



RESPA/TILA INTEGRATION – PART II: CLOSING DISCLOSURE AND ACTION PLAN INCLUDES CLOSING DISCLOSURE TABLE

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WHITE PAPER

This second White Paper of a four-part series will introduce and treat the numerous features of the **Closing Disclosure**. In the first part, I discussed the mission of the RESPA/TILA Integration and the **Loan Estimate**. The third part will be a detailed analysis of the Loan Estimate. The fourth part will provide an in depth scrutiny of the Closing Disclosure.

Accompanying this article is a **Closing Disclosure Table** that may be used for certain itemized categories and action requirements. The table outlines the types of areas of interest in many of the routine requirements of the Closing Disclosure process. Rather than a before-and-after, comparative analysis, the Closing Disclosure Table provides the requirements with the compliance effective date of August 1, 2015.

In the other articles of the two remaining White Papers, I will provide charts, tables, form specimens, and annotations for applicable categories and action requirements relating to the RESPA-TILA Integration. In the third part of this four-part series on RESPA-TILA Integration, I will provide a deep dive, line by line outline of the Loan Estimate. The fourth part will provide a thorough analysis of the Closing Disclosure.

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The full series, and accompanying charts, tables, and form specimens, first appeared in the October 2014 edition of National Mortgage Professional Magazine.

As I indicated in Part I, brand new disclosures have a compliance effective date of August 1, 2015 – a combined set, as in a new disclosure at the commencement of the loan origination and a new disclosure at its closing: these are, respectively, the Loan Estimate and the Closing Disclosure.¹

The new set has been dubbed “RESPA-TILA Integration,” since the consolidation requirements reflect the mandates of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which directed the Bureau to integrate the mortgage loan disclosures under TILA and RESPA Sections 4 and 5.² For the balance of this article, I will refer to these provisions as the “RESPA-TILA Rule” or (“Rule”). The Bureau often refers to these provisions as the “TILA-RESPA Integrated Disclosure Rule.” Additionally, I will refer to the consolidated disclosures as “Integrated Disclosures.”

The Rule applies to most closed-end consumer mortgages. It does not apply to home equity lines of credit (HELOCs), reverse mortgages, or chattel-dwelling loans, such as mortgages secured by a mobile home or by a dwelling that is not attached to real property (i.e., land). The provisions also do not apply to loans made by persons who are not considered “creditors,” where such persons make five or fewer mortgages in a year. However, certain types of loans that are currently subject to TILA but not RESPA are subject to the Rule’s Integrated Disclosure requirements, including construction-only loans, loans secured by vacant land or by 25 or more acres, and credit extended to certain trusts for tax or estate planning purposes. So, creditors originating these types of mortgages must continue to use, as applicable, the Good Faith Estimate (“GFE”) GFE, Truth in Lending Disclosure (“TIL”), and HUD-1 Settlement Statement (“HUD-1”) disclosures required under current law.

There is also a partial exemption for certain transactions associated with housing assistance loan programs for low- and moderate-income consumers. These creditors are exempt from the requirement to provide the RESPA settlement cost booklet, GFE, HUD-1, and application servicing disclosure statement requirements, and, thus, exempt from the requirements to provide a Loan Estimate, Closing Disclosure, and Special Information Booklet for these loans.

I would also like to answer the question about whether or not creditors may use the Integrated Disclosure on loans not covered by the Rule but subject to RESPA and TILA. The answer is that using the Integrated Disclosures for such purposes is not prohibited on loans that are not covered by RESPA and TILA (i.e., mortgages associated with housing assistance loan programs for low- and moderate-income consumers). But a creditor cannot use the new Integrated Disclosure

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forms instead of the GFE, TIL and HUD-1 forms for transactions, such as reverse mortgages, that are covered by RESPA and TILA that require those disclosures.

Also, to repeat my statement from Part I, it should be emphasized that the Rule can be encapsulated, as follows:

The TILA-RESPA rule consolidates four existing disclosures required under TILA and RESPA for closed-end credit transactions secured by real property into two forms: a *Loan Estimate* that must be delivered or placed in the mail no later than the third *business day* after receiving the consumer's *application*, and a *Closing Disclosure* that must be provided to the consumer at least three *business days* prior to *consummation*.³ (Emphases in original.)

