INFOBYTES SPECIAL ALERT: CFPB FINALIZES RULE COMBINING TILA AND RESPA MORTGAGE DISCLOSURES

December 2, 2013

Updated to reflect amendments proposed by the CFPB on October 10, 2014. Significant proposed amendments are noted below in red font.

On November 20, 2013, the CFPB finalized its long-awaited rule combining the mortgage disclosures consumers receive under the Truth in Lending Act ("TILA") and the Real Estate Settlement Procedures Act ("RESPA").[1] For more than 30 years, the TILA and RESPA mortgage disclosures had been administered separately by, respectively, the Federal Reserve Board ("FRB") and the U.S. Department of Housing and Urban Development ("HUD"). In 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") transferred authority over TILA and RESPA to the Bureau and directed the Bureau to create "rules and model disclosures that combine the disclosures required under [TILA] and sections 4 and 5 of [RESPA], into a single, integrated disclosure for mortgage loan transactions covered by those laws."[2] Congress did not, however, amend TILA and RESPA provisions governing timing, responsibility, and liability for the disclosures, leaving it to the Bureau to resolve the inconsistencies.

Unlike the Bureau's other Dodd-Frank Act mortgage rules, Congress did not impose a January 2013 deadline for the TILA-RESPA Integrated Disclosure rule. Nevertheless, from the outset, the Bureau made the project the public centerpiece of its rulemaking efforts, announcing its commencement in December 2010 and releasing the first prototype disclosures for public comment in conjunction with the beginning of consumer testing in May 2011. Over the next twelve months, the Bureau released nine additional sets of prototype disclosures, conducted nine additional rounds of testing, and convened its first Small Business Review Panel, culminating in the release of the proposed rule in July 2012. Following the proposal, the Bureau conducted additional testing and developed Spanish-language and refinancing versions of the disclosures.

For additional background, please review our report on the rule as proposed.

EFFECTIVE DATE AND SCOPE

The final rule generally applies to covered transactions for which the creditor or mortgage broker receives an application on or after **August 1, 2015**.[3] The rule applies to most closed-end consumer mortgage loans, although it establishes different requirements for timeshares and construction loans. The rule does not apply to:

- Home equity lines of credit

[1] Bureau of Consumer Financial Protection, Final Rule, Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) (Nov. 20, 2013), http://www.consumerfinance.gov/regulations/integrated-mortgage-disclosures-under-the-real-estate-settlement-procedures-act-regulation-x-and-the-truth-in-lending-act-regulation-z/ (publication in the Federal Register forthcoming) (hereinafter "*TILA-RESPA Integrated Disclosure Rule*" or "*TRID Rule*"). The CFPB has also released a guide summarizing the rule: http://files.consumerfinance.gov/f/201311_cfpb_tila-respa_detailed-summary.pdf.
[2] Dodd-Frank Act § 1032(f).
[3] *TRID Rule* at p. 1243.

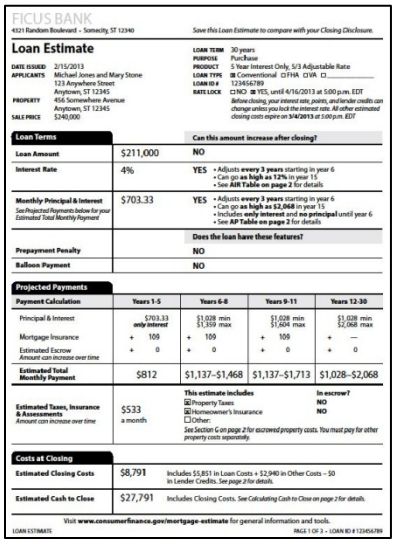
- Reverse mortgages
- Mortgage loans secured by a mobile home or by a dwelling that is not attached to real property[4]
- Loans made by a lender who makes five or fewer mortgages in a year[5]
- Certain no-interest second mortgage loans made for the purpose of downpayment assistance, property rehabilitation, energy efficiency, or foreclosure avoidance[6]

THE FORMS

Use of the Bureau's forms is mandatory for most transactions and only limited modifications are permitted.[7] Despite requests from industry, the Bureau's regulation and official interpretations do not specify which disclosures are subject to TILA liability and which are subject to RESPA liability. Instead, the Bureau stated that the "detailed discussions [in the final rule's preamble] of the statutory authority for each of the integrated disclosure provisions provide sufficient guidance for industry, consumers, and the courts regarding the liability issues raised by the commenters."[8] We will continue to study this issue.

The Loan Estimate: Truth in Lending Statement + Good Faith Estimate

The Bureau's Loan Estimate combines some of the disclosures that are currently provided in the initial Truth in Lending ("TIL") statement with the disclosures that are currently provided in the RESPA Good Faith Estimate ("GFE"). The form also incorporates other disclosures that are required by the Dodd-Frank Act or are currently provided separately, such as the Total Interest Percentage required by TILA (as amended by the Dodd-Frank Act), the appraisal notice required by the Equal Credit Opportunity Act, and the servicing notice required by RESPA.


FICUS BANK
4321 Random Boulevard · Somecity, ST 12340
Save this Loan Estimate to compare with your Closing Disclosure.

Loan Estimate

DATE ISSUED 2/15/2013
APPLICANTS Michael Jones and Mary Stone
123 Anywhere Street
Anytown, ST 12345
PROPERTY 456 Somewhere Avenue
Anytown, ST 12345
SALE PRICE $240,000

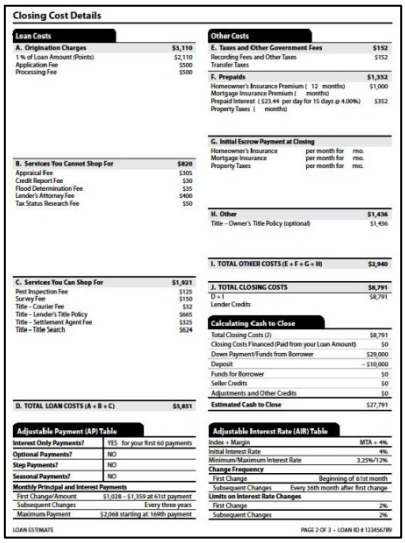
LOAN TERM 30 years
PURPOSE Purchase
PRODUCT 5 Year Interest Only, 5/3 Adjustable Rate
LOAN TYPE ☒ Conventional ☐ FHA ☐ VA ☐
LOAN ID # 123456789
RATE LOCK ☐ NO ☒ YES, until 4/16/2013 at 5:00 p.m. EDT
Before closing, your interest rate, points, and lender credits can change unless you lock the interest rate. All other estimated closing costs expire on 3/4/2013 at 5:00 p.m. EDT

