



## WHITE PAPER

### Closing Disclosure: Deep Dive – Page Three

**Jonathan Foxx \***

This is the fifth article of a six-part series devoted to TILA-RESPA Integration Disclosure. Although the series, structured as White Papers, was initially established with four parts, I have added a fifth part and a sixth part to discuss additional features of the Closing Disclosure. In this fifth part, I will discuss Page Three. The sixth and final part of the series will provide an outline of Page Four and Page Five. Through a review of important highlights, I invite you to join me in a deep dive into the intricate features of the Closing Disclosure.

In the first article, I discussed the mission of TILA-RESPA Integration and the Loan Estimate (LE).<sup>1</sup> The second article introduced and treated the numerous features of the Closing Disclosure (CD).<sup>2</sup> These two articles (viz., on the Loan Estimate and Closing Disclosure, respectively) were accompanied by separate, detailed tables to be used for certain itemized categories and action requirements. In the third article, I provided the salient features of the Loan Estimate, in considerable detail.<sup>3</sup> In the fourth article, I took you through Page One and Page Two of the Closing Disclosure.<sup>4</sup>

I would suggest that you read all the articles in this series in order to better understand the TILA-RESPA Integration Disclosure (TRID) rule promulgated by the Consumer Financial Protection

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\* President and Managing Director, Lenders Compliance Group, Inc.

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Bureau (“CFPB” or “Bureau”).

The series on TILA-RESPA is meant to be informative, though it is not intended to be comprehensive. It is always prudent to research areas of particular interest with respect to the regulatory mandates. If assistance is needed, Lenders Compliance Group is a resource, and we recently established two proactive paths toward a TRID knowledgebase:

(1) We established the TEAM TRID™ task force,<sup>5</sup> a relatively inexpensive, cost-effective way to get TRID integration implementation done efficiently (viz., [www.teamtrid.com](http://www.teamtrid.com)); and importantly

(2) We established TRIDHotline.com,<sup>6</sup> an *entirely free online service*, manned by our task force, to assist people with their questions about TRID. We want to listen to their compliance needs (viz., [www.tridhotline.com](http://www.tridhotline.com)).

Please consider my analysis carefully. Follow along with a copy of the Closing Disclosure. I will provide, where helpful, some information as **SUGGESTED GUIDANCE**. Allow several hours to consider this explication. And as I have admonished all along, make notes, raise questions, and seek answers from competent compliance professionals!

Hopefully, you will have read the previous four articles. Now we will continue a detailed review of the third page of the Closing Disclosure. As indicated above, a forthcoming sixth article will further elucidate the Closing Disclosure analyses for Page Four and Page Five.

### PAGE THREE

TILA requires the Closing Disclosure to contain two tables:<sup>7</sup> “Calculating Cash to Close” and “Summaries of Transactions.”<sup>8</sup> For transactions without a seller, the creditor or settlement agent may substitute a “Payoffs and Payments” table for the Summary of Transactions table and place it before the alternative Calculating Cash to Close table.<sup>9</sup>

### CALCULATING CASH TO CLOSE TABLE

#### GENERAL DESCRIPTION

TILA requires the creditor to disclose the “cash to close;” that is, the total amount of cash or other funds the consumer must provide at consummation, and how the creditor determines that

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amount. The “Calculating Cash to Close” table generally mirrors the format of, and updates the amounts shown on, the “Calculating Cash to Close” table in the Loan Estimate. The purpose of this table is to provide the consumer with a three-business-day window before closing to make arrangements to have the necessary funds available for the consummation of the transaction.

The table on the CD includes a row not included on the Loan Estimate, labeled “Closing Costs Paid Before Closing,” and additional information under the column with the subheading “Did this change?”<sup>10</sup>

#### **STANDARD CALCULATING CASH TO CLOSE TABLE**

The standard “Calculating Cash to Close” table consists of four columns and nine rows. The columns are for the (1) components of cash to close, (2) the estimated amounts of cash to close (from the Loan Estimate) and its components, (3) the cash to close and its components without rounding (Final), and (4) a “Did this change” (Yes or No).

#### **ALTERNATIVE CALCULATING CASH TO CLOSE TABLE**

“Calculating Cash to Close” may be used as a table for use in a transaction<sup>11</sup> without a seller when the Loan Estimate was disclosed with the optional “Calculating Cash to Close” table.<sup>12</sup>

#### **ELEMENTS OF STANDARD CALCULATING CASH TO CLOSE TABLE**

##### Total Closing Costs

The first row of the standard “Calculating Cash to Close” table discloses a comparison of the consumer’s estimated and actual “Total Closing Costs (J)” amounts, Item J from the Closing Cost Details on the Loan Estimate and CD. If the actual amount on the CD differs from the estimated amount on the LE (unless the difference is due to rounding), the creditor or closing agent must state “YES” under the subheading “Did this change?” and that the consumer should “See Total Loan Costs (D) and Total Other Costs (I).”

