TRID Amendments 2017

By: Venessa Snell, Randy Carey and Shannon Phillips
Compliance

I. **Effective Date:** October 10, 2017

II. **Mandatory Compliance Date:** October 1, 2018

a. As there is a significant amount of changes to be made, the CFPB has granted permission for updates to be made in phases.

b. Our system is being updated well in advance of the mandatory effective date. Significant portions of the changes will be added to the system in phases.

c. This means that changes to our system, as well as others may not always line up to the updates LOS systems are phasing in.
Exemption and Exceptions

I. Cooperatives:
   a. Old Rule- The Loan Estimate and Closing Disclosure are required for all closed-end consumer credit transactions secured by “real property”. With “real property” not clearly defined in Reg. Z, co-ops were placed into a gray area. As some states consider co-ops “personal property” they were excluded.

   b. New 2017 - TRID disclosures will be required in all closed-end consumer credit transactions including those secured by a cooperative, regardless of their classification under state law.
Exemptions and Exceptions

II. Housing Assistance:
   a. **Old** - Revisions to the GFE and HUD-1 in 2010 created an exception to the disclosure requirements for certain 2nd lien homebuyer assistance loans. The CFPB incorporated this same exception into TRID.
      i. Total costs payable must be less than 1% of the loan amount and include no costs other than recordation, application, and counseling.
      ii. Many homebuyer assistance loans have been falling outside of the exception. Loans are typically small with recording fees often exceeding the 1% threshold.

   b. **New 2017** - Transfer taxes will be included in the allowable costs, in addition to recordation, application, and counseling fees; however, transfer taxes and recording fees will be excluded from the 1% fee cap.
Rounding and Truncation

I. **Loan Estimate:** Previous amounts not rounded to the nearest whole dollar updated to round to the nearest whole cent.
   a. Prepaids- Per Diem Interest (ex: $15.45 per day for 15 days @ 3.125%)
   b. Section G. Initial Escrow Payment At Closing- Monthly amounts (ex: $175.54 per month for 2 mo.)

II. **Closing Disclosure:** Truncation requirements changed
   a. Calculating Cash to Close table: Funds for Borrower-When calculation results in zero the number will be disclosed as $0 (not $0.00)
   b. Section F. Prepaids: Prepaid Interest- If per diem interest will not be collected the creditor will disclose as $0.00 (not $0)
Rounding and Truncation

III. **Loan Estimate and Closing Disclosure:** Previous truncations have been updated to reflect rounding to three decimal places, with any trailing zeros to the right of the decimal omitted.

a. **Loan Terms** - Interest Rate and any percentages under “Can this amount increase after closing?”

b. **Loan Costs** - Points disclosed in Section A. Origination Charges

c. **Other Costs** - Percentage disclosed for Prepaid Interest

d. **Adjustable Interest Rate (AIR) table** - All rates disclosed

e. **Comparison Table/Loan Calculations** - Annual Percentage Rate (APR) and Total Interest Paid (TIP)
Disbursement Date

I. **Purchase:** Disbursement Date is generally based on when the final Cash to Close amount will be paid to the Seller or Consumer. If dates differ, either is acceptable.

II. **Non-Purchase:** Disbursement Date is based on when some of the proceeds or the entire loan amount is expected to be paid to a third party, or the Consumer. This will not be based on when proceeds are paid to the Settlement Agent.

III. **Simultaneous Subordinate Lien:** Disbursement Date is based on when some or the entire loan amount is expected to be paid to a third party (excluding the Settlement Agent), or the Consumer. (§1026.38(a)(3)(iii), (a)(4)-4, (g)(1), (l)(1), and associated commentary)

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Clarified Treatment of Seller Credits

I. Loan Estimate:

a. Old- Within the Calculating Cash to Close table, the total amount known at the time of disclosure that the Seller will pay for total loan costs, disclosed as a negative number and labeled “Seller Credits”. (1026.37(h)(1)(vi))

b. New 2017- Non-specific Seller credits that do not pay for a particular fee will be disclosed in the Cash to Close table as “Seller Credits”. (1026.37(h(1)(vi)-1)
Clarified Treatment of Seller Credits

