charged to the consumer, but must include at least those settlement services required by the creditor for which the consumer may shop.

🔍 **Where in the Rule:**

See comments 19(e)(1)(vi)-1, 19(e)(1)(vi)-2, 19(e)(1)(vi)-3, and 19(e)(1)(vi)-4. See also 19(e)(3)(ii)-1, 19(e)(3)(ii)-2, 19(e)(3)(ii)-6, and 19(e)(3)(iii)-2.

For example, if the creditor requires lender's title insurance and permits the consumer to shop, the creditor must disclose the service (i.e., lender title's insurance) and the fee for the service on the Loan Estimate, and at least one available provider of the service on the written list of service providers. However, the creditor is not required under the written list of service provider requirements 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.

The 2017 Rule identifies the tolerance standard for when the creditor permits shopping for settlement service providers, but fails to provide the written list (see above in *Good Faith Requirement and Revised Disclosures*).

Settlement service providers disclosed on the written list of service providers must correspond to the settlement services required by the creditor for which the consumer may shop. Further, those service providers must be available to the consumer such that they are in business and provide services in the consumer's or property's area.

Although a creditor is not required to use the model form for the written list of service providers, the proper use of the model form (including any permitted changes) provides a safe harbor. Further, some revisions to the model form may still allow the creditor to maintain the safe harbor. For example, deleting the column for estimated fee amounts is an example of an acceptable change to the model form for the written list of service providers.

Disclosure of principal reductions (also known as principal curtailments)

The 2017 TILA-RESPA Rule provides details for the proper disclosure of principal reductions, such as principal reductions provided to cure tolerance violations.

On the Closing Disclosure, the 2017 Rule explains how principal reductions are disclosed in the Summaries of Transactions table (or Payoffs and Payments table on the alternative Closing Disclosure) and when to factor them into the Calculating Cash to Close table.

🔍 **Where in the Rule:**

See comment 38-4. See also

§§ 1026.38(e)(2)(iii)(A)(3) and (i)(1)(iii)(A)(3), and comments 19(f)(2)(v)-1, 38(e)(2)(iii)(A)-3, 38(i)(1)(iii)(A)-3, 38(j)(1)(v)-2, 38(j)(4)(i)-1, and 38(t)(5)(vii)(B)-3.

The 2017 Rule requires the disclosure of principal reductions to include the following:

- The amount of the principal reduction;
- The phrase “principal reduction” or a similar phrase;
- For a principal reduction disclosure on the alternative Closing Disclosure only, the name of the payee;
- If applicable to the transaction, the phrase “Paid Outside of Closing” or “P.O.C.” and the name of the party making the payment; and
- If the principal reduction is used to cure a tolerance violation, a statement that the principal reduction is being provided to offset charges that exceed the legal limits, using any language that meets the clear and conspicuous standard.

It permits the use of an addendum for the principal reduction disclosure in certain circumstances when additional space is needed.

Total of payments disclosure

The 2017 TILA-RESPA Rule sets forth tolerances that apply to the Total of Payments disclosure generally as well as for purposes of a consumer’s right of rescission. The tolerances for the Total of Payments disclosure mirror the tolerances applicable to the finance charge.

🔍 **Where in the Rule:**

See §§ 1026.23(g)(1), (g)(2), (h)(2), and 1026.38(o)(1) and comments 23(g)-1, 23(h)(2)-1, 23(h)(2)-2, 38(o)-1, and 38(o)(1)-1.

In general, the Total of Payments disclosure is considered accurate if it:

- Is understated by no more than \$100; or
- Is greater than the amount required to be disclosed.

The 2017 Rule provides separate tolerances for the Total of Payments for certain refinance transactions and after the initiation of foreclosure on a consumer's principal dwelling that secures the credit obligation.

The 2017 Rule states that the Total of Payments excludes charges for principal, interest, mortgage insurance, or loan costs that are offset by another party through a specific credit. General credits, however, may not be used to offset amounts for purposes of the Total of Payments.