The creditor or closing agent also must state the dollar amount of any excess amount of closing costs above the limitations on increases in closing costs (i.e., above the zero or 10% tolerance), if applicable, along with language stating that the increase exceeds the legal limits by the dollar amount of the excess.

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## ***SUGGESTED GUIDANCE***

- The dollar amount of any excess amount of closing costs, if applicable, must reflect the different methods of calculating excess amounts under TILA.<sup>13</sup>
- Because certain closing costs, individually, are subject to the limitations on increases in closing costs under Regulation Z<sup>14</sup> (i.e., origination fees, transfer taxes, and charges paid by the consumer to an affiliate of the creditor, which are subject to the zero percent tolerance rule), while other closing costs are collectively subject to the limitations on increases in closing costs<sup>15</sup> (i.e., recordation fees and fees paid to an unaffiliated third party if the creditor permitted the consumer to shop for the service provider, which are subject to the 10% tolerance rule, the creditor or closing agent must calculate subtotals for each type of excess amount and then add the subtotals together to yield the dollar amount disclosed in the table.<sup>16</sup>
- The calculation of excess amounts above the limitations on increases in closing costs takes into account the fact that the itemized, estimated closing costs disclosed on the Loan Estimate will not result in charges to the consumer if the service is not actually provided at or before consummation, and that certain itemized charges listed on the Loan Estimate under “Servicers You Can Shop For” may be subject to different limitations depending on the circumstances.<sup>17</sup>
- The creditor or closing agent must refund to the consumer any excess amounts at consummation or within 30 days after consummation.<sup>18</sup>

### **Closing Costs Paid Before Closing**

The second row in the standard “Calculating Cash to Close” table (and the third row in the alternative table), labeled “Closing Costs Paid Before Closing,” discloses a comparison of the estimated and actual amounts of the “Total Closing Costs” paid before consummation of the transaction. The figure for the Loan Estimate column is \$0 because the Loan Estimate does not have an equivalent disclosure. The actual “Closing Costs Paid Before Closing” amount that appears in the third (“Final”) column is the amount disclosed on page 2 of the Closing Disclosure in the “Borrower-Paid/Before Closing” column for “Closing Costs Subtotals (D+I).” If the actual amount is different from the \$0 Loan Estimate amount (unless the difference is due to rounding), the creditor or closing agent must answer “YES” under the fourth column subheading “Did this change?,” and state “You paid these Closing Costs before closing.” The language is intended to remind the consumer that he or she paid certain transaction closing costs before consummation and that those costs will be subtracted from the actual cash to close amount.<sup>19</sup>

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### Closing Costs Financed

The third row of the standard “Calculating Cash to Close” table discloses a comparison of the “Closing Costs Financed (Paid from your Loan Amount)” figure from the “Calculating Cash to Close” table on the Loan Estimate and the actual “Closing Costs Financed” amount. If the actual amount is different from the Loan Estimate amount (unless the excess is due to rounding), the creditor or closing agent must state “YES” under the fourth column subheading, “Did this change?,” and that the consumer included these closing costs in the loan amount, which increased the loan amount.<sup>20</sup>

### Down Payment/Funds from Borrower

The fourth row of the standard “Calculating Cash to Close” table discloses a comparison of the “Down Payment/Funds from Borrower” figure from the “Calculating Cash to Close” table on the Loan Estimate and the actual “Down Payment/Funds from Borrower” on the Closing Disclosure. Down Payment and Funds from Borrower are related concepts, but Down Payment applies to a purchase transaction while Funds from Borrower relates to a transaction other than a purchase. In a purchase transaction, the actual amount of the “Down Payment\Funds from Borrower” is the actual amount of the difference between the purchase price of the property and the principal amount of the credit extended, stated as a positive number.<sup>21</sup>

In a transaction other than a purchase, the actual amount of “Down Payment\Funds from Borrower” is determined by subtracting the principal amount of the credit extended from the total amount of all existing debt being satisfied in the real estate closing and disclosed pursuant to Regulation Z<sup>22</sup> (i.e., as Adjustments in Section K on Page 3 of the Closing Disclosure) - except to the extent the satisfaction of the existing debt is disclosed under “Other Costs” on page 2 of the Closing Disclosure. If the calculation yields a positive number, then the positive number is disclosed; otherwise, \$0.00 is disclosed. If the actual amount of “Down Payment\Funds from Borrower” is different from the amount on the Loan Estimate (unless the difference is due to rounding), the creditor or closing agent must state “YES” under the fourth column subheading, “Did this change?,” and state that the consumer increased or decreased the payment, as applicable, and also that the consumer should see the details disclosed under Section K or L, as applicable.