Loan Terms		Can this amount increase after closing?
Loan Amount	$211,000	NO
Interest Rate	4%	YES • Adjusts every 3 years starting in year 6 • Can go as high as 12% in year 15 • See AIR Table on page 2 for details
Monthly Principal & Interest See Projected Payments below for your Estimated Total Monthly Payment	$703.33	YES • Adjusts every 3 years starting in year 6 • Can go as high as $2,068 in year 15 • Includes only interest and no principal until year 6 • See AP Table on page 2 for details
		Does the loan have these features?
Prepayment Penalty		NO
Balloon Payment		NO

Projected Payments Payment Calculation	Years 1-5	Years 6-8	Years 9-11	Years 12-30
Principal & Interest	$703.33 only interest	$1,028 min $1,359 max	$1,028 min $1,604 max	$1,028 min $2,068 max
Mortgage Insurance	+ 109	+ 109	+ 109	+ —
Estimated Escrow Amount can increase over time	+ 0	+ 0	+ 0	+ 0
Estimated Total Monthly Payment	$812	$1,137–$1,468	$1,137–$1,713	$1,028–$2,068
Estimated Taxes, Insurance & Assessments Amount can increase over time	$533 a month	This estimate includes ☒ Property Taxes ☒ Homeowner's Insurance ☐ Other: See Section G on page 2 for escrowed property costs. You must pay for other property costs separately.		In escrow? NO NO

Costs at Closing		
Estimated Closing Costs	$8,791	Includes $5,851 in Loan Costs + $2,940 in Other Costs – $0 in Lender Credits. See page 2 for details.
Estimated Cash to Close	$27,791	Includes Closing Costs. See Calculating Cash to Close on page 2 for details.

Visit www.consumerfinance.gov/mortgage-estimate for general information and tools.
LOAN ESTIMATE PAGE 1 OF 3 • LOAN ID # 123456789


Closing Cost Details

Loan Costs	
A. Origination Charges	$3,110
1 % of Loan Amount (Points)	$2,110
Application Fee	$500
Processing Fee	$500
B. Services You Cannot Shop For	$820
Appraisal Fee	$305
Credit Report Fee	$30
Flood Determination Fee	$25
Lender's Attorney Fee	$400
Tax Status Research Fee	$50
C. Services You Can Shop For	$1,921
Pest Inspection Fee	$125
Survey Fee	$150
Title – Courier Fee	$32
Title – Lender's Title Policy	$665
Title – Settlement Agent Fee	$325
Title – Title Search	$624
D. TOTAL LOAN COSTS (A + B + C)	$5,851

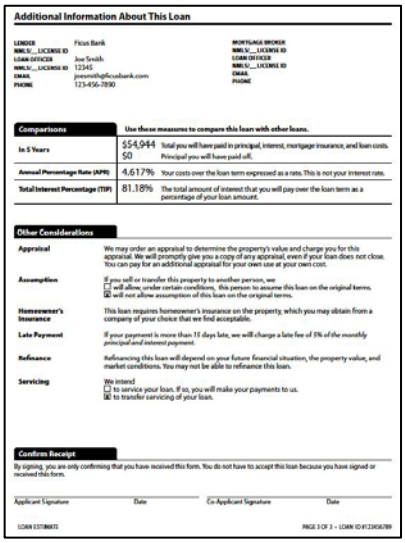
Other Costs	
E. Taxes and Other Government Fees	$152
Recording Fees and Other Taxes	$152
Transfer Taxes	
F. Prepaids	$1,352
Homeowner's Insurance Premium (12 months)	$1,000
Mortgage Insurance Premium (months)	
Prepaid Interest ($23.44 per day for 15 days @ 4.00%)	$352
Property Taxes (months)	
G. Initial Escrow Payment at Closing	
Homeowner's Insurance per month for mo.	
Mortgage Insurance per month for mo.	
Property Taxes per month for mo.	
H. Other	$1,436
Title – Owner's Title Policy (optional)	$1,436
I. TOTAL OTHER COSTS (E + F + G + H)	$2,940
J. TOTAL CLOSING COSTS D + I Lender Credits	$8,791 $8,791

Calculating Cash to Close	
Total Closing Costs (J)	$8,791
Closing Costs Financed (Paid from your Loan Amount)	$0
Down Payment/Funds from Borrower	$29,000
Deposit	– $10,000
Funds for Borrower	$0
Seller Credits	$0
Adjustments and Other Credits	$0
Estimated Cash to Close	$27,791

Adjustable Payment (AP) Table	
Interest Only Payments?	YES for your first 60 payments
Optional Payments?	NO
Step Payments?	NO
Seasonal Payments?	NO
Monthly Principal and Interest Payments	
First Change/Amount	$1,028 – $1,359 at 61st payment
Subsequent Changes	Every three years
Maximum Payment	$2,068 starting at 169th payment

Adjustable Interest Rate (AIR) Table	
Index + Margin	MTA + 4%
Initial Interest Rate	4%
Minimum/Maximum Interest Rate	3.25%/12%
Change Frequency	
First Change	Beginning of 61st month
Subsequent Changes	Every 36th month after first change
Limits on Interest Rate Changes	
First Change	2%
Subsequent Changes	2%

LOAN ESTIMATE PAGE 2 OF 3 • LOAN ID # 123456789


Additional Information About This Loan

LENDER Ficus Bank
NMLS/__LICENSE ID
LOAN OFFICER Joe Smith
NMLS/__LICENSE ID 12345
EMAIL joesmith@ficusbank.com
PHONE 123-456-7890

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	$54,944 Total you will have paid in principal, interest, mortgage insurance, and loan costs. $0 Principal you will have paid off.
Annual Percentage Rate (APR)	4.617% Your costs over the loan term expressed as a rate. This is not your interest rate.
Total Interest Percentage (TIP)	81.18% 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 ☐ will allow, under certain conditions, this person to assume this loan on the original terms. ☒ 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 15 days late, we will charge a late fee of 5% of the monthly principal and interest payment.