The new Integrated Disclosures must be provided by a creditor or mortgage broker that receives an application from a consumer for a closed-end credit transaction secured by real property on or after August 1, 2015. But creditors will still be required to use the GFE, TIL, and HUD-1 forms for applications received prior to August 1, 2015.

Operationally speaking, as the applications received prior to August 1, 2015 are consummated, withdrawn, or cancelled, the use of the GFE, TIL, and HUD-1 forms will no longer be used for most mortgage loans.⁴

FOUR GENERAL REQUIREMENTS

If the loan requires a Loan Estimate, creditors must also provide the Closing Disclosure, to be received by the consumer no later than three business days before consummation of the loan.^{5 6} A practical way to view the Closing Disclosure is as a consolidation of the HUD-1 and the final TIL disclosure, containing additional elements. There are four rudimentary requirements of the Closing Disclosure.

REQUIREMENT 1: The Closing Disclosure generally must contain the actual terms and costs of the transaction.⁷

- Creditors may estimate disclosures using the best information reasonably available when the actual term or cost is not reasonably available to the creditor at the time the disclosure is made.
- Creditors must act in good faith and use due diligence in obtaining the information. The creditor normally may rely on the representations of other parties in obtaining the information, including, for example, the settlement agent.

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- Creditors are required to provide corrected disclosures containing the actual terms of the transaction at or before consummation.⁸



REQUIREMENT 2: The Closing Disclosure must be in writing and contain the information prescribed in § 1026.38, the section of Regulation Z that outlines the content of disclosures for certain mortgage transactions (i.e., Closing Disclosure). Creditors must disclose only the specific information set forth in § 1026.38(a)-(s), as shown in the Bureau’s form (viz., Appendix H-25, the “Mortgage Loan Transaction Closing Disclosure—Model Form”).⁹ The specific information referred to covers a section-by-section analysis of the Closing Disclosure’s content requirements.

REQUIREMENT 3: If the actual terms or costs of the transaction change prior to consummation, creditors must provide a corrected disclosure that contains the actual terms of the transaction and complies with other requirements¹⁰, such as the timing requirements, as well as the requirements for providing corrected disclosures due to subsequent changes.¹¹



REQUIREMENT 4: There is a new three-day waiting period; that is, if a creditor provides a corrected disclosure, it may also be required to provide the consumer with an additional three-business-day waiting period prior to consummation.¹² (I will elaborate further on this feature below. See also the Table that accompanies this article.)

PAGE BY PAGE

The Closing Disclosure is an extensive, five-page document with numerous fields, containing information disclosed in the Loan Estimate form, as well as additional information.

It may be categorically organized, as follows:

PAGE 1:

Essentially the same as the first page of the Loan Estimate, captures key mortgage loan terms, projected payment amount scenarios, and costs at closing.

PAGES 2 AND 3:

Outline the closing costs, other costs, cash to close and summaries of transactions, split between borrower and seller information.

PAGES 4 AND 5:

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Provide the total payments, finance charge, amount financed, Annual Percentage Rate (APR) and the Total Interest Percentage (TIP), the total amount of interest paid by the borrower will pay over the loan term as a percentage of the loan amount.¹³ (Note that disclosing the TIP means that there are now three types of rates disclosed, the interest rate, the APR, and the TIP.)

These pages also cover disclaimers, such as potential need for appraisals, whether the loan is assumable, whether homeowner's insurance is required, brief information regarding late payment policies, partial payments, escrow accounts, refinancing not guaranteed, and possibility of servicing transfer.

SALIENT OBSERVATIONS

CLOSING COST DETAILS

The Closing Disclosure organizes the elements of closing costs into the similar categories as the Loan Estimate, with columns showing costs paid "At Closing" and "Before Closing."