### Deposit

The fifth row of the standard “Calculating Cash to Close” table discloses a comparison of the

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“Deposit” amount shown on the Loan Estimate’s “Calculating Cash to Close” table and the actual “Deposit” amount. The actual “Deposit” amount is the same amount shown on line 01 under Section L (Paid Already by or on Behalf of Borrower at Closing). If the actual “Deposit” amount is different from the Loan Estimate “Deposit” amount (unless the difference is due to rounding), the creditor or closing agent must indicate “YES” under the fourth column subheading, “Did this change?,” and state that the consumer increased or decreased this payment, as applicable, and that the consumer should see the details disclosed under Section L.<sup>23</sup>

### Funds for Borrower

The sixth row of the standard “Calculating Cash to Close” table discloses a comparison of the “Funds for Borrower” amount shown on the Loan Estimate’s “Calculating Cash to Close” table and the actual “Funds for Borrower” amount. This amount is intended to generally represent the amount to be disbursed to the consumer or used at the consumer’s discretion at consummation, such as in cash-out refinance transactions. The determination of whether the transaction will result in “Funds for Borrower” is determined by subtracting from the total amount of all existing debt being satisfied in the real estate closing (disclosed as Adjustments in Section K on page 3 of the Closing Disclosure), except to the extent the satisfaction of this existing debt is disclosed under “Other Costs” on page 2 of the Closing Disclosure), the principal amount of the credit extended, excluding any amount disclosed under Closing Costs Financed (Paid from your Loan Amount). The exclusion of any amount disclosed under Closing Costs Financed is necessary because that amount of credit extended has already been accounted for in the Calculating Cash to Close table. If this calculation yields a negative number, then the negative number is disclosed; otherwise \$0 is disclosed.<sup>24</sup>

If the actual amount of “Funds for Borrower” is different from the estimated amount (unless the difference is due to rounding), the creditor or closing agent must indicate “YES” under the fourth column subheading, “Did this change?,” and whether the consumer’s available funds from the loan amount increased or decreased, as applicable.

### Seller Credits

The seventh row of the standard “Calculating Cash to Close” table discloses a comparison of the “Seller Credits” disclosed on the Loan Estimate’s “Calculating Cash to Close” table to the actual amount of Seller’s Credits disclosed on line 05 of Section L on the Closing Disclosure. The “Final” amount must reflect any change, following the delivery of the Loan Estimate, in the amount of funds given by the seller to the consumer for closing costs or for allowances for items purchased

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separately, as distinguished from payments by the seller for items attributable to periods before consummation (which are considered “Adjustments and Other Credits” separately disclosed on lines 08 through 11 of Section L). If the actual amount of “Seller Credits” is different from the Loan Estimate amount (unless the difference is due to rounding), the creditor or closing agent must indicate “YES” under the fourth column subheading, “Did this change?,” and state: “See Seller Credits in Section L.”<sup>25</sup>

### Adjustments and Other Credits

The eighth row of the standard “Calculating Cash to Close” table discloses a comparison of the “Adjustments and Other Credits” disclosed on the Loan Estimate’s “Calculating Cash to Close” table to the actual amount of “Adjustments and Other Credits” (for example, prorations of taxes or homeowners’ association fees, utilities used but not paid for by the seller, rent collected in advance by the seller from a tenant for a period extending beyond consummation, and interest on loan assumptions). This category also includes generalized credits toward closing costs given by parties other than the seller. The actual amount equals the total amount of the adjustments and other credits due from the consumer at consummation (the amounts disclosed in Section K), reduced by the total amount of the adjustments and other credits already paid by or on behalf of the consumer at consummation (i.e., the amounts disclosed in Section L).<sup>26</sup>

### ***Suggested Guidance***

- If the actual amount of “Adjustments and Other Credits” is different from the Loan Estimate amount (unless the difference is due to rounding), the creditor or closing agent must indicate “YES” under the fourth column subheading, “Did this change?,” and state that the consumer should see the details disclosed under Sections K and L.
- If the calculation yields a negative number, the creditor or closing agent must disclose it as a negative number. If the “Final” amount of “Cash to Close” yields a negative number, the creditor or closing agent must disclose it as a negative number. The label “Cash to Close” must be in boldface type.

### **CASH TO CLOSE**

The final row of the standard “Calculating Cash to Close” table discloses a comparison of the “Cash to Close” amount from the Loan Estimate to the actual “Cash to Close” amount from the bottom line of the Summaries of Transactions table on page 3 of the Closing Disclosure. The two “Cash to Close” amounts also are the sums of the respective amounts disclosed in the “Loan

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Estimate” and “Final” columns of the “Calculating Cash to Close” table.<sup>27</sup>

### ***Suggested Guidance***

If the “Final” amount of “Cash to Close” yields a negative number, the creditor or closing agent must disclose it as a negative number. The label “Cash to Close” must be in boldface type.