Simultaneous subordinate lien loans

The 2017 TILA-RESPA Rule provides that, 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**, then:

- 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.
- The requirement to disclose the Summary of Seller's Transaction table does not apply to the Closing Disclosure for the simultaneous subordinate lien loan.
- A creditor may use the optional alternative disclosures, (i.e., the alternative disclosures formerly used only for transactions without a seller) when disclosing the simultaneous subordinate lien loan.
 - If the creditor uses the alternative tables on the Loan Estimate for the subordinate lien loan, it must also use them on Closing Disclosure for that loan.



Where in the Rule:

See §§ 1026.37(d)(2), (h)(1)(iii)(A)(2), and (h)(2) and 1026.38(d)(2), (e), (e)(2)(ii), (e)(4)(ii), (i)(4)(ii)(A)(2), and (t)(5)(vii), and comments 19(f)(4)(i)-2, 37(a)(9)-1, 37(d)(2)-1, 37(h)(1)-2, 37(h)(1)(iii)-2, 37(h)(1)(vii)-5, 37(h)(2)-1, 37(h)(2)(iii)-2, 38(a)(3)(iii)-1, 38(a)(4)-2, 38(d)(2)-1, 38(e)-1, 38(i)(3)-1.ii, 38(i)(4)(ii)(A)-2, 38(j)-3, 38(j)(1)(ii)-1, 38(j)(1)(v)-3, 38(j)(2)(vi)-2, 38(k)-1, 38(k)(1)-1, 38(k)(2)(vii)-1, 38(t)(5)(vii)(B)-1 and -2.

- If the creditor for the subordinate lien uses the alternative tables on the disclosures for the subordinate lien loan, contributions towards the subordinate lien from the seller must be included in the Closing Disclosures for both the first lien (in the Summaries of Transactions table) and subordinate lien (in the Payoffs and Payments table).
- For a simultaneous subordinate lien loan, a creditor may leave the seller's name and address blank on the Closing Disclosure for the simultaneous subordinate lien.

The 2017 Rule provides instructions for disclosing the Disbursement Date on the Closing Disclosure that also apply to simultaneous subordinate lien loans (see below in the *Other disclosures in the Closing Disclosure* section).

In a purchase transaction involving a simultaneous subordinate lien loan, the purpose of the subordinate lien loan is disclosed as "Purchase" on the Loan Estimate and Closing Disclosure, as long as that loan is secured by the purchased property.

Funds from the subordinate lien loan are included in the Adjustments and Other Credits calculation on the Loan Estimate for the first lien, and are disclosed in the Summaries of Transactions table on the Closing Disclosure for the first lien.

Unless using the optional alternative Loan Estimate or alternative Closing Disclosure to disclose the simultaneous subordinate lien loan, the sales price is not disclosed in the Summaries of Transactions table for the Closing Disclosure for the simultaneous subordinate lien loan.

Additionally, the sales price is not used in the Calculating Cash to Close calculations on the Loan Estimate or Closing Disclosure for the simultaneous subordinate lien loan.

The 2017 Rule provides instructions for disclosing amounts as a positive or negative number in the Calculating Cash to Close tables, including for the simultaneous subordinate lien loan (see below in the *Use of positive and negative numbers for certain disclosures in the Loan Estimate and Closing Disclosure* section).

Construction loans

ALLOCATION OF COSTS WHEN SEPARATE DISCLOSURES ARE USED FOR THE CONSTRUCTION PHASE AND PERMANENT PHASE

The 2017 TILA-RESPA Rule provides that if the creditor discloses a construction-permanent loan as two separate transactions,



Where in the Rule:

See comments 17(c)(6)-5, 19(e)(1)(iii)-5, 37(a)(7)-1, 37(a)(8)-3, 37(a)(10)-2, 37(b)(2)-1, 37(b)(6)(iii)-1, 37(c)-2, 37(f)-3, 37(f)(6)-3, 37(h)(1)(v)-2, 37(h)(2)(iii)-1, 38(a)(3)(vii)-1, 38(f)-2, 38(i)(3)-1, 38(j)(1)(v)-2, and app. D-7.

the creditor must allocate to the construction phase amounts for finance charges (12 CFR 1026.4) and points and fees (12 CFR 1026.32(b)(1)) that would not be imposed but for the construction financing. 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.