I. Loan Estimate: (Cont.)

c. **New 2017**- Specific Seller credits known at the time of disclosure may be either disclosed under the Calculating Cash to Close table as general “Seller Credits”, or reflected directly within the amount disclosed for specific Loan Costs or Other Costs. (1026.37(h)(1)(vi)-2)

**Example:** If it is indicated that the Seller has agreed to pay for a $350.00 Survey Fee, the Creditor may disclose the whole $350.00 Survey Fee in Section B. or C. (based on whether or not the Consumer can shop), and the corresponding credit under the Calculating Cash to Close Seller Credits; the Creditor may alternatively choose to completely omit disclosing the fee, indicating that the specific Seller credit will cover the fee in its entirety.
Clarified Treatment of Lender Credits

I. Loan Estimate- Specific vs. Non-Specific:

a. Old- Within Total Loan Costs, the general amount known at the time of disclosure that the Creditor will pay for **non-specific fees**, disclosed as a negative number and labeled “Lender Credits”. (1026.37(g)(6)(ii))

b. New 2017- The total amount of **any** Lender credits that will pay for **specific or non-specific fees**, disclosed as a negative number and labeled “Lender Credits”. (1026.37(g)(6)(ii)-1)
Clarified Treatment of Lender Credits

II. Closing Disclosure:

a. Old- Lender credits identified for cures on tolerance violations are disclosed as a negative number and labeled “Lender Credits”. Specific language is added to indicate the cure is for “an increase above legal limits”. (1026.37(g)(6)(ii))

b. New 2017- Lender credits identified as cures for tolerance violation may be disclosed as a negative number and labeled “Lender Credits” in Section J of the Closing Costs table, or Lender credits may be applied as a principal reduction.
Principal Reductions

I. Old-Closing Disclosure (§1026.38(j)(4) and §1026.38(t)(5)(vii)(B)):

a. Principal reductions paid with closing funds are reflected in the Summaries of Transaction Section L under Adjustments. This will be labeled according to which party is making the payment and indicated as “Paid Outside of Closing” or “P.O.C”.

b. Principal reductions paid outside of closing funds, such as realtor credits, loan originator credits, etc. will be identified in the Summaries of Transaction Section L. Adjustments, and labeled as POC with the party providing the payment. These reductions will not be included in computing totals under Sections K or L.
Principal Reductions

II. New 2017- Closing Disclosure (1026.38(j)(1)(v) and §1026.38(t)(5)(vii)(B):

a. Principal reductions that occur immediately or very soon after closing are reflected in the Summaries of Transaction Section L under Adjustments, or the Payoffs and Payments table of the alternative format.

i. Clarification was provided on specific labeling for principal reductions.
Principal Reductions

b. The principal reduction required label to include:

i. The amount of the reduction;

ii. the phrase “principal reduction” or a similar phrase;

iii. If applicable, the phrase “Paid Outside of Closing” or “P.O.C”, and the name of the party making the payment;

iv. If used for purposes of curing a tolerance violation, a statement that the principal reduction is provided to offset the increase above legal limits; and

v. If being provided on the alternative format, the name of the payee.

Example: “$500.00 Principal Reduction for exceeding legal limits P.O.C. Lender”
**Principal Reductions**

c. **New 2017**- If enough space is not available in the Adjustments or Payoffs and Payments section, an addendum may be provided to the Consumer. An abbreviated disclosure will be required in Adjustments or on the Payoffs and Payments table.

d. **New 2017**- Principal reductions that are not paid with closing funds will be labeled in the same fashion as those paid with closing funds; however, the amounts will not be used in computing Calculating Cash to Close, Summaries of Transactions totals, or Payoffs and Payments totals.
Change in Circumstance

I. Settlement Cost Expiration Date §1026.37(a)(13)(ii)-4:

a. **Old**- Once the Consumer has provided the Intent to Proceed the initial date entered for settlement cost expiration may remain the same or be left blank on each subsequent redisclosure.

b. **New 2017**- Once the Consumer has provided the Intent to Proceed, the settlement cost expiration date must be left blank on any subsequent redisclosure. Failure to leave this section blank may result in a violation.
Change in Circumstance

II. Rate Lock (§1026.19(e)(3)(iv)(D)):

a. **Old** - The Creditor *may* issue a revised Loan Estimate with a valid Change in Circumstance to the Consumer, if any of the fees in the zero or 10% tolerance categories are increased due to the written Rate Lock Agreement.

b. **New 2017** - The Creditor is *required* to issue a revised Loan Estimate within three days of a written Rate Lock Agreement, even if none of the fees have changed. If the Closing Disclosure has already been issued, a revised Closing Disclosure will only need to be provided if the Closing Disclosure becomes inaccurate under §1026.19(f)(2).