## **ELEMENTS OF THE ALTERNATIVE CALCULATING CASH TO CLOSE TABLE**

### Alternative Calculating Cash to Close Table—General Description

I have mentioned that there is an alternative “Calculating Cash to Close” table for use with a transaction without a seller for which the creditor has provided the optional alternative “Calculating Cash to Close” table on the Loan Estimate and/or the alternative “Costs at Closing” table on page 1 of the Closing Disclosure.<sup>28</sup> Like the standard table on the Closing Disclosure, the alternative table mirrors the Loan Estimate’s alternative table except for updating the amounts and including a row not included on the Loan Estimate, labeled “Closing Costs Paid Before Closing,” along with additional information under the column with the subheading “Did this change?” The “YES” or “NO” answers to this subheading must be in capital letters and in boldface. In the event of a “YES” answer, certain words in the narrative text also must be displayed more prominently than other disclosures, as indicated below and in model Closing Disclosure form H-25.<sup>29</sup>

### Loan Amount

The first row of the alternative “Calculating Cash to Close” table must state the Loan Amount - in the first column, under “Loan Estimate,” the Loan Amount disclosed on the Loan Estimate; and in the second column, under “Final,” the Loan Amount disclosed on the first page of the Closing Disclosure. Then, in the third column, under “Did this change?,” the creditor must indicate either “NO” or “YES.” If the answer is Yes, the creditor must state, as applicable: “This amount increased” or “This amount decreased,” or “You increased this amount” or “You decreased this amount.”<sup>30</sup>

### Total Closing Costs

The creditor must complete this row of the alternative “Calculating Cash to Close” table according

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to the same instructions described above for the corresponding row of the standard table.<sup>31</sup>

### Closing Costs Paid Before Closing

The creditor must complete this row of the alternative “Calculating Cash to Close” table according to same instructions described above for the corresponding row of the standard table.<sup>32</sup>

### Total Payoffs and Payments

The fourth line, “Total Payoffs and Payments,” discloses the total of all payments to third parties not otherwise disclosed in the “Loan Costs” and “Other Costs” tables earlier on page 2 of the Loan Estimate and Closing Disclosure, as negative numbers. In the third column, under “Did this change?,” the creditor must indicate either “NO” or “YES.” If the answer is yes, the creditor must also state: “See Payoffs and Payments (K).”

### ***Suggested Guidance***

- Examples of these payments include, but are not limited to:
  - payoffs of existing liens secured by the property such as existing mortgages,
  - deeds of trust,
  - judgments that have attached to the real property,
  - mechanics’ and materialmen’s liens,
  - and local,
  - state and federal tax liens;
  - payments of unsecured outstanding debts of the consumer; and
  - payments to other third parties for outstanding debts of the consumer (but not for settlement services) as required to be paid as a condition for the extension of credit.<sup>33</sup>
  
- The dollar amounts generally are shown to two decimal places, unless otherwise required. As a result, any “Final” amount is shown to two decimal places unless otherwise required. Any “Loan Estimate” amount is shown to the nearest dollar amount,<sup>34</sup> to match the corresponding estimated amount disclosed on the Loan Estimate. For this reason, a “Final” amount could be a larger number than its corresponding “Loan Estimate” amount when, in fact, the apparent increase is due solely to rounding. Accordingly, each statement of a change between the “Final” amount and “Loan Estimate” amount must be based on the actual, non-rounded

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estimate that would have been shown on the Loan Estimate if it had been shown to two decimal places rather than a whole dollar amount.<sup>35</sup>

### Cash to Close To or From Consumer

The fifth item in the optional “Calculating Cash to Close” table is the absolute value of the sum of the previous four lines disclosed with a statement of the estimated amount due to or from the consumer - as “Cash to Close  From  To Borrower” (bold-face type required) under the “Loan Estimate” and “Final” columns. In the third column of this row, the creditor must list as “Closed Costs Financed (Paid from your Loan Account)” the sum of the amounts disclosed as the final “Loan Amount” and the final “Total Payoffs and Payments,” but only if this sum is greater than zero and less than or equal to “Total Closing Costs (Borrower-Paid)” (line J) minus “Closing Costs Subtotals” (D+I) on page 2 of the Closing Disclosure. If applicable, the creditor must use this disclosure: “Closing Costs Financed (Paid from your Loan Amount): \$.”

## **SUMMARIES OF TRANSACTIONS**

We now move to the second section on Page Three, entitled *Summaries of Transactions*. Regulation Z generally requires the rest of page 3 of the Closing Disclosure to contain the “Summaries of Transactions” table, which summarizes the consumer and seller portions of the transaction.<sup>36</sup> The heading “Summaries of Transactions” must appear as a tab with upper rounded corners and a black background, along with the statement in boldface type, “Use this table to see a summary of your transaction.”

The creditor or closing agent may separate the Closing Disclosure into two disclosures, one reflecting the consumer’s costs and credits only and one reflecting only the seller’s costs and credits; that is, for the consumer’s disclosure, the seller’s side of the “Summaries of Transactions” would be left blank, and for the seller’s disclosure, the borrower’s side would be left blank or deleted.