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 ☐ to service your loan. If so, you will make your payments to us. ☒ 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

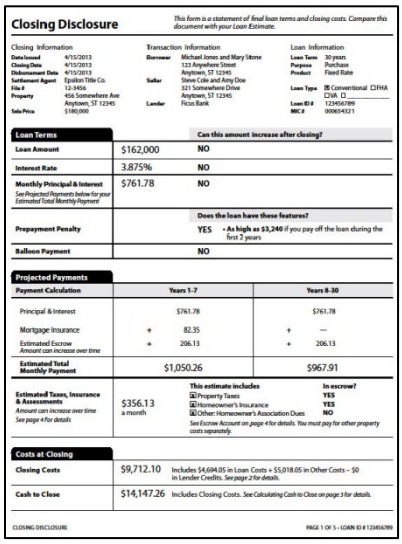
LOAN ESTIMATE PAGE 3 OF 3 • LOAN ID #123456789

(click to enlarge)

[4] 12 C.F.R. § 1026.19(e)(1)(i) and (f)(1)(i). Unless otherwise noted, all citations to the Code of Federal Regulations and the commentary are to revised version adopted in the TRID Rule.
[5] 12 C.F.R. § 1026.2(a)(17)(v). Thus, this long-standing exception in Regulation Z now applies to provision of the RESPA §§ 4 and 5 disclosures.
[6] 12 C.F.R. § 1026.3(h).
[7] 12 C.F.R. §§ 1026.37(o), 1026.38(t).
[8] *TRID Rule* at pp. 120-21.

The Closing Disclosure: Truth in Lending Statement + HUD-1/1A Settlement Statement

The Bureau's Closing Disclosure combines the disclosures that are currently provided in the final TIL statement with the disclosures that are currently provided in the RESPA HUD-1 or HUD-1A settlement statement. Like the Loan Estimate, the form also incorporates other disclosures, including the new TILA negative amortization and escrow account notices.


Closing Disclosure

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

Closing Information
Date Issued 4/15/2013
Closing Date 4/15/2013
Disbursement Date 4/15/2013
Settlement Agent Epsilon Title Co.
File # 12-3456
Property 456 Somewhere Ave, Anytown, ST 12345
Sale Price $180,000

Transaction Information
Borrower Michael Jones and Mary Stone, 123 Anywhere Street, Anytown, ST 12345
Seller Steve Cole and Amy Doe, 321 Somewhere Drive, Anytown, ST 12345
Lender Ficus Bank

Loan Information
Loan Term 30 years
Purpose Purchase
Product Fixed Rate
Loan Type ☒ Conventional ☐ FHA ☐ VA ☐ _____
Loan ID # 123456789
MIC # 000654321

Loan Terms — Can this amount increase after closing?

Loan Amount	$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest See Projected Payments below for your Estimated Total Monthly Payment	$761.78	NO
Prepayment Penalty		Does the loan have these features? YES • As high as $3,240 if you pay off the loan during the first 2 years
Balloon Payment		NO

Projected Payments

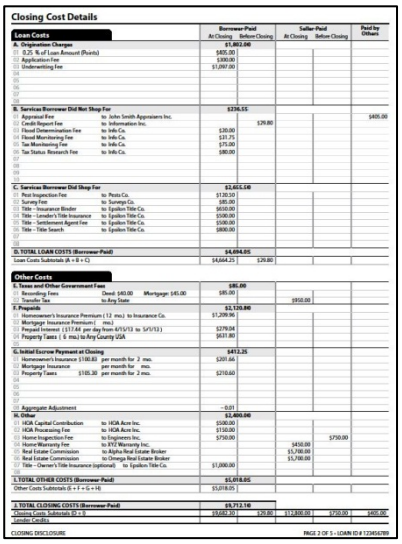
Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	$761.78	$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow Amount can increase over time	+ 206.13	+ 206.13
Estimated Total Monthly Payment	$1,050.26	$967.91

Estimated Taxes, Insurance & Assessments
Amount can increase over time
See page 4 for details
$356.13 a month
This estimate includes: ☒ Property Taxes; ☒ Homeowner's Insurance; ☒ Other: Homeowner's Association Dues
See Escrow Account on page 4 for details. You must pay for other property costs separately.
In escrow? YES; YES; NO

Costs at Closing

Closing Costs	$9,712.10	Includes $4,694.05 in Loan Costs + $5,018.05 in Other Costs – $0 in Lender Credits. See page 2 for details.
Cash to Close	$14,147.26	Includes Closing Costs. See Calculating Cash to Close on page 3 for details.

CLOSING DISCLOSURE PAGE 1 OF 5 • LOAN ID # 123456789


Closing Cost Details

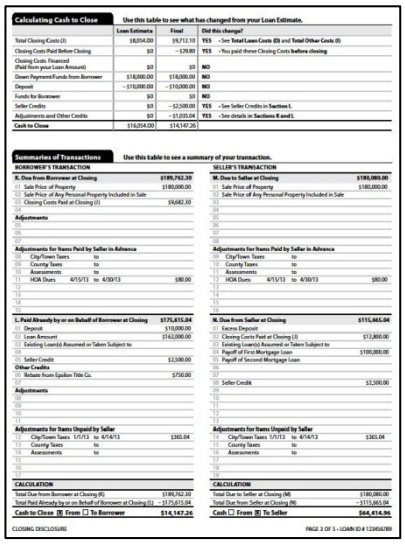
Loan Costs

	Borrower-Paid At Closing	Borrower-Paid Before Closing	Seller-Paid At Closing	Seller-Paid Before Closing	Paid by Others
A. Origination Charges	$1,802.00				
01 0.25 % of Loan Amount (Points)	$405.00				
02 Application Fee	$300.00				
03 Underwriting Fee	$1,097.00				
B. Services Borrower Did Not Shop For	$236.55				
01 Appraisal Fee to John Smith Appraisers Inc.					$405.00
02 Credit Report Fee to Information Inc.		$29.80			
03 Flood Determination Fee to Info Co.	$20.00				
04 Flood Monitoring Fee to Info Co.	$31.75				
05 Tax Monitoring Fee to Info Co.	$75.00				
06 Tax Status Research Fee to Info Co.	$80.00				
C. Services Borrower Did Shop For	$2,665.50				
01 Pest Inspection Fee to Pests Co.	$120.50				
02 Survey Fee to Surveys Co.	$85.00				
03 Title – Insurance Binder to Epsilon Title Co.	$650.00				
04 Title – Lender's Title Insurance to Epsilon Title Co.	$500.00				
05 Title – Settlement Agent Fee to Epsilon Title Co.	$500.00				
06 Title – Title Search to Epsilon Title Co.	$800.00				
D. TOTAL LOAN COSTS (Borrower-Paid)	$4,694.05				
Loan Costs Subtotals (A + B + C)	$4,664.25	$29.80			