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Change in Circumstance


a. An informational Loan Estimate may be provided to the Consumer when fees or terms increase or change, that does not otherwise constitute a valid Change in Circumstance.

b. Redisclosing and Fees - Any redisclosure of the Loan Estimate, whether due to a valid Change in Circumstance, or for informational purposes only, requires all fees to be based on the best information reasonably known at the time of redisclosure. Updating the information and fees is required even if the updated fees will not be used for baseline purposes.

c. Informational Loan Estimates will hold the same waiting period of 4 days prior to consummation, and 1 day prior to receipt of the preliminary Closing Disclosure.
Written List of Service Providers

I. Identifying Providers (§1026.19(e)(1)(iv)-2):

a. **Proposed** - The Creditor must specifically identify the settlement services for which a Consumer can shop unless the service is offered as a package or combination of settlement services.

b. **New 2017** - A Creditor who permits the Consumer to shop must identify each service and a service provider for each service required by the Creditor.
**Written List of Service Providers**

II. Tolerance for Failure to Issue (§1026.19(e)(3)(iii)-2):

a. **Old** - If Consumer is allowed to shop for settlement services, but the Creditor fails to provide the Written List of Service Providers or provides a non-compliant list, then the fees fall into the 10% tolerance category.

b. **Proposed** - If Consumer is permitted to shop for settlement services, but the Creditor fails to provide the written list or provides a non-compliant written list, then the fees would fall into the **ZERO** tolerance category.

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Written List of Service Providers

c. New 2017 - If Consumer is allowed to shop for settlement services, but the Creditor fails to provide the Written List of Service Providers or provides a non-compliant list, then the fees for these services fall into the 10% tolerance category. Any service fees payable to the Creditor or the affiliate will fall into the zero tolerance category.

d. Retained - If the Consumer is permitted to shop, and a redisclosure is issued due to a Change in Circumstance which results in a new shopable fee, failure to reissue the WLSP with the addition of the new service provider results in this fee falling in the 10% tolerance category.
Written List of Service Providers

III. Tolerance for Affiliate fees (§1026.19(e)(3)(iii)):

a. **Old**- Any fees charged to the Consumer which are paid to the Creditor or one of its affiliates are included in the *zero* tolerance category.

b. **New 2017**- Fees for optional services or those which generally hold no tolerance category remain in the *UNLIMITED* tolerance category, even if the service provider is the Creditor or one its affiliates.
Written List of Service Providers

III. Tolerance for Affiliate fees (§1026.19(e)(3)(iii)):

c. New 2017- If Consumer is permitted to shop for settlement services, and the Creditor provides a compliant Written List of Service Providers without affiliates listed, and the Consumer subsequently selects an affiliate service provider, the fee is subject to the UNLIMITED tolerance category, and will remain in Section C as long as the fee is bona fide and reasonable.
Affiliate Fees

IV. Tolerance for Affiliate fees(§1026.19(e)(3)(iii)-4):

d. New 2017- Fees and charges must be disclosed in good faith, bona fide and reasonable. This was clarified to additionally mean charges must be lawful and for services actually performed.
Good Faith Determination