By allowing this separation of consumer and seller costs, it seems clear that the Bureau sought to balance privacy concerns and more restrictive state law requirements with the mandated combination of the existing TILA and RESPA disclosures, consistent with the previous RESPA settlement statement requirements in RESPA.<sup>37</sup> Even if the consumer and seller are given separate disclosures, a creditor may still prepare, or require the settlement agent to prepare, a complete Closing Disclosure to document compliance and to evaluate the transaction in accordance with governmental loan program and secondary market requirements to underwrite

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the loan.<sup>38</sup>

The creditor or closing agent may attach additional pages to the Closing Disclosure to add lines, as necessary,<sup>39</sup> to accommodate the complete listing of all items required to be shown in the Summaries of Transactions table and to include customary recitals and information used locally in real estate closings (for example, a breakdown of payoff figures, a breakdown of the consumer's total monthly mortgage payments, an accounting of debits received and check disbursements, a statement stating receipt of funds, applicable stipulations between the consumer and seller, and the date funds are transferred). The creditor or closing agent should place a reference such as "See attached page for additional information" in the applicable section of the Closing Disclosure.

## **SUMMARY OF BORROWER'S TRANSACTION**

### Due from Borrower at Closing

Next to the label "K. Due from Borrower at Closing," presented on a gray background, the creditor or closing agent is required to disclose the total amount due from the consumer at closing.<sup>40</sup> This amount is calculated as the sum of the items that follow in Section K, including:

- Sales Price of Property, on line K01, which is the contract sales price of the property being sold in a purchase real estate transaction, excluding the price of any tangible personal property if the consumer and seller have agreed to a separate price for those items.<sup>41</sup>
- Sale Price of Any Personal Property Included in Sale, on line K02 (if the consumer and seller agreed to a separate price for personal property items).<sup>42</sup>
- Closing Costs Paid at Closing (from item J in the Closing Cost Details on page 2 of the Closing Disclosure), on line K03.<sup>43</sup>
- Adjustments to these items, on lines K05 through K06.<sup>44</sup>
- Adjustments for items paid by the seller in advance, on lines K08 through K15.<sup>45</sup>

Line K03 provides a subtotal of the closing costs paid by the consumer at closing, from Item J on page 2 of the Closing Disclosure. Lines K05 through K07 must include a description and the cost of any additional items ("Adjustments") owed by the consumer not otherwise disclosed in Sections K and L (such as any balance in the seller's reserve account held in connection with an existing loan, if assigned to the consumer in a loan assumption; any rent the consumer would collect after closing for a period prior to closing; or the treatment of a security deposit), all of which do not have a parallel amount disclosed under Seller's Transaction.<sup>46</sup>

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Lines K08 through K15 must include adjustments for items paid by the seller in advance, beginning with City/Town Taxes on line K08,<sup>47</sup> County Taxes on line K09,<sup>48</sup> and Assessments on line K10.<sup>49</sup> On each of these lines K08 through K10, the creditor or closing agent must indicate the period for which the consumer is responsible for reimbursing the seller for the item and the prorated amount due from the consumer at closing. Lines K11 through K15 must include any other adjustments for items paid by the seller in advance,<sup>50</sup> such as additional taxes, flood and hazard insurance premiums for which the consumer is being substituted as an insured under the same policy, mortgage insurance in loan assumptions, planned unit development or condominium association assessments paid in advance, fuel or other supplies on hand purchased by the seller that the consumer will use when the consumer takes possession of the property, and ground rent paid in advance.<sup>51</sup>

### ***Suggested Guidance***

- For purposes of this disclosure, personal property is defined by state law and could include items such as carpets, drapes, and appliances.<sup>52</sup>
- Manufactured homes are not considered personal property.<sup>53</sup>

### **Paid Already By or On Behalf of Borrower at Closing**

Regulation Z requires the creditor or closing agent to itemize in Section L the amounts paid by or on behalf of the consumer prior to closing, labeled “L. Paid Already by or on Behalf of Borrower at Closing.”<sup>54</sup> With the label, the creditor or closing agent must disclose the total amount paid by or on behalf of the consumer prior to closing, calculated as the sum of the items that follow in Section L. The creditor or closing agent must disclose the amount of the Deposit on line L01,<sup>55</sup> the Loan Amount on line L02,<sup>56</sup> any Existing Loan(s) Assumed or Taken Subject to on line L03,<sup>57</sup> any Seller Credit on line L05,<sup>58</sup> other credits and adjustments,<sup>59</sup> and then “Adjustments for Items Unpaid by Seller.”<sup>60</sup>

### **Calculation of Borrower’s Transaction**

At the bottom of the “Borrower’s Transaction” section of “Summaries of Transactions,” the creditor or closing agent must include the label “CALCULATION” with a gray background. Underneath appear three lines for “Total Due from Borrower at Closing (K),” “Total Paid Already by or on Behalf of Borrower at Closing (L),” and “Cash to Close  From  To Borrower” with the associated dollar amounts.<sup>61</sup>

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## Items Paid Outside Closing

The creditor or closing agent is required to designate amounts paid outside closing with the phrase “Paid Outside of Closing” or “P.O.C.”<sup>62</sup> Any charges not paid from closing funds but otherwise disclosed as part of Borrower’s Transaction must be marked “paid outside of closing” or “P.O.C.” with a designation of the person making the payment.<sup>63</sup> Charges paid outside closing are not included in computing totals under Borrower’s Transaction, although they reduce the relevant component(s) of the items being added to determine cash to close.