Other Costs

E. Taxes and Other Government Fees	$85.00				
01 Recording Fees Deed: $40.00 Mortgage: $45.00	$85.00				
02 Transfer Tax to Any State			$950.00		
F. Prepaids	$2,120.80				
01 Homeowner's Insurance Premium (mo.) to Insurance Co.	$1,209.96				
02 Mortgage Insurance Premium (mo.)					
03 Prepaid Interest ($17.44 per day from 4/15/13 to 5/1/13)	$278.04				
04 Property Taxes (6 mo.) to Any County USA	$631.80				
G. Initial Escrow Payment at Closing	$413.25				
01 Homeowner's Insurance $100.83 per month for 2 mo.	$201.66				
02 Mortgage Insurance per month for mo.					
03 Property Taxes $105.30 per month for 2 mo.	$210.60				
04					
05					
06 Aggregate Adjustment	– 0.01				
H. Other	$2,480.00				
01 HOA Capital Contribution to HOA Acre Inc.	$500.00				
02 HOA Processing Fee to HOA Acre Inc.	$150.00				
03 Home Inspection Fee to Engineers Inc.	$750.00				$750.00
04 Home Warranty Fee to XYZ Warranty Inc.			$450.00		
05 Real Estate Commission to Alpha Real Estate Broker			$5,700.00		
06 Real Estate Commission to Omega Real Estate Broker			$5,700.00		
07 Title – Owner's Title Insurance (optional) to Epsilon Title Co.	$1,000.00				
I. TOTAL OTHER COSTS (Borrower-Paid)	$5,018.05				
Other Costs Subtotals (E + F + G + H)	$5,018.05				
J. TOTAL CLOSING COSTS (Borrower-Paid)	$9,712.10				
Closing Costs Subtotals (D + I)	$9,682.30	$29.80	$12,800.00	$750.00	$405.00
Lender Credits					

CLOSING DISCLOSURE PAGE 2 OF 5 • LOAN ID # 123456789

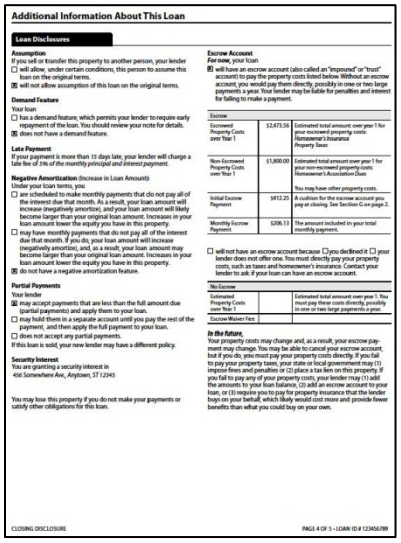

Calculating Cash to Close — Use this table to see what has changed from your Loan Estimate.

	Loan Estimate	Final	Did this change?
Total Closing Costs (J)	$8,054.00	$9,712.10	YES • See Total Loan Costs (D) and Total Other Costs (I)
Closing Costs Paid Before Closing	$0	– $29.80	YES • You paid these Closing Costs before closing
Closing Costs Financed (Paid from your Loan Amount)	$0	$0	NO
Down Payment/Funds from Borrower	$18,000.00	$18,000.00	NO
Deposit	– $10,000.00	– $10,000.00	NO
Funds for Borrower	$0	$0	NO
Seller Credits	$0	– $2,500.00	YES • See Seller Credits in Section L
Adjustments and Other Credits	$0	– $1,035.04	YES • See details in Sections K and L
Cash to Close	$16,054.00	$14,147.26	

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	$185,762.30	M. Due to Seller at Closing	$180,080.00
01 Sale Price of Property	$180,000.00	01 Sale Price of Property	$180,000.00
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)	$9,682.30	03	
04		04	
Adjustments		05	
06		06	
07		07	
Adjustments for Items Paid by Seller in Advance		08	
08 City/Town Taxes to		Adjustments for Items Paid by Seller in Advance	
09 County Taxes to		09 City/Town Taxes to	
10 Assessments to		10 County Taxes to	
11 HOA Dues 4/15/13 to 4/30/13	$80.00	11 Assessments to	
12		12 HOA Dues 4/15/13 to 4/30/13	$80.00
13		13	
14		14	
15		15	
16		16	
L. Paid Already by or on Behalf of Borrower at Closing	$175,615.04	N. Due from Seller at Closing	$115,665.04
01 Deposit	$10,000.00	01 Excess Deposit	
02 Loan Amount	$162,000.00	02 Closing Costs Paid at Closing (J)	$12,800.00
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	$100,000.00
05 Seller Credit	$2,500.00	05 Payoff of Second Mortgage Loan	
Other Credits		06	
06 Rebate from Epsilon Title Co.	$750.00	07	
07		08 Seller Credit	$2,500.00
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 1/1/13 to 4/14/13	$365.04	14 City/Town Taxes 1/1/13 to 4/14/13	$365.04
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)	$185,762.30	Total Due to Seller at Closing (M)	$180,080.00
Total Paid Already by or on Behalf of Borrower at Closing (L)	– $175,615.04	Total Due from Seller at Closing (N)	– $115,665.04
Cash to Close ☒ From ☐ To Borrower	$14,147.26	Cash ☐ From ☒ To Seller	$64,414.96

CLOSING DISCLOSURE PAGE 3 OF 5 • LOAN ID # 123456789


Additional Information About This Loan

Loan Disclosures

Assumption
If you sell or transfer this property to another person, your lender
☐ will allow, under certain conditions, this person to assume this loan on the original terms.
☒ will not allow assumption of this loan on the original terms.

Demand Feature
Your loan
☐ has a demand feature, which permits your lender to require early repayment of the loan. You should review your note for details.
☒ does not have a demand feature.

Late Payment
If your payment is more than 15 days late, your lender will charge a late fee of 5% of the monthly principal and interest payment.

Negative Amortization (Increase in Loan Amount)
Under your loan terms, you
☐ 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.
☐ 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.
☒ do not have a negative amortization feature.