Consequently, lenders will need to map both the cost estimates from the Loan Estimate form into the Closing Disclosure cost detail section, as well as capture actual amounts and surrounding detail rather than estimates. Those actual amounts will also need to be screened against the tolerances for increases described above to prevent passing any impermissible charges on to consumers.

PARTIAL PAYMENT POLICY

The requirement to disclose the lender's partial payment policy is a change from current disclosure requirements. Under the Rule, a statement is required by the lender, affirming if may accept periodic payments that are less than the full amount due, may hold them in a separate account until the borrower pays the rest of the payment before applying the full payment, or does not accept partial payments. The new disclosures also include a warning that, if the loan is sold, the new lender may have a different policy.

Please note that, in essence, this is a servicing policy. Thus, the information required to populate the partial payment policy in the Closing Disclosure should be incorporated into the Loan Origination System or embedded into the underlying disclosure template.

ESCROW ACCOUNT

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The Closing Disclosure provides more information about escrow than current disclosures. This additional information will require corresponding changes to loan originators' systems and processes. Specifically, the Closing Disclosure discloses whether the consumer's loan will have an escrow account and must disclose certain details as to payments made using escrow account funds and those the consumer must make directly.

Note, also, that the Rule requires both a warning to consumers that escrow payments may change and also a warning as to the consequences of failing to pay property taxes or to pay property costs.

TOLERANCES AND REVISED CLOSING DISCLOSURE

The Rule provides for circumstances where a change can trigger a new Closing Disclosure and a new waiting period if any of the following events occurs that causes the Closing Disclosure to be inaccurate:

- Changes to the APR greater than 1/8 of a percent (or 1/4 of a percent for loans with irregular payments or periods) that causes the disclosures to become inaccurate;
- Changes to the loan product that cause the disclosure to become inaccurate; or,
- Adding a prepayment penalty, causing the disclosure to become inaccurate.

The additional three-business-day waiting period after the revised Closing Disclosure is subject to the consumer's written waiver for a *bona fide* financial emergency.

But not all changes to the information in the Closing Disclosure require a restart of the waiting period. For less significant changes than those described above, the lender may provide the consumer with an updated Closing Disclosure at or before the closing reflecting such changes. (Please see Closing Logistics in the Plan of Action section of this article for more detail.)

CONSUMMATION VERSUS CLOSING OR SETTLEMENT

Because the three-day waiting period rule uses “consummation” as the triggering event, we have often been asked for the difference between consummation and closing or settlement.¹⁴ Actually, consummation may commonly occur at the same time as closing or settlement, but it is a legally distinct event. Consummation occurs *when the consumer becomes contractually obligated to the creditor on the loan*, not, for example, when the consumer becomes contractually obligated to a seller on a real estate transaction.

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The point in time when a consumer becomes contractually obligated to the creditor on the loan depends on applicable state law.¹⁵ Thus, creditors and settlement agents should verify the applicable state laws to determine when consummation will occur, and make sure delivery of the Closing Disclosure occurs at least three business days before this event.

CLOSING DISCLOSURE VERSUS HUD-1 SETTLEMENT STATEMENT

For the most part, a creditor must use the Bureau's Closing Disclosure form¹⁶ for any loans subject to the Rule that are federally related mortgage loans subject to RESPA (which will include most mortgages).¹⁷

With respect to other loan transactions subject to the RESPA-TILA rule that are not federally related mortgage loans, the Closing Disclosure is considered a "a model form", meaning creditors are not strictly required to use this form, but alternative disclosures must contain the exact same information and be made with headings, content, and format substantially similar to the Closing Disclosure.¹⁸

PLAN OF ACTION

In this final section, I will outline some guidelines to follow in preparing for the RESPA-TILA implementation. Notwithstanding these suggestions, companies should embark on a training schedule to ensure that all personnel in the loan flow process – including any business partners and agents – are properly educated in the implementation requirements. In the Bureau's view, companies should consider "the training that will be necessary for your loan officer, processor, closing, compliance, and quality-control staff, as well as anyone else who accepts applications, processes loans, or monitors transaction compliance."¹⁹

The Bureau has set forth several elementary, practical implementation and compliance issues, consisting of advice concerning identifying affected products, departments, and staff; identifying the business-process, operational, and technology changes that will be necessary for compliance; and, identifying impacts on key service providers or business partners. The following are highlights of such suggestions.