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.

TIMING OF THE LOAN ESTIMATE WHEN SEPARATE DISCLOSURES ARE USED FOR THE CONSTRUCTION PHASE AND PERMANENT PHASE

The 2017 Rule provides that when disclosing a construction-permanent loan as two separate transactions, a creditor must provide a Loan Estimate for a particular phase within 3 business days of receiving the application for that phase (i.e., the creditor must provide the Loan Estimate for the construction phase within 3 business days of receiving the application for the construction phase and the Loan Estimate for the permanent phase within 3 business days of receiving the application for the permanent phase). 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 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.

DISCLOSURE OF SALES PRICE

For construction loans that are not also purchase transactions (for example, loans to build where no land is being purchased), the disclosure of the property value:

- On the Loan Estimate, **may**, at the creditor's option, include the estimated value of improvements to be made on the property.
- On the Closing Disclosure, **must** be the value of the property used to determine the approval of the credit transaction, including improvements to be made on the property, if those improvements were used to determine the approval of the credit transaction.

DISCLOSURE OF LOAN TERM

The 2017 Rule explains how a creditor discloses the Loan Term for a construction-permanent loan:

- If disclosed as a single transaction, the Loan Term is the total combined term of both phases.

- If disclosed as separate transactions, the Loan Term of the permanent phase is counted from the date the interest for the permanent phase periodic payment begins to accrue.

DISCLOSURE OF PRODUCT

The 2017 Rule explains how to disclose the duration of the “Interest Only” feature for the construction loan or the construction phase of a construction-permanent loan.

- If there is a final balloon payment that includes principal, it is not counted for purposes of the determining the duration of the “Interest Only” payment period.
- For a combined construction-permanent disclosure, the “Interest Only” payment period is disclosed as the full term of the construction phase, plus any additional interest only period in the permanent phase. There is no balloon payment at the end of the construction phase if a construction-permanent loan is disclosed as a single transaction.

It also explains how to disclose the Product if the interest rate for the permanent phase is not known at consummation or will increase from the interest rate for the construction phase.

- For construction-permanent loans with a single consummation (with combined or separate disclosures), if the interest rate for the permanent phase is not known at consummation, the Product for the permanent phase is an Adjustable Rate product, as the interest rate *may* increase after consummation.
- Similarly, if interest rate for the permanent phase is known but is different from the interest rate of the construction phase, the Product for the permanent phase is a Step-Rate product, as the interest rate *will* change after consummation and the change is known.

The 2017 Rule discusses the fact that any disclosures that would accompany the applicable Product disclosure would also apply, such as disclosure of the duration of the introductory rate period, the Adjustable Payment table, or the Adjustable Interest Rate table. For example, if the permanent phase is considered an Adjustable Rate product because the permanent phase interest rate may change upon conversion from the construction phase, but is not known at consummation, then the disclosure of the duration of the introductory rate period is also required. If the permanent phase is disclosed separately, has a loan term of 30 years, and does not itself have an introductory rate, the introductory rate period disclosure would be “0/30.”

DISCLOSURE OF INTEREST RATE

The 2017 Rule explains how to disclose the interest rate in construction-permanent loans, if the permanent phase is disclosed at the same time as the construction transaction (either in combined or separate disclosures) and the interest rate is unknown at consummation.

- If the permanent loan has an adjustable rate and separate disclosures are provided, the rate disclosed for the permanent phase is the fully-indexed rate.
- If the permanent loan has a fixed rate that is not known at consummation, it is treated as an adjustable rate, and if separate disclosures are provided, the rate disclosed for the permanent phase is the fully-indexed rate.
- If the permanent loan has a fixed rate that is known and will not be adjusted upon conversion from the construction phase and separate disclosures are provided, that rate is disclosed.