Partial Payments
Your lender
☒ may accept payments that are less than the full amount due (partial payments) and apply them to your loan.
☐ may hold them in a separate account until you pay the rest of the payment, and then apply the full payment to your loan.
☐ does not accept any partial payments.
If this loan is sold, your new lender may have a different policy.

Security Interest
You are granting a security interest in
456 Somewhere Ave, Anytown, ST 12345
You may lose this property if you do not make your payments or satisfy other obligations for this loan.

Escrow Account
For now, your loan
☒ 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.

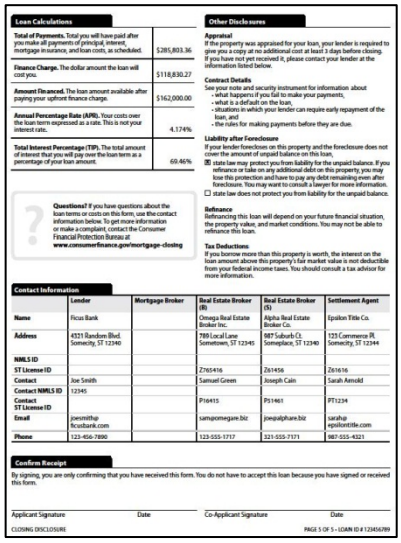
Escrow		
Escrowed Property Costs over Year 1	$2,673.56	Estimated total amount over year 1 for your escrowed property costs: Homeowner's Insurance, Property Taxes
Non-Escrowed Property Costs over Year 1	$1,800.00	Estimated total amount over year 1 for your non-escrowed property costs: Homeowner's Association Dues. You may have other property costs.
Initial Escrow Payment	$413.25	A cushion for the escrow account you pay at closing. See Section G on page 2.
Monthly Escrow Payment	$206.13	The amount included in your total monthly payment.

☐ will not have an escrow account because ☐ you declined it ☐ 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.

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		

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.

CLOSING DISCLOSURE PAGE 4 OF 5 • LOAN ID # 123456789


Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.	$285,803.36
Finance Charge. The dollar amount the loan will cost you.	$118,830.27
Amount Financed. The loan amount available after paying your upfront finance charge.	$162,000.00
Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.	4.174%
Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.	69.46%

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

Other Disclosures

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.

Contract Details
See your note and security instrument for information about
- 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.

Liability after Foreclosure
If your lender forecloses on this property and the foreclosure does not cover the amount of unpaid balance on this loan,
☒ 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.
☐ state law does not protect you from liability for the unpaid balance.

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

	Lender	Mortgage Broker	Real Estate Broker (B)	Real Estate Broker (S)	Settlement Agent
Name	Ficus Bank		Omega Real Estate Broker Inc.	Alpha Real Estate Broker Co.	Epsilon Title Co.
Address	4321 Random Blvd. Somecity, ST 12340		789 Local Lane Sometown, ST 12345	987 Suburb Ct. Someplace, ST 12340	123 Commerce Pl. Somecity, ST 12344
NMLS ID					
ST License ID			Z765416	Z87456	Z61616
Contact	Joe Smith		Samuel Green	Joseph Cain	Sarah Arnold
Contact NMLS ID	12345				
Contact ST License ID			P16415	P51461	PT1234
Email	joesmith@ficusbank.com		samp@omegare.biz	joep@alphare.biz	sarah@epsilontitle.com
Phone	123-456-7890		123-555-1717	321-555-7171	987-555-4321

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

CLOSING DISCLOSURE PAGE 5 OF 5 • LOAN ID # 123456789

(click to enlarge)

Initial Observations

The regulation and official interpretations provide extensive, highly-detailed guidance on how to fill out the Loan Estimate and Closing Disclosure.[9] In addition to the sample Loan Estimate above (which is for an interest-only adjustable rate purchase loan), the Bureau provided samples for fixed-rate, balloon-payment, and negative amortization purchase loans and for a refinancing.[10] The Bureau also provided two variations of page one and four variations each of pages two and three of the Loan Estimate to

[9] *See* 12 C.F.R. §§ 1026.37 and 1026.38 and Official Interpretations.
[10] *See* Sample Forms H-24(B)-(F).

address the variable content requirements. Similarly, the Bureau provided multiple samples of the Closing Disclosure, including samples separating the borrower and seller information for privacy reasons.[11]

Although our analysis of the final rule is ongoing, we make the following observations regarding the forms:

- *Itemization*: Unlike HUD's 2010 GFE, the Bureau's Loan Estimate requires the itemization of individual charges. The GFE prohibits separately disclosing the items that are consolidated in, for example, the origination charge. But the Loan Estimate mandates providing a consolidated figure on page 2 under the subheading of "Origination Charges," with an itemization of each amount that the consumer will pay to each creditor and loan originator for originating and extending the credit.[12] These separately disclosed items may include, for example, an application fee, origination fee, underwriting fee, processing fee, verification fee, and rate-lock fee.[13] A consolidated subtotal and an itemization of individual amounts must also be provided for "Services You Cannot Shop For" and "Services You Can Shop For."[14] The items listed as loan costs under these provisions generally must be labeled using terminology that describes each item and listed alphabetically.[15]
- *Disclosure of Discount Points*: Under the subheading "Origination Charges" on page 2 of the Loan Estimate, the points paid to the creditor to reduce the interest rate must be disclosed as a separate line item, listed as both a dollar amount and as a percentage of the amount of credit extended labeled as "__% of Loan Amount (Points)."[16] A charge imposed to pay for a loan level pricing adjustment ("LLPA") assessed on the creditor, which the creditor passes on to the consumer as a charge at consummation and not as an adjustment to the interest rate, must be separately itemized.[17]
- *Disclosure of Broker Compensation*: One of the most significant revisions made to the GFE in 2010 was the emphasis placed on disclosing compensation paid to a mortgage broker by the lender as both a charge to the consumer and a "credit" from the lender. The Loan Estimate does not disclose creditor-paid mortgage broker compensation in the same manner. Consumer-paid broker compensation must be disclosed on the Loan Estimate as an individual line item under "Origination Charges" on page 2.[18] Unlike the GFE, the CFPB does not require (and, in fact, prohibits) disclosure of creditor-paid broker compensation (*e.g.*, compensation to a loan originator paid indirectly by the creditor through the interest rate) on the Loan Estimate.[19] On the Closing Disclosure, borrower-paid and creditor-paid compensation are separately disclosed on page 2. Consumer-paid broker compensation is disclosed as a "Borrower-Paid" charge, whereas lender-paid broker compensation is disclosed as a charge in the "Paid by Others" column.[20]

[11] *See* Sample Forms H-25(B)-(J).
[12] 12 C.F.R. § 1026.37(f)(1).
[13] Comment 37(f)(1)-3.
[14] 12 C.F.R. § 1026.37(f)(2, 3).
[15] 12 C.F.R. § 1026.37(f)(5).
[16] 12 C.F.R. § 1026.37(f)(1)(i).
[17] Comment 37(f)(1)-5.
[18] 12 C.F.R. § 1026.37(f)(1) and Official Interpretations.
[19] *Id*.
[20] 12 C.F.R. § 1026.38(f)(1) and Official Interpretations.