IDENTIFYING AFFECTED PRODUCTS, DEPARTMENTS, AND STAFF

Compliance must reflect the business model of the company. The first step in compliance with the Rule is to identify all affected products, departments, and staff.

According to the Bureau, origination, processing, closing and post-closing departmental

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staff and processes are likely to be most broadly impacted by these rule changes.²⁰ However, “certain groups within servicing operations may be implicated by the two new disclosures related to escrow account cancellation and partial payment application policies during servicing transfers.”

Because the company may originate certain products for which the existing disclosure regime will persist following the RESPA-TILA rule’s effective date, be certain to closely consider the coverage of the rule to different types of mortgage products.²¹

IDENTIFYING BUSINESS-PROCESS OPERATIONAL, AND TECHNOLOGY CHANGES

Review the existing business processes, as well as relevant hardware and software, not only of the company but also the company’s agents, settlement services providers, or other business partners use.²² Note the gaps or concerns affecting the compliance nexus between any systems involved in the loan flow process.

The Bureau suggests that the company should review its technology platforms and determine which version of MISMO is currently supported.²³ Evaluate the current integrations between the company’s technology platforms and those of its relevant third party service providers, such as document generators and settlement service providers, to determine required updates, as needed.

IDENTIFYING IMPACTS ON KEY SERVICE PROVIDERS OR BUSINESS PARTNERS

Third-party updates may be necessary to:²⁴

- Update transaction coverage and calculations;
- Obtain required information or verifications;
- Incorporate new disclosures; and,
- Make sure software, compliance, quality-control, and recordkeeping protocols comply with this rule.

Software providers, or other vendors and business partners, may offer compliance solutions that can assist with any necessary changes. These key partners may depend on the company’s business model. All creditors will likely need to carefully coordinate readiness and compliance with the network of settlement services providers on whom they rely for closing services.

The Bureau states that “in some cases, a company may want to negotiate revised or new contracts with these parties, or seek a different set of services.”²⁵ Specifically, “creditors should be in close touch with all key business partners and vendors to ensure that their

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process and technology changes will meet a company's business and compliance needs and are scheduled to occur on a timeline that supports collaborative readiness."²⁶

Therefore, it is important to understand the extent of the assistance that vendors, settlement services providers and other business partners provide and be prepared for the consequences that may result from such assistance.

CLOSING LOGISTICS

At the closing, the Final TIL and the HUD-1 are prepared by two different parties: the lender and the closing agent respectively. But, due to the Rule, there is a combining of such information that is now existing in two separate systems, in order to create the Closing Disclosure. The result of this change will create significant challenges to lenders and, of course, settlement agents. The Rule allows lenders to request the assistance of settlement agents in the preparation of the Closing Disclosure, but it leaves the ultimate responsibility (and, it should be noted, also the liability) with the lender. Because the Rule allows preparation of all or part of the Closing Disclosure by settlement agents, there are certain legal responsibilities of settlement agents with respect to preparing a form containing information and disclosure responsibilities under both RESPA and TILA.

Lawyers Title recently published in their newsletter some insights into these challenges.²⁷ For instance, as noted in the newsletter, "one of the most notable closing process changes concerns the delivery of the final Closing Disclosure to the borrower. Instead of a borrower receiving the final HUD-1 Settlement Statement at or directly before closing, borrowers must now receive the final Closing Disclosure form three business days prior to 'consummation' (generally, the day loan documents are signed). This is sometimes referred to as the '3-day waiting period'."²⁸

Receipt means actual receipt, confirmed by the borrower. As the newsletter correctly observes, "if actual receipt of the Closing Disclosure cannot be confirmed, the delivery will be deemed received three business days after the Closing Disclosure is delivered (i.e., placed in the mail) by the lender or settlement agent. (Sometimes called the '3-day delivery rule')."²⁹

A confirmed receipt of the Closing Disclosure permits certain changes to the loan terms and transaction costs on the Closing Disclosure between the delivery of the Closing Disclosure and the final closing, such changes limited to:

- Addition of a prepayment penalty; or
- Annual Percentage Rate (APR) becomes inaccurate, meaning a change of more than 1/8th percent; or

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- Change in Loan Product.