It also explains that if the contract indicates the creditor may modify the interest rate for the permanent loan when the construction phase converts to the permanent phase, the creditor must provide the adjustable rate disclosures under 12 CFR 1026.20(c), regardless of whether the permanent phase itself is fixed rate or adjustable rate after conversion. However, the disclosures under 12 CFR 1026.20(d) are not required.

DISCLOSURE OF INCREASES TO THE PERIODIC PAYMENT

The 2017 Rule explains how to disclose the answer to “Can this amount increase after closing?” for construction loans or construction-permanent loans where the amounts and timing of advances are unknown. For the construction loan or separate construction phase of a construction-permanent loan, even though appendix D produces interest-only periodic payments that are equal in amount, the creditor discloses “YES” in the “Can this amount increase after closing?” disclosure.

The 2017 Rule also explains how to disclose the increase in periodic payment disclosures in the Loan Terms table and First Change/Amount in the Adjustable Payments table for separate construction disclosures or the combined construction-permanent disclosures where interest is payable only on the amount advanced for the time it is outstanding and appendix D is used to calculate the periodic payment:

- To disclose the increase in periodic payment disclosures, the creditor may use months or years.
- The maximum possible payment in the Loan Terms table and Adjustable Payments table is calculated based on the maximum possible principal balance that could be outstanding during construction.
- The creditor can omit and leave blank the amount in the “First Change/Amount” disclosures of the Adjustable Payment table, **but not** the timing of the first change. The timing of the first change is the earliest possible payment that may change under the terms of the legal obligation.

For loans that are **adjustable rate** where interest is payable only on the amount advanced for the time it is outstanding and appendix D is used to calculate the periodic payment:

- The increase in periodic payment disclosures are based on changes in the interest rate and total amount advanced.
- The creditor also discloses the Adjustable Interest Rate table.

PROJECTED PAYMENTS

The 2017 Rule explains how to disclose the Projected Payments table for the construction phase of a construction-permanent loan if the creditor uses appendix D to calculate the periodic payments.

If the construction and permanent phases are disclosed as **separate** transactions:

- The construction phase must be disclosed according to the requirements for the Projected Payments table, including disclosing the number and amounts of any interest payments.

If the terms of the construction phase do not account for repayment of the entire principal, it must disclose a balloon payment.

If the construction and permanent phases are disclosed as a **single** transaction:

- The Projected Payments table must reflect the interest-only payments during the construction phase in the first column. The first column also reflects the amortizing payments, and mortgage insurance and escrow payments, if any, for the permanent phase if the term of the construction phase is not a full year.

The 2017 Rule explains how to disclose the mortgage insurance and escrow payments in the Projected Payments table for construction-permanent transactions disclosed as a single transaction:

- If the construction phase **is a full year** and does not include mortgage insurance or escrow, the first column should reflect the projected payments for the construction phase, “0” in the first column for mortgage insurance, and a hyphen or dash in the first column for escrow, as applicable.
- If the construction phase **is not a full year** and does not include mortgage insurance or escrow, the first column should also reflect the amortizing payments and the mortgage insurance and escrow payments, if any, for the permanent phase.

CONSTRUCTION COSTS AND CONSTRUCTION HOLDBACKS

The 2017 Rule explains where the costs of construction or amounts held in reserve for the construction loan (holdbacks) are disclosed:

- On the Loan Estimate, these amounts are factored into the Funds for Borrower calculation (or the Payoffs and Payments calculation, if using the optional alternative Loan Estimate) as existing debt being satisfied in the transaction.
- On the Closing Disclosure, these amounts are disclosed in the Summary of Borrower's Transactions table (or the Payoffs and Payments table, if using the alternative Closing Disclosure), and factored into the Funds for Borrower calculation (or the Payoffs and Payments calculation if using the alternative Closing Disclosure).

The 2017 Rule does not specifically define holdbacks, but refers to a portion of a construction loan's proceeds that a creditor places in a reserve or other account at consummation and clarifies that such an amount may be disclosed separately or as part of the other construction costs. The amount may be labeled with any accurate term, so long as any label the creditor uses is in accordance with the "clear and conspicuous" standard. If the amount is disclosed separately, it may be separately itemized, but the other construction costs must not include the amount of the holdback so as to avoid double counting in the Calculating Cash to Close calculations.