I. Best information reasonably available standard-Clarification (§1026.19(e)(3)(iii)-4):

   a. New 2017- The services for which the consumer is permitted to shop must be disclosed in good faith and based on the “best information reasonably available”. This is clarified to indicate that when fees are not disclosed, or are disclosed with unreasonably low estimates, it would result in these fees being relegated to the ZERO tolerance category. This result is the same whether or not the consumer did in fact shop for the service provider.
Good Faith Determination

b. New 2017- The “best information reasonably available” standard is clarified to additionally apply to those services which carry no tolerance category (§1026.19(e)(1)(iii). These include: property taxes, homeowners and other property insurance premiums, amounts paid into escrow, reserve, or impound accounts, prepaid interest and third party services not required by the creditor. Therefore, if contrary to the best information available, the Creditor does not provide an estimate, or estimates are unreasonably low for the service or premium, then the fee is subject to ZERO tolerance testing (§1026.19(e)(1)(i)).
Good Faith Determination

I. Best information reasonably available standard - Clarification (§1026.19(e)(3)(iii)-4):

a. Example: “If the creditor discloses an unreasonably low estimated settlement agent fee of $20 when the average prices for settlement agent fees in that area are $150, then the under-disclosure does not comply with §1026.19(e)(3)(iii) and good faith is determined under §1026.19(e)(3)(i).”

b. Example: If a creditor habitually discloses homeowners insurance at $100 a month, whereas average amounts for the area are $250 monthly, the estimate does not comply with “good faith” standards.
Post-Consummation Closing Disclosures

I. Information becomes inaccurate after consummation (§1026.19(f)(2)(iii)-2):

a. Old- If the Closing Disclosure provided to the Consumer at the time of consummation becomes inaccurate post-closing, the Creditor is required to provide a corrected Closing Disclosure within 30 days for inaccuracies resulting from tolerance violations, or 60 days for non-numerical clerical errors.
Post-Consummation Closing Disclosures

b. New 2017- If the Closing Disclosure becomes inaccurate post-closing, and the only reason for the inaccuracy is due to per diem interest, then a corrected Closing Disclosure is not required.

c. New 2017- If the Closing Disclosure provided to the Consumer at the time of consummation becomes inaccurate post-closing for reasons other than the per diem interest, and the per diem interest is likewise inaccurate, then the per diem is required to be accurately disclosed on the corrected Closing Disclosure.
Consumers on the Closing Disclosure

I. Consumers with the right to rescind (§1026.38(a)(4)-4):

a. Old- The Closing Disclosure requires each consumer to be listed as a borrower. For rescindable transactions, it must be provided to each party with the right to rescind. For rescindable loan purposes, “consumer” includes any person whose principal residence is all or part of the security interest to be retained or required.

b. New 2017- Borrower is defined as only “persons to whom credit is offered or extended”. The Closing Disclosure must be provided to each party with the right to rescind; however, those who are not applying for credit will not be listed as Borrowers.

c. New 2017- For Creditors who opt to include signature lines on the Closing Disclosure, signature lines for all parties with the right to rescind may be provided.
**Total of Payments (TOP)**

I. Tolerance Testing (§1026.38(o)(1)):

   a. **New 2017**- To facilitate compliance and conformity with TILA, the Total of Payments will be subject to tolerance testing. The disclosed Total of Payments shall be treated as accurate if the amount disclosed:

      i. Is understated by no more than $100, or

      ii. Is greater than the amount required to be disclosed.
Total of Payments (TOP)

I. Charges paid by Consumer:

a. Total of Payments is defined as the total the Consumer will have paid after making all payments of principal, interest, mortgage insurance, and loan costs as scheduled.

b. New 2017- If any of the components are not charged to and paid by the Consumer including interest, MI, loan costs or any of the principal amount, then it will not be included in the Total of Payments calculation. (example: Lender credits, Seller credits)
**Escrow Table**

I. Estimated Property Costs over Year 1


a. **Old**- Within the Escrow and No Escrow table sections, the Estimated Property Costs over Year 1 is calculated by multiplying the costs included in Taxes, Insurance and Assessments by the number of months included in the first year of the transaction. Taxes, Insurance and Assessments excludes Mortgage Insurance, as this is disclosed in the Projected Payments table.
**Escrow Table**

b. **New 2017**- Estimated Property Costs over 1 Year includes the amounts in Taxes, Insurance and Assessments as well as any amounts for ongoing Mortgage Insurance premiums.