- *De-emphasis of APR and Other TIL Disclosures*: Based on consumer testing performed by the FRB and the Bureau indicating that the traditional "TIL Box" disclosures of Annual Percentage Rate ("APR"), Finance Charge, Amount Financed, and Total of Payments were not helpful to consumers, the Bureau used its exception and adjustment authority to move the APR to the last page of the forms and to provide the other disclosures only on the last page of the Closing Disclosure. While these changes were supported by industry, consumer advocates strongly opposed the relegation of the APR to the back page.
- *Elimination of Average Cost of Funds*: Based on its consumer testing, the Bureau used its exception authority to eliminate the Average Cost of Funds disclosure required by Congress in the Dodd-Frank Act, which would have required creditors to disclose a figure representing the cost to the creditor of the funds used to make the loan. This disclosure was strongly opposed by industry as being burdensome and unhelpful to consumers.

THE RULES

The Loan Estimate

The Loan Estimate must provide a "good faith estimate" of the loan's costs and terms.[21] Until the Loan Estimate is provided and the consumer indicates an intent to proceed with the transaction, a creditor cannot impose any fee other than a bona fide and reasonable credit report fee.[22] A creditor is also prohibited from requiring the consumer to submit documents verifying information relating to the consumer's application until the Loan Estimate has been provided.[23]

Timing Requirements

The Loan Estimate must be delivered or placed in the mail not more than three business days after receipt of an application and not less than seven business days before consummation of the transaction.[24] Two definitions are critical to understanding this requirement:

- *Application.* Under the final rule, an "application" has been received for purposes of triggering the obligation to provide the Loan Estimate once the creditor receives six pieces of information:

  1. The consumer's name;
  2. The consumer's income;
  3. The consumer's social security number to obtain a credit report;
  4. The property address;
  5. An estimate of the value of the property; and
  6. The mortgage loan amount sought.[25]

  This represents a departure from the definition of application that applies to the current RESPA GFE and initial TIL disclosures, which includes a seventh "catch-all" element that permits the loan originator to determine what other information is necessary to complete the application.[26]

[21] 12 C.F.R. § 1026.19(e)(1)(i).
[22] 12 C.F.R. § 1026.19(e)(2)(i)(A).
[23] 12 C.F.R. § 1026.19(e)(2)(iii).
[24] 12 C.F.R. § 1026.19(e)(1)(iii).
[25] 12 C.F.R. § 1026.2(a)(3)(ii).
[26] *TRID Rule* at 120.

The CFPB acknowledged the difficulties associated with eliminating the seventh catch-all element, but concluded that creditors can resolve those issues by collecting any other information deemed necessary before obtaining all six pieces of information from the consumer (*e.g.*, by requiring the consumer to submit all other information deemed necessary to process the application before obtaining the consumer's social security number).[27]

- *Business Day.* "Business day" has two different meanings for purposes of the Loan Estimate. For the requirement that the Loan Estimate be provided within three business days of application, business day means "a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions."[28] However, for purposes of the seven business day waiting period before consummating the transaction, business day means all calendar days except Sundays and the legal public holidays.[29] Although having multiple definitions is confusing, this distinction benefits creditors by allowing more time to provide the Loan Estimate without lengthening the waiting period after the Loan Estimate is provided before the loan may be consummated.

  The seven business day waiting period may be waived or modified if the consumer determines, after receiving the Loan Estimate, that the extension of credit is needed to meet a "bona fide personal financial emergency."[30] However, the Bureau retained the existing requirements for such waivers or modification, which require the consumer to give the creditor a dated written statement that: (1) describes the emergency; (2) specifically modifies or waives the waiting period; (3) bears the signature of all consumers who are primarily liable on the legal obligation; and (4) is not a printed form.[31] Because investors have historically been unwilling to purchase loans where the waiting period has been waived or modified, it is unclear whether this exception will be meaningful in allowing consumers to avoid closing delays.

Responsibility for Provision

The Loan Estimate must be provided either by the creditor or the mortgage broker who received the consumer's application.[32] However, the creditor retains ultimate responsibility – and liability – for ensuring the Loan Estimate is provided in accordance with the rule, even if the mortgage broker delivers it.[33]

Permissible Changes

The Bureau generally retained the "tolerance" regime adopted by HUD in 2010, with certain adjustments. The Loan Estimate must provide a "good faith estimate of the closing costs."[34] An estimate is in good faith if the "charge paid by or imposed on the consumer does not exceed the amount originally disclosed," except as follows:

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[27] *See, e.g., TRID Rule* at 132-3; *see also* comment 2(a)(3)-1 ("This definition does not prevent a creditor from collecting whatever additional information it deems necessary in connection with the request for the extension of credit."). In addition, if a creditor provides a written estimate of terms or costs specific to a consumer before the consumer receives the Loan Estimate, the creditor must clearly and conspicuously state at the top of the front of the first page: "Your actual rate, payment, and costs could be higher. Get an official Loan Estimate before choosing a loan." 12 C.F.R. § 1026.19(e)(2)(ii).
[28] 12 C.F.R. § 1026.2(a)(6).
[29] *Id.*
[30] 12 C.F.R. § 1026.19(e)(1)(v).
[31] *Id.*
[32] 12 C.F.R. § 1026.19(e)(1)(i)-(ii).
[33] 12 C.F.R. § 1026.19(e)(1)(ii).
[34] 12 C.F.R. § 1026.19(e)(1)(i) and (e)(3)(i).