DISCLOSURE OF DISBURSEMENT DATE

The 2017 Rule explains how to disclose the Disbursement Date for purchase and non-purchase transactions, including construction-permanent loans (see below in the *Other disclosures in the Closing Disclosure* section for further guidance).

DISCLOSURE OF INSPECTION AND HANDLING FEES

The 2017 Rule explains the disclosure of construction inspection and handling fees. The 2017 Rule explains such costs are subject to the good faith tolerance standards and are disclosed as follows:

- Construction and handling costs collected **before or at consummation** are disclosed in the Loan Costs table.
- Construction and handling costs collected **after consummation** are disclosed in an addendum. The 2017 Rule includes additional information regarding the addendum. Additionally, such costs are not included in the Calculating Cash to Close table.

The 2017 Rule explains that subsequent events that cause a disclosure to become inaccurate for construction inspection and handling fees would not be a violation, but may require revised disclosures.

Use of positive and negative numbers for certain disclosures in the Loan Estimate and Closing Disclosure

The 2017 TILA-RESPA Rule permits the use of positive and negative numbers, if applicable, for the amounts disclosed (or used to calculate the disclosures) for:

- Total Closing Costs
- Payoffs and Payments
- Adjustments and Other Credits



Where in the Rule:

See §§ 1026.37(h)(1)(i), (h)(1)(vii), (h)(2)(ii) and (iii) and 1026.38(e)(2)(ii) and (e)(4)(ii).

Rounding

The 2017 TILA-RESPA Rule simplifies certain rounding requirements as follows:

ON THE LOAN ESTIMATE

The exact percentage amounts in the following disclosures are rounded to three decimal places:

- Certain Loan Terms table disclosures - the Interest Rate and percentages under the subheading “Can this amount increase after closing?”
- Certain Loan Costs - the points disclosed in Origination Charges,
- Certain Other Costs - the percentage disclosed for the Prepaid Interest amount,
- The AIR table, and
- Certain Comparisons table disclosures - the APR and the TIP.



Where in the Rule:

See §§ 1026.37(o)(4) and 1026.38(t)(4)(ii), and comments 37(o)(4)(i)(A)-1, 37(o)(4)(ii)-1, 38(g)(2)-3, and 38(i)(6)(ii)-1.

Any trailing zeroes to the right of the decimal are not included in the disclosure (i.e., 1.05%, not 1.050%).

Per diem interest amounts disclosed in Prepaids and monthly amounts disclosed in the Initial Escrow Payment At Closing are not rounded to the nearest dollar, but are rounded to the nearest whole cent.

ON THE CLOSING DISCLOSURE

The exact percentage amounts in the following disclosures are rounded to three decimal places:

- The Loan Terms table
- Certain Loan Costs - the points disclosed in Origination Charges,
- The AIR table,
- Certain Loan Calculations table disclosures - the APR and the TIP.

Any trailing zeroes to the right of the decimal are not included in the disclosure (i.e., 1.05%, not 1.050%).

For the Final amount in the Funds for Borrower disclosure in the Closing Disclosure Calculating Cash to Close table, if the calculation results in zero, the number is disclosed as a \$0 (not \$0.00).

The creditor should disclose “\$0.00” (not “\$0”) for Prepaid Interest if, based on the best information available, the creditor does not believe it will collect interest for a period between closing and the date from which interest will be collected with the first monthly payment.

Calculating cash to close

The TILA-RESPA Rule provides explanations of various calculations in the Calculating Cash to Close table.



Where in the Rule:

See the various changes to §§ 1026.37(h) and 1026.38(e), (i), and (j).

ON THE LOAN ESTIMATE:

Closing Costs Financed

In transactions other than simultaneous subordinate lien loans the sales price is included in the Closing Costs Financed calculation as a payment to a third party.