But the confirmed receipt of the Closing Disclosure is a requisite of the foregoing permissible changes: “Any of the above changes require delivery of a new Closing Disclosure containing the changes and another 3-day waiting period prior to signing.”³⁰ Certain changes other than the foregoing permissible changes that are subject to prior confirmed receipt by the borrower, may be changed in the Closing Disclosure at the closing.

The actual closing charges passed on to the consumer must comply with the zero and ten percent tolerances for increases over the amounts disclosed in the Loan Estimate.

CHART OF READINESS TASKS

The Bureau published the Rule in November 2013,³¹ thereby giving companies twenty months to be ready by the compliance effective date of August 1, 2015.³² Even though my firm manages the compliance support for a leading loan origination system (LOS) and also provides ongoing implementation readiness for our clients, the scope of the Rule is so extensive that the timeframe permitted for such implementation still does not seem sufficient.

Most changes actually will be technological, such as the updates and changes required by the loan origination systems. However, all changes must reflect a company’s size, complexity, loan products, and risk profile, and assuredly the inherent features of its business model.

I offer the Chart of Readiness Tasks as a modest guide, though it is not meant to be exhaustive, which offers some direction to taking actions needed for implementation of the Rule. Please see the Closing Disclosure Table, accompanying this article, for more details.

CHART OF READINESS TASKS FOR RESPA-TILA INTEGRATION	
Company and Functions	Tasks and Actions
Loan Originators using proprietary LOS	<ul style="list-style-type: none"> • Develop Business Requirement Rules in the LOS • Implement & Test Changes • Conduct Staff Training
Loan Originators using non-proprietary LOS	<ul style="list-style-type: none"> • Contact Service Provider for Updates • Test Upgrades • Attend Vendor System Training
Mortgage Brokers	<ul style="list-style-type: none"> • Train on New Forms

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	<ul style="list-style-type: none"> • Review Current Vendor Processes • Review Interaction with Lenders
Settlement Agents	<ul style="list-style-type: none"> • Train on New Forms • Review Current Vendor Processes • Review Interaction with Lenders

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¹ *Integrated Mortgage Disclosures Under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z)*, 78 FR 7973, December 31, 2013

² Section 1032(f) of the Dodd-Frank Act mandated that the Bureau propose for public comment rules and model disclosures that integrate the TILA and RESPA disclosures by July 21, 2012

³ *TILA-RESPA Integrated Disclosure Rule, Small Entity Compliance Guide*, September 2014, 2.1. Note: the September 2014 guide provides updates to the March guide with respect to information on where to find additional resources on the rule; additional clarification on questions relating to the Loan Estimate and the 7 day waiting period; and, additional clarification on questions relating to Timing for Revisions to Loan Estimate. In this article, I will use the September Guide, endeavoring to provide text and citations as primary sources. The complete rule and the Official Interpretations are available at: <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/>

⁴ Idem. 3.1

⁵ § 1026.19(f)(1)(ii)

⁶ §§ 1026.19(f) and 1026.38

⁷ § 1026.19(f)(1)(i)

⁸ Comments 19(f)(1)(i)-2, -2.i, and -2.ii

⁹ § 1026.38(t)

¹⁰ § 1026.19(f)

¹¹ Comment 19(f)(1)(i)-1

¹² § 1026.19(f)(2)

¹³ § 1026.38(o)(5)

¹⁴ § 1026.2(a)(13)

¹⁵ § 1026.2(a)(13) and Comment 2(a)(13)-1

¹⁶ § 1026.38(t)

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¹⁷ § 1026.38(t)(3)(i)

¹⁸ § 1026.38(t)(3)(ii)

¹⁹ TILA-RESPA Integrated Disclosure Rule, Small Entity Compliance Guide - September 2014, Consumer Financial Protection Bureau, 16.4