c. **New 2017**- Estimated Property Costs over 1 Year may include a varied number of months, depending on the Creditor’s interpretation of the number of months being calculated based on the date of consummation, or the Consumer’s initial payment date.
The Black Hole Proposal

I. Use of Closing Disclosure to Redisclose and Reset Tolerances:

a. Current- A Loan Estimate may not be issued after the Closing Disclosure has been provided. If a valid Change in Circumstance occurs less than 4 days prior to consummation, the Closing Disclosure may be used to reset tolerances.

i. The current rule gives no further indication that a Closing Disclosure may be used any time after 4 days prior to consummation to reset the tolerances; therefore, any Change in Circumstance after this point would affect tolerance levels at the original baseline amounts.
The Black Hole Proposal

b. Proposal 1026.19(e)(4), (f)(2)(ii) and(iii)- Creditors may reset tolerances by providing an initial Closing Disclosure or redisclosed Closing Disclosure within three business days of receiving information sufficient to establish a valid Change in Circumstance.

i. This effectively removes the 4 business day requirement and allows the tolerances to be reset via a valid change in circumstance any time after the Closing Disclosure has been issued.

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# Cash to Close Table

1026.37(h) and 1026.38(i)

I. **Total Closings Costs (J):** No change

II. **Closing Costs Paid Before Closing:** No change

III. **Closing Costs Financed (Paid from your Loan Amount):**

   a. **New 2017-** If a standard Closing Disclosure is used for a simultaneous subordinate purchase transaction, then sales price is excluded from any calculations in the Cash to Close table.

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Cash to Close Table

IV. New 2017- Down Payment/Funds From Borrower and Funds for Borrower:

a. In a purchase money transaction, down payment and other funds from borrower will now be calculated by subtracting the loan amount and any other existing loans (i.e., subordinate financing) from the sales price.

b. In a purchase money transaction, if the calculation of the Down Payment/Funds From Borrower results in a positive number or $0, the amount disclosed for Down Payment/Funds From Borrower will be the calculated number or $0 retrospectively, and Funds For borrower will be disclosed as $0.
Cash to Close Table

IV. New 2017 - Down Payment/Funds From Borrower and Funds for Borrower (Cont.):

c. If the loan amount in a simultaneous subordinate financing transaction or a purchase-plus transaction, or the sum of the current loan and any additional loan assumed or taken subject to, exceeds the sales price on a purchase transaction, that amount will be disclosed as determined under Funds for Borrower.
Cash to Close Table

IV. New 2017- Down Payment/Funds From Borrower and Funds for Borrower (Cont.):

d. Now allows Funds for Borrower field in a purchase money transaction.

e. In non-purchase transactions, the current loan and any additional loan assumed or taken subject to, excluding closing costs financed, is subtracted from the amount of all existing debt being satisfied. A positive result is disclosed as Funds from Borrower and a negative amount is disclosed as Funds for Borrower.

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V. **Deposit:** No change

VI. **Seller Credits:**

a. **New 2017** - On the Loan Estimate, the creditor has options for disclosing seller credits when they are related to specific closing costs rather than a general credit. They can either reduce or eliminate the closing costs to the borrower on the Loan Estimate by the amount of the seller credit or they can disclose the total amount of the closing costs as borrower paid with a seller credit.
Cash to Close Table

VII. Adjustments and Other Credits:

a. **New 2017** - Clarified that gifts received by the borrower outside of the closing table need not be disclosed as such.

b. **New 2017** - Conforming amendments to take into account the changes to the calculation of Funds To and From Borrower and Funds for Borrower.

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Cash to Close Table

VIII. Loan Estimate Amounts:

a. New 2017- Clarified that the amounts that go in the Cash to Close table in the Loan Estimate column are taken from the last Loan Estimate provided to the borrower, regardless of the reason.
Payoffs and Payment Table

I. Payoffs and Payments Table Changes (1026.38(t)(5)(vii)(B):

a. New 2017- The amount applied from a simultaneous subordinate financing to the 1st Lien loan is shown in the Estimated Total Payoffs and Payments on the Loan Estimate and in the Payoffs and Payments table on the subordinate financing Closing Disclosure.