Down Payment/Funds from Borrower and Funds for Borrower

In purchase transactions, the creditor subtracts the sum of the loan amount and any amount for loans assumed or for loans “taken subject to” (i.e., any loans on the property subject to which the consumer is taking title to the property) that will be disclosed on the Closing Disclosure from the sale price of the property, except for simultaneous subordinate financing or transactions that involve improvements to be made on the property, or when the sum of the loan amount and any amount for loans assumed or “taken subject to” exceeds the sale price of the property.

In a purchase transaction that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount and any amount for loans assumed or “taken subject to” exceeds the sale price, the Funds for Borrower disclosure is used.

The Down Payment and Funds from Borrower calculation is independent of any loan program or investor requirements.

Seller Credits

Seller credits may be disclosed as a lump sum in the Calculating Cash to Close table, or at the creditor’s option, may be reflected in the specific Loan Costs or Other Costs to which they are applicable.

Adjustments and Other Credits

Explains how to disclose the Adjustments and Other Credits if the amount required to be paid by the consumer is not more than the amount of credits (e.g., for some purchase transactions, the payoff of unsecured debt is less than the amount of credits).

Amounts provided in advance of the real estate closing by third parties not otherwise involved in the transaction (such as gifts by family members) are not required to be disclosed.

Adjustments that require additional funds from the consumer pursuant to the real estate contract, such as tenant security deposits, can be included in the Adjustments and Other Credits so long as they are not included in the Down Payment/Funds from Borrower or Funds for Borrower amounts as debt being satisfied.

Optional Alternative Calculating Cash to Close Table for Transactions without a Seller or for Simultaneous Subordinate Lien Loans

Positive numbers are permitted in the Total Closing Costs and Payoffs and Payments disclosures (see above in the *Use of positive and negative numbers for certain disclosures in the Loan Estimate and Closing Disclosure* section).

ON THE CLOSING DISCLOSURE

The amount disclosed in the “Loan Estimate” column of the table is based on the most recent Loan Estimate provided to the consumer, including revised Loan Estimates provided for informational purposes only.

Closing Costs Financed

The 2017 Rule provides a formula for calculating the Closing Costs Financed, which requires subtracting the total amount of payments to third parties (not disclosed in the Loan Costs or Other Costs tables) from the disclosed loan amount.

- Total amount of payments to third parties for this calculation includes amounts such as the sale price of the property as disclosed in the Summaries of Transactions table, construction costs, and payoffs of secured or unsecured debt, as applicable.

For some loans, no sale price will be disclosed in the Summaries of Transactions table and thus will not be included in the calculation as a payment to third parties.

Construction costs and payoffs of secured or unsecured debt are examples of amounts not otherwise disclosed in the Loan Costs or Other Costs tables.

Down Payment/Funds from Borrower and Funds for Borrower

In purchase transactions, the creditor subtracts the sum of the loan amount and any amount for loans assumed or for loans “taken subject to” (i.e., any loans on the property subject to which the consumer is taking title to the property) disclosed on the Closing Disclosure from the sale price of the property, except for simultaneous subordinate financing or transactions that involve improvements to be made on the property, or when the sum of the loan amount and any amount for loans assumed or “taken subject to” exceeds the sale price of the property.

In a purchase transaction that is a simultaneous subordinate financing transaction or that involves improvements to be made on the property, or when the sum of the loan amount and any amount for loans assumed or “taken subject to” exceeds the sale price, the sum of the loan amount and any amount for loans assumed or for loans “taken subject to” disclosed on the Closing Disclosure is subtracted from the total amount of existing debt being satisfied in the transaction, as disclosed in the Summary of Borrower’s Transaction table.

The Down Payment and Funds from Borrower calculation is independent of any loan program or investor requirements.

Seller Credits

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 that the consumer should see details of the credits. There are options for the statements disclosed under the heading “Did this change?” based on whether the seller credit is general, specific, or both.

Adjustments and Other Credits

The 2017 Rule does not require amounts provided in advance of the real estate closing by third parties not otherwise involved in the transaction (such as gifts by family members) to be disclosed in the Summaries of Transactions table, and as a result, they will not be included in the Adjustments and Other Credits calculation.