- *10% increase permitted for certain third-party charges.* A third-party service fee or a recording fee may be estimated and will be considered in good faith if:
  - The aggregate amount of charges for third-party services and recording fees ultimately paid by or imposed on the consumer does not exceed the aggregate amount of such charges disclosed on the Loan Estimate by more than 10%;
  - The third-party service charge is not paid to the creditor or its affiliate; and
  - The consumer is permitted to shop for the third-party service.[35]
- *No limitations on increases for certain charges*. The following charges may be estimated and will be considered in good faith if they are consistent with the best information reasonably available to the creditor at the time the estimate is provided, regardless of the amount actually paid:
  - Prepaid interest;
  - Property insurance premiums;
  - Amounts placed into an escrow, impound, reserve, or similar account;
  - Charges paid to third-party service providers selected by the consumer that are not on the creditor's list of service providers; and
  - Charges paid for third-party services not required by the creditor, even if paid to an affiliate of the creditor.[36]
- *Exceptions for revisions to estimates*. Unless a revision is permitted for one of the reasons discussed below, increases are not allowed for other estimated charges, such as creditor and loan originator charges and charges paid to an affiliate of the creditor. In addition, for unaffiliated third-party charges subject to the 10% limitation, the aggregate amount of such charges cannot increase by more than 10% unless an exception applies. A creditor may increase an estimated charge beyond the limitations discussed above if the increase is due to any of the following reasons:
  - *Changed circumstances affecting eligibility or settlement charges*. One of the following changed circumstances affects the consumer's creditworthiness or the value of the security or causes the estimated charge to increase:
    - An extraordinary event beyond the control of any interested party or other unexpected event specific to the consumer or transaction;
    - Information specific to the consumer or transaction that the creditor relied upon when providing the Loan Estimate and that was inaccurate or changed after the disclosures were provided; or
    - New information specific to the consumer or transaction that the creditor did not rely on when providing the original Loan Estimate.[37]
  - Consumer request. The consumer requests revisions to the credit terms or the settlement that cause an estimated charge to increase.[38]

[35] 12 C.F.R. § 1026.19(e)(3)(i)-(ii). A fee is not considered "paid to" a person if the person does not retain the fee but instead passes it on to a servicer provider. Comment 19(e)(3)(i)-3.
[36] 12 C.F.R. § 1026.19(e)(3)(iii).
[37] 12 C.F.R. § 1026.19(e)(3)(iv)(A)-(B).
[38] 12 C.F.R. § 1026.19(e)(3)(iv)(C).

- *Interest rate dependent charges*. The discount points, loan originator charges, and loan originator credits change because the interest rate was not locked when the Loan Estimate was provided. On the date the interest rate is locked, the final rule requires the creditor to provide a revised Loan Estimate that includes the revised interest rate, discount points, loan originator charges and credits, and all other interest rate dependent charges and terms.[39]
    - **Proposed amendment:** On October 10, 2014, the Bureau proposed to relax the timing requirement to provide a revised Loan Estimate in connection with an interest rate lock. The proposed rule would require the revised disclosure to be provided no later than the business day after the rate is locked instead of on the date the rate is locked.[40]
- *Expiration*. The consumer does not indicate an intent to proceed with the transaction within 10 business days after the Loan Estimate was provided.[41]
- *Delayed Settlement on New Construction Loans*. For new construction loans where the creditor reasonably expects that settlement will occur more than 60 days after the initial Loan Estimate is provided, the creditor may provide a revised Loan Estimate, but only if the original Loan Estimate states clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue revised disclosures.[42]
    - **Proposed amendment:** The original TRID Rule inadvertently prohibited the inclusion of the construction disclosure on the Loan Estimate. On October 10, 2014, the Bureau proposed to permit creditors to make this disclosure on page 3 under the "Other Considerations" heading.[43]

If an estimate is revised for one of the above reasons, the creditor must provide a revised Loan Estimate within three business days of receiving information sufficient to establish that the reason applies.[44] However, the creditor must not provide a revised Loan Estimate on or after the date it provides the Closing Disclosure.[45] Therefore, the consumer must receive the revised Loan Estimate not later than four business days prior to consummation.[46]

For unaffiliated third-party charges subject to the 10% limitation, it appears that the final rule permits the creditor to provide a revised Loan Estimate when such charges increase by less than 10%, regardless of whether this increase is due to a changed circumstance or other exception. However, unless these charges increase in the aggregate by more than 10% due to a changed circumstance or other exception, the revised Loan Estimate does not "re-set" the 10% tolerance and the final charges will be measured

[39] 12 C.F.R. § 1026.19(e)(3)(iv)(D).
[40] *See, e.g.,* Bureau of Consumer Financial Protection, Amendments to the 2013 Integrated Mortgage Disclosures Rule under the Real Estate Settlement Procedures Act (Regulation X) and Truth In Lending Act (Regulation Z) and the 2013 Loan Originator Rule under the Truth In Lending Act (Regulation Z) at p.10, http://files.consumerfinance.gov/f/201410_cfpb_final-proposal_trid-amends-and-corrections.pdf, (publication in the Federal Register forthcoming) (hereinafter "October 10 Proposed Amendment").
[41] 12 C.F.R. § 1026.19(e)(3)(iv)(E).
[42] 12 C.F.R. § 1026.19(e)(3)(iv)(F).
[43] *See, e.g.,* October 10 Proposed Amendment at p. 23.
[44] 12 C.F.R. § 1026.19(e)(4)(i).
[45] 12 C.F.R. § 1026.19(e)(4)(ii).
[46] *Id.* If the revised Loan Estimate is not provided to the consumer in person, the consumer is considered to have received it three business days after the creditor delivers or places it in the mail. *Id.* If there are less than four business days between the time the revised Loan Estimate is required to be provided and consummation, a creditor may comply with this requirement if the revised disclosures are reflected in the Closing Disclosure. Comment 19(e)(4)(ii)-1.

against those disclosed on the original Loan Estimate or on the last revised Loan Estimate that was based on a changed circumstance or other exception.[47]

The Closing Disclosure

The Closing Disclosure generally must state "the actual terms of the credit transaction, and the actual costs associated with the settlement of that transaction."[48] If, however, information is not known despite the creditor having exercised due diligence to obtain that information, the creditor may disclose an estimate based on the best information reasonably available, even if the creditor knows that more precise information will be available at or before consummation.[49]

Timing Requirements

The final rule requires that the consumer *receive* the Closing Disclosure no later than three business days before consummation.[50] If the Closing Disclosure is not delivered in person, it is presumed received three business days after it is placed in the mail, sent by email, or otherwise delivered.[51] However, the creditor may rely on evidence that the consumer received the Closing Disclosure earlier (*e.g.*, the consumer's signed receipt of delivery by overnight mail or acknowledgment of receipt via email).[52]

For purposes of these requirements, "business day" means all calendar days except Sundays and the legal public holidays.[53] The three business day waiting period may be waived or modified in the case of a bona fide personal financial emergency, consistent with the standard discussed above.[54]

As discussed below, the Bureau's final rule substantially relaxes the proposed limitations on changes to the amounts disclosed on the Closing Disclosure. Nevertheless, this requirement means that the creditor and settlement agent must coordinate to obtain the "best information reasonably available" for each item on the Closing Disclosure several days or even a week before closing in order to ensure that the consumer receives the completed form three business days before closing.