### ***Suggested Guidance***

To be safe, creditors and closing agents that choose to use the phrase rather than the abbreviation should capitalize the words in the phrase “Paid Outside of Closing,” because the main text of the regulation prevails over the Comment.<sup>64</sup>

## **SUMMARY OF SELLER’S TRANSACTION**

### Summary of Seller’s Transaction—General

The right side of “Summaries of Transactions” addresses the “Seller’s Transaction.” The “Seller’s Transaction” is not completed when no seller is involved, such as in a refinance transaction. The “Seller’s Transaction” roughly mirrors the “Borrower’s Transaction.”

### Due to Seller at Closing

If a seller is involved in the transaction, the creditor or closing agent is required to disclose the total amount due to the seller at closing, using the label “Due to Seller at Closing.”<sup>65</sup> This amount is the sum of the items disclosed in Section M of the “Seller’s Transaction” side of the “Summaries of Transactions” table, excluding items paid from funds other than closing funds.

Below this amount, the creditor or closing agent must disclose on:

- Line M01, the amount of the real estate contract sale sales price of the property being sold, labeled “Sale Price of Property,” excluding the price of any items of tangible personal property if the consumer and seller have agreed to a separate price for those items.<sup>66</sup>
- Line M02, the sale price of any personal property included in the sale but excluded from

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the Sale Price of Property, labeled “Sale Price of Any Personal Property Included in Sale”.<sup>67</sup>

- Lines M03 through M08, the amount of other items to be paid to the seller by the consumer under the contract of sale or other agreement, such as charges not listed on the Loan Estimate or items paid by the seller prior to closing but reimbursed by the consumer at consummation.<sup>68</sup>
- Lines M09 through M16, “Adjustments for Items Paid by Seller in Advance,” beginning with “City/Town Taxes” on line M09, “County Taxes” on line M10, and “Assessments” on line M11.<sup>69</sup>
- For the items on lines M09 through M16, the creditor or closing agent should include the period in which the consumer is responsible for reimbursing the seller for prepaid amounts (if applicable), and the prorated amount due from the consumer at closing.

### Due from Seller at Closing

If a seller is involved in the transaction, the creditor or closing agent must disclose the total amount due from the seller at closing, using the label “N. Due from Seller at Closing.”<sup>70</sup> The amount is the sum of items disclosed in Section N of the “Seller’s Transaction” side of the “Summaries of Transactions” table, excluding items paid from funds other than closing funds.

Below this amount, the creditor or closing agent must disclose on:

- Line N01, the amount of any excess deposit disbursed to the seller before the closing, labeled “Excess Deposit.”<sup>71</sup>
- Line N02, the “Closing Costs Paid at Closing (J),”<sup>72</sup> from the subtotal amount listed under Item J in the Seller-Paid At Closing column of the Closing Cost Details.
- Line N03, the existing loans assumed by or taken subject to at closing, labeled “Existing Loan(s) Assumed or Taken Subject to.”<sup>73</sup>
- Line N04, the payoff amount of a first mortgage loan, labeled “Payoff of First Mortgage Loan.”<sup>74</sup>
- Line N05, the payoff amount of a second mortgage loan, labeled “Payoff of Second Mortgage Loan.”<sup>75</sup>
- Line N08, any “Seller Credit,” for instance, the total amount of money the seller will provide as a lump sum at closing to pay for loan costs and other costs, designated borrower-paid at or before closing under Loan Costs and Other Costs, not including costs disclosed as seller-paid at or before closing under Loan Costs and Other Costs.<sup>76</sup>
- Lines N06, N07, and N09 through N13, the description and amount of any and all other

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obligations required to be paid by the seller at the real estate closing, including any lien-related payoffs, fees, or obligations.<sup>77</sup>

- Lines N14 through N19, “Adjustments for Items Unpaid by Seller,” beginning with City/Town Taxes on line N14, County Taxes on line N15, and Assessments on line N16.<sup>78</sup>

### ***Suggested Guidance***

- Any excess deposit disbursed to the seller by a party other than the closing agent must be disclosed on line N01 if the party will provide the excess deposit directly to the seller. Any amounts of the deposit disbursed to the seller prior to closing must be disclosed on line N01.<sup>79</sup>
- Any real estate commissions disclosed under Section H of Other Costs in the Closing Cost Details on page 2 must be the full amount of the commission, regardless of the party who holds the deposit.
- The amount of any outstanding balance or balances of any lien(s) the consumer is assuming or taking title subject to, and which is to be deducted from the sales price, must be disclosed on line N03 (more than one lien can be included in the amount).<sup>80</sup>
- If third or fourth loans are secured with liens on the property, they are disclosed as Adjustments on lines N17 through N19.
- The Seller Credit amount must include other obligations of the seller to be paid directly to the consumer, such as credits for issues identified at a walk-through of the property before closing.<sup>81</sup>
- Adjustments would include any and all other obligations required to be paid by the seller at closing, including any lien-related payoffs, fees, or obligations.<sup>82</sup>
- The satisfaction of existing liens by the consumer that are not deducted from the sales price are disclosed under Adjustments as paid outside of closing (P.O.C.).<sup>83</sup>
- Escrowed funds held by the closing agent for payment of invoices related to repairs, water, fuel, or other utility bills received after closing that cannot be prorated are disclosed under Adjustments (on lines N18 through N19).<sup>84</sup>