Alternative Calculating Cash to Close Table for Transactions without a Seller

The 2017 Rule allows positive number disclosures in the Total Closing Costs and Payoffs and Payments amounts (see above in the *Use of positive and negative numbers for certain disclosures in the Loan Estimate and Closing Disclosure* section).

Disclosure of payoffs of existing liens, and unsecured debt

The 2017 TILA-RESPA Rule provides, if the creditor is not using the alternative Loan Estimate and Closing Disclosures, payoffs of existing liens and unsecured debts are disclosed as follows:

- On the Loan Estimate for some transactions, including some purchase transactions, these amounts are factored into the Funds for Borrower calculation. Otherwise, these amounts are factored into the Adjustments and Other Credits calculation.
- On the Closing Disclosure, these amounts are disclosed in the Summaries of Transactions table and, for some transactions (including some purchase transactions), are factored into the Funds for Borrower calculation. Otherwise, these amounts are factored into the Adjustments and Other Credits calculation.



Where in the Rule:

See the various changes to §§ 1026.37(h)(1)(iii)(A)(2) and (B), (h)(1)(v), and 1026.38(j)(1)(v) and comments 37(h)(1)(ii)-1, 37(h)(1)(v)-2, 37(h)(1)(vii)-6, 37(h)(2)(iii)-1, 38(i)(3)-1, 38(i)(6)(ii)-1, 38(j)(1)(v)-2, 38(t)(5)(vii)(B)-1, and app. D.-7.vi.

Disclosure of estimated value when no sales price or appraised value

The 2017 TILA-RESPA Rule states that if there is no seller, the creditor has not obtained an appraisal of the property at the time the disclosure is provided, and the creditor has prepared its own estimate of value, the creditor must use its own estimate when disclosing the estimated value of the property rather than disclose an estimated value received from the consumer.



Where in the Rule:

See comments 37(a)(7)-1 and 38(a)(3)(vii)-1.

Separation of consumer and seller information on Closing Disclosures

The 2017 TILA-RESPA Rule explains the three methods by which a creditor can make modifications to the Closing Disclosure in order to provide separate Closing Disclosures to consumers and sellers, and provides examples of when the creditor may want to provide separate Closing Disclosures.



Where in the Rule:

See comments 38(t)(5)(v)-1, -2, and -3, and 38(t)(5)(vi)-1.

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 the table or label, as applicable, for the form provided to the other party; or
- Provide the seller, a modified version of the form provided in appendix H.

The 2017 Rule provides a discussion of Regulation P and the Gramm-Leach-Bliley Act that creditors who are concerned about providing consumer or seller nonpublic personal information to nonaffiliated third parties may find helpful to review.

Other disclosures in the Loan Estimate

The 2017 TILA-RESPA Rule also makes other clarifications and changes regarding disclosures in the Loan Estimate.

The 2017 Rule provides that the Loan Amount disclosed in the Loan Estimate is the total amount the consumer will borrow as set forth on the face of the note.



Where in the Rule:

See § 1026.37(b)(1), and comments 37(c)(1)(iii)(B)-1, 37(c)(4)(iv)-2, 37(g)(6)(ii)-1, and 37(l)(3)-1.

If multiple changes to periodic principal and interest payments may occur in a single year, the creditor combines the changes and discloses them as a single range of payments within one column of the Projected Payments table.

A creditor may indicate that only a portion of the amounts disclosed in the Taxes, Insurance, and Assessment section of the Projected Payment table will be paid using escrow account funds, including property taxes and homeowner's insurance, if applicable.

Subject to the terms of the legal obligation, both specific and general lender credits are included under the “Lender Credits” label.

The TIP includes prepaid interest that the consumer will pay, but does not include prepaid interest that someone other than the consumer will pay. Also, it provides that prepaid interest that is disclosed as a negative number must be included as a negative value when calculating the TIP.

Other disclosures in the Closing Disclosure

The 2017 TILA-RESPA Rule also makes other clarifications and changes regarding the disclosures on the Closing Disclosure.