Responsibility for Provision

The Closing Disclosure must be provided by either the creditor or a settlement agent. However, as with the Loan Estimate, the creditor retains ultimate responsibility – and liability – for ensuring that the disclosure is provided in accordance with the rule.[55]

Permissible Changes

The requirements governing changes to the terms and costs on the Closing Disclosure vary depending on what item changes and when the change occurs:

- *Changes during the three business day waiting period.* In response to industry concerns about harmful closing delays, the Bureau made substantial revisions to the proposed rule, which would have required a revised Closing Disclosure and an additional three business day waiting

[47] Comment 19(e)(3)(iv)(A)-1.ii.
[48] Comment 19(f)(1)(i)-1.
[49] Comment 19(f)(1)(i)-2.ii.
[50] 12 C.F.R. § 1026.19(f)(1)(ii)(A).
[51] 12 C.F.R. § 1026.19(f)(1)(iii); comments 19(f)(1)(iii)-1 and -2.
[52] Comments 19(f)(1)(iii)-1 and -2.
[53] 12 C.F.R. § 1026.2(a)(6).
[54] 12 C.F.R. § 1026.19(f)(1)(iv).
[55] 12 C.F.R. § 1026.19(f)(1)(v).

period for most changes. Under the final rule, if a change occurs after the initial provision of the Closing Disclosure but before consummation, the creditor is generally permitted to provide a revised Closing Disclosure at or before consummation.[56] The only changes that require re-disclosure and a new three business day waiting period are:

1. A change in the APR of more than 1/8 of 1 percentage point above or below the disclosed APR or, if the transaction is irregular (*e.g.*, multiple advances or irregular payment periods), a change of more than 1/4 of 1 percentage point;[57]
2. A change in the loan product (*e.g.*, from adjustable rate to fixed rate);[58] or
3. The addition of a prepayment penalty.[59]

- *Changes after consummation*. If during the 30 calendar days following consummation an event in connection with the settlement occurs that causes the Closing Disclosure to become inaccurate and the inaccuracy results in a change to an amount actually paid by the consumer (*e.g.*, the fee charged by the recorder's office after closing for recording the security instrument differs from the amount disclosed and paid at closing), the creditor must provide a corrected Closing Disclosure within 30 calendar days of receiving information sufficient to establish the event.[60] If the Closing Disclosure contains non-numeric clerical errors, the creditor must provide a corrected Closing Disclosure no later than 60 days after consummation.[61]
- *Curing Tolerance Violations*. If the estimated costs disclosed on the Loan Estimate increase the beyond the permitted levels and the consumer pays those amounts at consummation, then no later than 60 days after consummation the creditor must (1) refund the excess payment to the consumer; and (2) provide a corrected Closing Disclosure reflecting the refund.[62]

Other Issues

- *"All-In" APR:* In the face of strong industry opposition and a mixed reaction from consumer advocates, the Bureau did not adopt the proposed amendments adding additional costs (such as title insurance) to the finance charge. If adopted, these amendments would have simplified the process of calculating the finance charge but also significantly increased APRs and, as a result, the number of loans considered "high-cost" or "higher-priced" unless the Bureau also made adjustments to those thresholds. The amendments could have also decreased the number of Qualified Mortgages that are eligible for the safe harbor. The Bureau did, however, state that it would reexamine this issue as part of the five-year review required by the Dodd-Frank Act for major rules.
- *Record Retention and Electronic, Machine-Readable Format Requirement:* The final rule generally requires creditors to retain evidence of compliance for three years after the later of consummation or the date a disclosure or other action is required. The final Closing Disclosure, however, and any related documents must be retained for five years after consummation by the creditor or any assignee.[63] In response to strong industry opposition, the Bureau did not adopt its proposed requirement that creditors maintain evidence of compliance

[56] 12 C.F.R. § 1026.19(f)(2)(i). The consumer must be permitted to inspect the Closing Disclosure, completed with all information known to the creditor at the time of the inspection, during the business day immediately preceding consummation, but the creditor may omit from the inspection items relating only to the seller's transaction. 12 C.F.R. § 1026.19(f)(2)(i).
[57] 12 C.F.R. §§ 1026.19(f)(2)(ii), 22(a).
[58] 12 C.F.R. §§ 1026.19(f)(2)(ii), 37(a)(10).
[59] 12 C.F.R. § 1026.19(f)(2)(ii).
[60] 12 C.F.R. § 1026.19(f)(2)(iii).
[61] 12 C.F.R. § 1026.19(f)(2)(iv).
[62] 12 C.F.R. § 1026.19(f)(2)(v).
[63] 12 C.F.R. § 1026.25(c).

in an "electronic, machine readable format." The Bureau emphasized, however, that it would continue to work with industry and the GSEs to promote the development of electronic forms and to reduce the amount of paper used in the closing process.

* * *

Questions regarding the matters discussed in this Alert may be directed to any of our lawyers listed below, or to any other BuckleySandler attorney with whom you have consulted in the past.

- Jeffrey P. Naimon, (202) 349-8030
- Clinton R. Rockwell, (310) 424-3901
- Joseph J. Reilly, (202) 349-7965
- John P. Kromer, (202) 349-8040
- Joseph M. Kolar, (202) 349-8020
- Jeremiah S. Buckley, (202) 349-8010
- Benjamin K. Olson, (202) 349-7924
- Jonathan W. Cannon, (310) 424-3903
- Brandy A. Hood, (202) 461-2911