### **Calculation of Seller’s Transaction**

At the bottom of the Seller’s Transaction column of the “Summaries of Transactions” table,<sup>85</sup> requires the creditor or closing agent to include the label “CALCULATION” with a gray background. Underneath appear three lines for “Total Due to Seller at Closing (M),” “Total Due from Seller at Closing (N),” and “Cash □ From □ To Seller” with the associated dollar amounts.

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As I stated above, the creditor or closing agent to designate amounts paid outside closing with the phrase “Paid Outside of Closing” or “P.O.C.”<sup>86</sup> Thus, any charges not paid from closing funds but otherwise disclosed as part of Seller’s Transaction must be marked “paid outside of closing” or “P.O.C.” with a designation of the party making the payment. Charges paid outside closing are not included in computing totals under Seller’s Transaction.

In the next and final article in this six-part series, I will discuss Page Four and Page Five of the Closing Disclosure. Page Four contains three tables, which require completion depending on the type of loan product: (1) a “Loan Disclosure” table, which addresses various requirements in or arising from the legal obligation, including assumption, demand feature, late payment, negative amortization, partial payments, security interest, and escrow account information; (2) the Adjustable Payments (AP) table that also appears on page 4 of the Loan Estimate, as applicable; and the Adjustable Interest Rate (AIR) table that also appears on page 4 of the Loan Estimate, as applicable. Page Five includes three tables, a “Questions?” box, and an optional “Confirm Receipt” signature section. The three tables are labeled “Loan Calculations,” “Other Disclosures,” and “Contact Information.”

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<sup>1</sup> Foxx, Jonathan, *RESPA/TILA Integration – Part I: Overview and Loan Estimate*, pp 28-54, National Mortgage Professional, October 2014

<sup>2</sup> Foxx, Jonathan, *RESPA/TILA Integration – Part II: Closing Disclosure and Action Plan*, pp 26-50, National Mortgage Professional, December 2014

<sup>3</sup> Foxx, Jonathan, *Loan Estimate: Deep Dive (Part III)*, pp 40-75, National Mortgage Professional, June 2015

<sup>4</sup> Foxx, Jonathan, *Closing Disclosure: Deep Dive – Pages One and Two (Part IV)*, pp 40-82, National Mortgage Professional, July 2015

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<sup>5</sup> [www.teamtrid.com](http://www.teamtrid.com)

<sup>6</sup> [www.tridhotline.com](http://www.tridhotline.com)

<sup>7</sup> Regulation Z § 1026.38(i)-(k)

<sup>8</sup> For description of the Closing Disclosure form, see *Annotated forms for TILA-RESPA Integrated Disclosure, December 2013*, Consumer Financial Protection Bureau

<sup>9</sup> Page 3 of form H-25(J) in Appendix H of Regulation Z illustrates this option.

<sup>10</sup> Regulation Z § 1026.38(i). Also see § 1026.38(e) for transactions without sellers.

<sup>11</sup> Regulation Z § 1026.38(e)

<sup>12</sup> Regulation Z § 1026.37(h)(2)

<sup>13</sup> Regulation Z § 1026.19(e)(3)(i) and (ii), also as illustrated by Comment 38(i)(1)(iii)(A)-1

<sup>14</sup> Regulation Z § 1026.19(e)(3)(i)

<sup>15</sup> *Idem*

<sup>16</sup> Comment 38(i)(1)(iii)(A)-2.i

<sup>17</sup> Comment 38(i)(1)(iii)(A)-2.ii and iii

<sup>18</sup> Regulation Z § 1026.19(f)(2)(v)

<sup>19</sup> Regulation Z § 1026.38(i)(2), and Comment 38(i)(2)(iii)(B)-1

<sup>20</sup> Regulation Z § 1026.38(i)(3)

<sup>21</sup> Regulation Z § 1026.38(i)(4)

<sup>22</sup> Regulation Z § 1026.38(j)(1)(v)

<sup>23</sup> Regulation Z § 1026.38(i)(5), and Comment 38(i)(5)-1

<sup>24</sup> Regulation Z § 1026.38(i)(6)

<sup>25</sup> Regulation Z § 1026.38(i)(7)

<sup>26</sup> Regulation Z § 1026.38(i)(8), and Comment 38(i)(8)(ii)-1

<sup>27</sup> Regulation Z § 1026.38(i)(9)

<sup>28</sup> Regulation Z § 1026.38(e)