b. New 2017- The proceeds of a simultaneous subordinate financing are included in Estimated Total Payoffs and Payments in the Calculating Cash to Close table on 1st lien loans eligible for the Alternative Loan Estimate, such as a refinancing.
Payoffs and Payment Table

c. New 2017- The total in the Payoffs and Payments table can now be a negative number, which would be a positive number in the Cash to Close table.

d. New 2017- If there is a seller contribution on a simultaneous subordinate financing transaction disclosed on an alternative Loan Estimate/Closing Disclosure, the amount of the seller contribution can be disclosed in the Payoffs and Payments table as a negative figure/credit.

e. New 2017- Credits from third parties may be shown in the Payoffs and Payments table as credits.
Subordinate Lien Transactions


a. The alternative Loan Estimate/Closing Disclosure can be used for simultaneous subordinate financing when the entirety of the seller’s transaction will be included on the 1st lien Closing Disclosure.

b. In a purchase transaction with simultaneous subordinate financing, as long as the entirety of the seller’s transaction is disclosed on the 1st lien Closing Disclosure, the seller is not required to receive a copy of the Closing Disclosure for the subordinate financing transaction.

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Subordinate Lien Transactions

I. New 2017- Alternative Loan Estimate/Closing Disclosure – Clarification: (Cont.)

c. In a purchase transaction with simultaneous subordinate financing, the simultaneous subordinate loan is also disclosed with the purpose “Purchase.” (1026.37(a)(9))

d. The amount applied from a simultaneous subordinate financing to the 1st Lien loan is shown in the Estimated Total Payoffs and Payments table. (1026.37(h)(2)(iii))

e. If there is a seller contribution on a simultaneous subordinate financing transaction disclosed on an alternative Loan Estimate/Closing Disclosure, the amount of the seller contribution will be disclosed in the Payoffs and Payments table. (1026.38(k)(2)(vii))
Separation of Borrower and Seller Information and Privacy Concerns


a. In a purchase transaction with simultaneous subordinate financing that as long as the entirety of the seller’s transaction is disclosed on the 1st lien loan Closing Disclosure, the seller is not required to receive a copy of the Closing Disclosure for the subordinate financing transaction. Conversely, if the entirety of the seller’s transaction is not disclosed on the 1st lien loan Closing Disclosure, then they are required to receive both.
Separation of Borrower and Seller Information and Privacy Concerns

II. New 2017- Separation of Borrower’s and Seller’s Information – Clarification: (1026.38(t)(5)(v))

a. The borrower or seller information in the Summaries of Transactions table should be left totally blank when separating the disclosures.

b. Alternatively, allows for the total deletion of the Borrower’s or Seller’s portion of the Summaries of Transactions table from the form.
Separation of Borrower and Seller Information and Privacy Concerns

II. New 2017- Separation of Borrower’s and Seller’s Information – Clarification: (Cont.)

c. The creditor can provide or assist the settlement agent to provide the alternative Seller’s only disclosure.

d. The Borrower and Seller’s information can be separated based on the creditor’s discretion.
Separation of Borrower and Seller Information and Privacy Concerns

III. New 2017- Privacy Concerns – Clarification:
(1026.38(t)(5)(v))

a. If applicable State law prohibits sharing the seller information with the borrower, a creditor may provide a separate Closing Disclosure to the borrower. A creditor may also provide a separate Closing Disclosure to the borrower in any other situation where the creditor in its discretion chooses to do so, such as based on the seller’s request.
Separation of Borrower and Seller Information and Privacy Concerns

III. New 2017- Privacy Concerns – Clarification: (Cont.)

b. Preamble Discussion: Regulation Z requires the use of the Closing Disclosure by the creditor to provide the required Closing Disclosure concerning the transaction to the borrower, requires the settlement agent to provide to the creditor a copy of the Closing Disclosure provided to the seller when the borrower’s and seller’s Closing Disclosures are provided in separate documents, and requires the settlement agent to provide the seller with the Closing Disclosure that relates to the seller’s transaction reflecting the actual terms of the seller’s transaction.