²⁰ *Idem*, 16.1

²¹ *Ibid*

²² *Op. cit.* 18, 16.2

²³ The data standards to support the new Loan Estimate and Closing Disclosure forms will exist in MISMO version 3.3 and later. A common industry dataset, called the Uniform Closing Dataset (UCD), has been established to support the Consumer Financial Protection Bureau's (CFPB) Closing Disclosure. The Closing Disclosure is part of the CFPB's Integrated Mortgage Disclosures final rule under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z) which was published in the Federal Register on December 31, 2013. The UCD Appendix B: Closing Disclosure Mapping to the MISMO v3.3 Reference Model contains the data required by the CFPB's Closing Disclosure and is mapped to the Mortgage Industry Standards Maintenance Organization (MISMO) version 3.3 Residential Reference Model.

²⁴ *Op. cit.* 18, 16.3

²⁵ *Idem*

²⁶ *Ibid*

²⁷ Lawyers Title, *eJournal*, June 2014

²⁸ *Idem*

²⁹ *Ibid*

³⁰ *Ibid*

³¹ Integrated Mortgage Disclosures under the Real Estate Settlement Procedures Act (Regulation X) and the Truth In Lending Act (Regulation Z), 12 CFR Parts 1024 and 1026, Final rule; official interpretation, Bureau of Consumer Financial Protection, November 20, 2013

³² This is actually a longer lead time than the Bureau provided the new mortgage rules that came into effect on January 10th, 2014.

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CLOSING DISCLOSURE TABLE

December 2014

CATEGORY	SYNOPSIS
	GENERAL REQUIREMENTS
General requirements [§§ 1026.19(f) and 1026.38]	<ul style="list-style-type: none"> • For loans that require a Loan Estimate and that proceed to closing, creditors must provide a new final disclosure reflecting the actual terms of the transaction called the Closing Disclosure. • The form integrates and replaces the existing HUD-1 and the final TIL disclosure for these transactions. • Creditor is generally required to ensure that the consumer receives the Closing Disclosure no later than three business days before consummation of the loan. [§ 1026.19(f)(1)(ii)] • Closing Disclosure generally must contain the actual terms and costs of the transaction. [§ 1026.19(f)(1)(i)] • Creditors may estimate disclosures using the best information reasonably available when the actual term or cost is not reasonably available to the creditor at the time the disclosure is made. • Creditors must act in good faith and use due diligence in obtaining the information. • Creditor normally may rely on the representations of other parties in obtaining the information, including, for example, the settlement agent. • Creditor is required to provide corrected disclosures containing the actual terms of the transaction at or before consummation. [Comments 19(f)(1)(i)-2, -2.i, and -2.ii]

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	<ul style="list-style-type: none"> • Closing Disclosure must be in writing and contain the information prescribed in § 1026.38. The creditor must disclose only the specific information set forth in § 1026.38(a) through (s), as shown in the Bureau’s form in appendix H-25. [§ 1026.38(t)] • If the actual terms or costs of the transaction change prior to consummation, the creditor must provide a corrected disclosure that contains the actual terms of the transaction and complies with the other requirements of § 1026.19(f), including the timing requirements, and requirements for providing corrected disclosures due to subsequent changes. [Comment 19(f)(1)(i)-1] • New three-day waiting period. If the creditor provides a corrected disclosure, it may also be required to provide the consumer with an additional three-business-day waiting period prior to consummation. [§ 1026.19(f)(2)]
<p>Consummation and closing or settlement definitions</p> <p>[§ 1026.2(a)(13)]</p>	<ul style="list-style-type: none"> • Consummation may commonly occur at the same time as closing or settlement, but it is a legally distinct event. <ul style="list-style-type: none"> ○ Consummation occurs when the consumer becomes contractually obligated to the creditor on the loan; not, for example, when the consumer becomes contractually obligated to a seller on a real estate transaction. • The point in time when a consumer becomes contractually obligated to the creditor on the loan depends on applicable State law. [§ 1026.2(a)(13) and Comment 2(a)(13)-1] • Creditors and settlement agents should verify the applicable State laws to determine when consummation will occur, and make sure delivery of the Closing Disclosure occurs at least three business days before this event.
<p>Using the Bureau’s Closing Disclosure form</p> <p>[§ 1026.38(t)]</p>	<ul style="list-style-type: none"> • For any loans subject to the TILA-RESPA rule that are federally related mortgage loans subject to RESPA (which will include most mortgages), form H-25 is a standard form, the Bureau’s Closing Disclosure form, meaning creditors must use the form H-25. [§ 1026.38(t)(3)(i)] • For other transactions subject to the TILA-RESPA rule that are not federally related mortgage loans, form H-25 is a model form, meaning creditors are not strictly required to use form H-25, but the disclosures must contain the exact same information and be made with headings, content, and format substantially similar to form H-25. [§ 1026.38(t)(3)(ii)]
TIMING AND DELIVERY	
<p>Timing & Delivery</p>	<ul style="list-style-type: none"> • Creditor is responsible for ensuring that the consumer receives the Closing Disclosure form no later than three business days before consummation.