<sup>29</sup> Comment 38(e)-2

<sup>30</sup> Comments 38(e)-5, 38(e)(1)(iii)(A)-1

<sup>31</sup> Comment 38(e)(2)(iii)(A)-1 and -2

<sup>32</sup> Comments 38(e)(3)(i)-1 and 38(e)(3)(iii)(B)-1

<sup>33</sup> Comment 37(h)(2)(iii)-1

<sup>34</sup> As required by Regulation Z § 1026.38(t)(4)(i)(C)

<sup>35</sup> Comment 38(e)-3

<sup>36</sup> Regulation Z § 1026.38(j)

<sup>37</sup> Regulation X § 1024.9(a)(6)

<sup>38</sup> Regulation Z § 1026.38(j), (k), and Comment 38(j)-1

<sup>39</sup> Comment 38(j)-2

<sup>40</sup> Regulation Z § 1026.38(j)(1)

<sup>41</sup> Regulation Z § 1026.38(j)(1)(ii)

<sup>42</sup> Regulation Z § 1026.38(j)(1)(iii)

<sup>43</sup> Regulation Z § 1026.38(j)(1)(iv)

<sup>44</sup> Regulation Z § 1026.38(j)(1)(v)

<sup>45</sup> Regulation Z § 1026.38(j)(1)(vi)

<sup>46</sup> Comment 38(j)(1)(v)-1 and -2

<sup>47</sup> Required by Regulation Z § 1026.38(j)(1)(vii)

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- <sup>48</sup> Required by Regulation Z § 1026.38(j)(1)(viii)
- <sup>49</sup> Required by Regulation Z § 1026.38(j)(1)(ix)
- <sup>50</sup> Required by Regulation Z § 1026.38(j)(1)(x)
- <sup>51</sup> Comment 38(j)(1)(x)-1 incorporates instructions for RESPA HUD-1 settlement statement lines 106-112 contained in Regulation X, Appendix A. See also Regulation Z § 1026.38(j)(1)
- <sup>52</sup> Comment 38(j)(1)(ii)-1
- <sup>53</sup> Comment 38(j)(1)(ii)-1
- <sup>54</sup> Regulation Z § 1026.38(j)(2)
- <sup>55</sup> Required by Regulation Z § 1026.38(j)(2)(i)
- <sup>56</sup> Required by Regulation Z § 1026.38(j)(2)(iii)
- <sup>57</sup> Required by Regulation Z § 1026.38(j)(2)(iv)
- <sup>58</sup> Required by Regulation Z § 1026.38(j)(2)(v)
- <sup>59</sup> Required by Regulation Z § 1026.38(j)(2)(vi)
- <sup>60</sup> Required by Regulation Z § 1026.38(j)(2)(vii)–(xi)
- <sup>61</sup> Regulation Z § 1026.38(j)(3), Comments 38(j)(3)(iii)-1 and -2
- <sup>62</sup> Regulation Z § 1026.38(j)(4)(i)
- <sup>63</sup> Comment 38(j)(4)(i)-1
- <sup>64</sup> *Idem*
- <sup>65</sup> Regulation Z § 1026.38(k)(1)(i)
- <sup>66</sup> Required by Regulation Z § 1026.38(k)(1)(ii)
- <sup>67</sup> Required by Regulation Z § 1026.38(k)(1)(iii)
- <sup>68</sup> Required by Regulation Z § 1026.38(k)(1)(iv)
- <sup>69</sup> Required by Regulation Z §§ 1026.38(l)(1)(v) through (ix)
- <sup>70</sup> Required by Regulation Z § 1026.38(k)(2)(i)
- <sup>71</sup> Required by Regulation Z § 1026.38(k)(2)(ii)
- <sup>72</sup> Required by Regulation Z § 1026.38(k)(2)(iii)
- <sup>73</sup> Required by Regulation Z § 1026.38(k)(2)(iv)
- <sup>74</sup> Required by Regulation Z § 1026.38(k)(2)(v)
- <sup>75</sup> Required by Regulation Z § 1026.38(k)(2)(vi), as applicable
- <sup>76</sup> Required by Regulation Z § 1026.38(k)(2)(vii)
- <sup>77</sup> Required by Regulation Z § 1026.38(k)(2)(viii)
- <sup>78</sup> Required by Regulation Z §§ 1026.38(k)(2)(ix) through (xiii)
- <sup>79</sup> Comment 38(k)(2)(ii)-1
- <sup>80</sup> Comment 38(k)(2)(iv)-1
- <sup>81</sup> Comment 38(k)(2)(iv)-2
- <sup>82</sup> Comment 38(k)(2)(viii)-1
- <sup>83</sup> HUD's *RESPA Roundup*, December 2010. Also see Comment 38(k)(2)(viii)-2
- <sup>84</sup> Comment 38(k)(2)(viii)-3
- <sup>85</sup> Regulation Z § 1026.38(k)(3)
- <sup>86</sup> *Op. cit.* 63

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