The 2017 Rule provides that the Disbursement Date to be used in the Closing Disclosure:

- In a purchase transaction, is generally the date that the Cash to Close amount is expected to be paid to the consumer or seller.
- In a non-purchase transaction, is the date some or all of the loan amount is expected to be paid to the consumer or a third party other than the settlement agent.
- In a simultaneous subordinate lien transaction, is the date that some or all of the loan amount is expected to be paid to the consumer or a third party other than the settlement agent.



Where in the Rule:

See the various changes to § 1026.38(a)(3)(iii), (g)(1), (l)(7) and its associated commentary, and comments 38(a)(4)-4 and 38(g)(1)-3.

The creditor only includes the names and mailing addresses of persons to whom credit is extended under the label “Borrower.” The 2017 Rule reminds creditors that the preexisting rule allows a creditor, at its option, to add consumer signature lines on the Closing Disclosure as long as the creditor properly discloses, above the signature line, that consumers do not have to accept the loan because they signed or received the form. In rescindable transactions, the consumer signature lines could include consumers who have a right to rescind under Regulation Z.

The total amount of fees for recording deeds and security instruments must each be disclosed on the first line under the subheading “Taxes and Other Government Fees,” and the total amounts paid for all recording fees must be disclosed in the applicable column. The 2017 Rule explains that if the creditor chooses, it can itemize the individual recording fees, and is permitted to do so on a separate addendum, consistent with the preexisting rule.

Under the subheading “Escrow Account” on page 4 of the Closing Disclosure:

- A creditor may use the 12 month period beginning with the initial payment (instead of consummation) for the Non-Escrowed Property Costs over Year 1, if it uses the Regulation X Escrow Account Analysis (12 CFR 1024.17), for the Escrowed Property Costs over Year 1 and the Monthly Escrow Payment disclosures. Alternatively, if the creditor uses the 12 month period beginning with consummation for certain of these disclosures, there may be less than 12 monthly payments used, if, based on the payment schedule in the legal obligation, there are less than 12 monthly payments to the escrow account in the first year after consummation.
- If the creditor is required to disclose the total amount of mortgage-related obligations during the first year that the consumer will pay directly without an escrow account, the creditor may use the 12 month period beginning with the initial payment (instead of consummation).
- Provides for the inclusion of ongoing payments for mortgage insurance within the amounts disclosed.
- Permits a creditor to use an addendum if additional lines are needed to complete the escrow account disclosures.

Other minor changes

The 2017 TILA-RESPA Rule also corrects various typographical errors and references.

The 2017 Rule corrects a typographical error that incorrectly references the Closing Disclosure section (12 CFR 1026.19(f)) instead of the intended cross reference to the revised estimates section (12 CFR 1026.19(e)(3)(iv)) when discussing revised estimates for delayed settlement dates for construction loans.

🔍 **Where in the Rule:**
See § 1026.19(e)(3)(iv)(F).

It corrects a typographical error that incorrectly references a Closing Disclosure section instead of the intended cross reference to the Loan Estimate Contact Information section.

🔍 **Where in the Rule:**
See comment 37(k)-3.

It corrects a typographical error that incorrectly says “fractional” instead of the intended word “functional” when discussing the “In 5 Years” disclosure of the Comparisons table.

🔍 **Where in the Rule:**
See comment 37(l)(1)(i)-1.

It removes a cross-reference to 12 CFR 1026.37(g)(6)(ii), to conform with the amendment to comment 37(g)(6)(ii)-1.

🔍 **Where in the Rule:**
See § 1026.38(h)(3).

It corrects a typographical error to replace the word “non” with “is not” when discussing the use of the integrated disclosure forms for non-federally related mortgage loans.

🔍 **Where in the Rule:**
See comment 38(t)(3)-1.

It corrects a typographical error that incorrectly references 12 CFR 1026.38(t)(5)(viii) instead of the intended cross reference to 12 CFR 1026.38(t)(5)(vii).

🔍 **Where in the Rule:**
See comment 38(t)(5)(vii)-2.