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Separation of Borrower and Seller Information and Privacy Concerns

III. New 2017- Privacy Concerns – Clarification: (Cont.)

c. The GLBA and Regulation P permit this required sharing of information without providing notice of such information sharing and an opportunity to opt-out of such sharing.

d. The GLBA provides an exception that applies if a financial institution’s sharing of its customers’ non-public personal information is required, or is a usual, appropriate, or acceptable method to provide the customer or the customer’s agent or broker with a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product.
Construction/Permanent Loans

1. New 2017- Delayed Settlement Date – Clarification: (1026.19(e)(3)(iv)(F))

   a. When the creditor reasonably expects that settlement will occur more than 60 days after the Loan Estimate is provided, the creditor may provide revised disclosures to the consumer if the original Loan Estimate states clearly and conspicuously that at any time prior to 60 days before consummation, the creditor may issue a revised Loan Estimate. If no such statement is provided, the creditor may not issue revised disclosures, except with a valid changed circumstance.
Construction/Permanent Loans

2. Closing Costs – One Time Close – Two Disclosures: (1026.17(c)(6))

a. Old - Closing costs may be allocated between the transactions in any manner the creditor chooses.

b. New 2017-
   i. The creditor must allocate to the construction transaction all finance charges and points and fees that would not be imposed “but for” the construction financing.
Construction/Permanent Loans

b. New 2017- (Cont.)

A. **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.

ii. If a creditor charges separate amounts for finance charges and points and fees for the construction phase and the permanent phase, such amounts must be allocated to the phase for which they are charged.
Construction/Permanent Loans

b. New 2017 (Cont.)

iii. If a creditor charges an origination fee for construction financing only but charges a greater origination fee for construction-permanent financing, the difference between the two fees must be allocated to the permanent phase.

iv. All other finance charges and points and fees must be allocated to the permanent financing.

v. Fees and charges that are not used to compute the finance charge or points and fees may be allocated between the transactions in any manner the creditor chooses.
Construction/Permanent Loans

   
a. Construction only application – Construction Loan Estimate within three business days.

b. Construction/permanent application – Separate construction and permanent Loan Estimates within three business days or a combined construction/ permanent Loan Estimate within three business days.

   c. Construction application received on one date and permanent loan application received on a later date – Loan Estimate issued for the construction loan and permanent loan within three business days from the respective application dates.
Construction/Permanent Loans

4. Loan Estimate - Est. Prop. Value: (1026.37(a)(7))
   a. **Old** - Requires the creditor to disclose the estimated value of the property at the time the disclosure is issued to the consumer.

   b. **New 2017** –
      i. Changed the requirement on construction/home improvement loans where there is no seller to optionally reflect the estimated value of the property, including improvements to be made on the property, if the creditor will rely on the improved property value to approve the loan.

      ii. Clarified that the lender must use their own estimate, if they have made one, over any estimate provided by the consumer.

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Construction/Permanent Loans

5. Construction Loan inspection and Handling Fees – Change: (1026.37(f)(6))

a. **New 2017**- Establishes a requirement to provide an addendum to the Closing Disclosure to disclose any post-consummation construction inspection or handling fees that are not collected at the time of the loan closing. Inspection and handling fees collected at closing will continue to be disclosed in the closing costs table.

b. **Reminder** – Fees for inspections conducted after loan consummation are always finance charges.

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Construction/Permanent Loans

6. Alt. Loan Estimate Form – Cash to Close - Payoffs and Payments: (1026.37(h)(2)(iii))

a. **New 2017**- Clarifies that when using the Alternative Loan Estimate, total construction costs are reflected in the Estimated Total Payoffs and Payments in the Calculating Cash to Close table.

b. **New 2017**- Also clarifies that amounts from the borrower, such as part of the funds for the construction contract or any other amount paid by third parties will be included as positive number.
Construction/Permanent Loans

7. Closing Disclosure – Summaries of Transactions - Borrower:

a. **New 2017** - The amount disclosed in Section K Adjustments includes the total construction costs (i.e. contract). (1026.38(j)(1)(v)

b. **New 2017** - The amount disclosed in Section L Adjustments would include any amount already paid on the construction contract. (1026.38(j)(2)(vi)
8. **Multiple Advance Construction Loans – New 2017 Clarifications:**
(Appendix D – Comment 7)

a. The term of the loan on a construction/permanent loan disclosed as one transaction will be the combined total of both terms.

b. The term on the permanent loan when disclosed separately starts on the date that interest begins to accrue on that phase of the transaction regardless of when the permanent loan is disclosed.
Construction/Permanent Loans

8. Multiple Advance Construction Loans – New 2017 Clarifications: (Cont.)

c. A one-year fixed rate interest only construction loan is disclosed as “11 mo. Interest Only, Fixed Rate.”

d. A fixed rate construction/permanent loan with a 12 month interest only construction period is disclosed as “1 Year Interest Only, Fixed Rate.”
Construction/Permanent Loans

8. Multiple Advance Construction Loans – New 2017 Clarifications: (Cont.)

e. The interest only payment disclosed in the Projected Payments table is disclosed as calculated according to Appendix D.

f. On a combined construction/permanent disclosure the first column in the Projected Payments table reflects the interest only payment during the construction phase and if the construction phase is less than one year, the first column also reflects the amortizing payments, and mortgage insurance and escrow payments, if any, for the permanent phase. The interest only payment is calculated using the Appendix D assumptions.
Construction/Permanent Loans

8. Multiple Advance Construction Loans – New 2017 Clarifications: (Cont.)

g. On a combined construction/permanent disclosure in the Projected Payments table when the first column exclusively discloses the construction phase, the creditor discloses “0” in the first column of the projected payments table for mortgage insurance and a hyphen or dash in the first column of the projected payments table for escrow.

h. Conversely, when the first column discloses construction phase and the permanent phase payments, the amount of the mortgage insurance premium or escrow payment (if any) for the permanent phase is disclosed in the first column.
Construction/Permanent Loans

8. Multiple Advance Construction Loans – New 2017 Clarifications: (Cont.)

i. When disclosing a construction/permanent loan separately, the permanent loan is disclosed as a fixed rate, if the rate remains the same as the construction phase.

j. When disclosing a construction/permanent loan separately, if the interest rate may adjust at the time of conversion to the permanent phase (i.e., based on an index), the permanent phase is disclosed as an adjustable rate even if the interest rate will then remain fixed for the life of the permanent loan and will require an ARM payment change notice at least 60 days prior to conversion.
Construction/Permanent Loans

9. Multiple Advance Construction Loans – New 2017 Requirements:

a. Requires a YES answer to whether payments can increase after closing on multiple advance loans when the timing of advances is unknown.

b. When answering YES, it will require the disclosure of “Adjusts every mo. starting in mo. 1” and “Can go as high as $[insert maximum possible periodic principal and interest payment] in year 1”. Month or years can be used as appropriate.
9. Multiple Advance Construction Loans – New 2017 Requirements: (Cont.)

c. Also requires the insertion of an AP table. Interest Only Payment will be answered YES. The amount or range of payments will be left blank in the First Change/Amount disclosure, but will disclose the first change as 1st Payment. Subsequent Changes will reflect “Every Month” and the Maximum Payment will disclose the maximum possible interest payment “Starting at 1st Payment”.

d. Provides clarification on the disclosure of construction costs. It requires the disclosure on the entire amount of construction costs whether the loan proceeds will pay all or part of those costs.
9. Multiple Advance Construction Loans – New 2017 Requirements: (Cont.)

e. The construction costs on the Loan Estimate are factored into the Funds for Borrower calculation similar to any other existing debt of the borrower being satisfied by the transaction.

f. The creditor has the option to disclose any construction reserve account established by the creditor as either a separate line item or together with the construction costs. If a reserve account is disclosed as a separate line item, the labeling of the reserve account needs to meet the “clear and conspicuous” standards.

g. Any inspection and handling fees disclosed on the addendum for the Loan Estimate and Closing Disclosure must be included in the calculation of the “In 5 Years” and “Total of Payments” disclosures, respectively.
Resources

➢ TILA-RESPA Integrated Disclosure Rule Implementation

➢ Amendments to Federal Mortgage Disclosure Requirements under the Truth in Lending Act (Regulation Z)

➢ 2017 TILA-RESPA Rule: Detailed Summary of Changes and Clarifications