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[§ 1026.19(f)]	<p>[§ 1026.19(f)(1)(ii)(A); Comment 19(f)(1)(v)-3] See also, delivery via a settlement agent).</p> <ul style="list-style-type: none"> • Creditor is responsible for ensuring that the Closing Disclosure meets the content, delivery, and timing requirements. [§§ 1026.19(f) and 1026.38]
<p>Delivery Method [§ 1026.19(f)(1)(ii)]</p>	<ul style="list-style-type: none"> • By providing it to the consumer in person. • By mailing, or by other delivery methods, including email. • Electronic delivery methods subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001 et seq.; § 1026.38(t)(3)(iii)] • Creditors must ensure that the consumer receives the Closing Disclosure at least three business days prior to consummation. [§ 1026.19(f)(1)(ii)(A)]
<p>Consumer Receipt [§ 1026.19(f)(1)(iii)]</p>	<ul style="list-style-type: none"> • If the Closing Disclosure is provided in person, it is considered received by the consumer on the day it is provided. • If it is mailed or delivered electronically, the consumer is considered to have received the Closing Disclosure three business days after it is delivered or placed in the mail. [§ 1026.19(f)(1)(iii); Comment 19(f)(1)(ii)-2] • If the creditor has evidence that the consumer received the Closing Disclosure earlier than three business days after it is mailed or delivered, it may rely on that evidence and consider it to be received on that date. [Comments 19(f)(1)(iii)-1 and -2]
<p>Delivery by Settlement Agent [§ 1026.19(f)(1)(v)]</p>	<ul style="list-style-type: none"> • Creditors may contract with settlement agents to have the settlement agent provide the Closing Disclosure to consumers on the creditor’s behalf. • Creditors and settlement agents also may agree to divide responsibility with regard to completing the Closing Disclosure, with the settlement agent assuming responsibility to complete some or all the Closing Disclosure. [Comment 19(f)(1)(v)-4] • Any such creditor must maintain communication with the settlement agent to ensure that the Closing Disclosure and its delivery satisfy the requirements described above, and the creditor is legally responsible for any errors or defects. [§ 1026.19(f)(1)(v) and Comment 19(f)(1)(v)-3]
<p>Delivery to Seller [§ 1026.19(f)(4)(i)]</p>	<ul style="list-style-type: none"> • The settlement agent is required to provide the seller with the Closing Disclosure reflecting the actual terms of the seller’s transaction. • The settlement agent may comply with this requirement by providing the seller with a copy of the Closing Disclosure provided to the consumer (buyer) if it also contains information relating to the seller’s transaction.

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	<p>[Comment 19(f)(4)(i)-1]</p> <ul style="list-style-type: none"> The settlement agent may also provide the seller with a separate disclosure, including only the information applicable to the seller’s transaction from the Closing Disclosure. [§ 1026.38(t)(5)(v) or (vi), as applicable] NOTE: If the seller’s disclosure is provided in a separate document, the settlement agent has to provide the creditor with a copy of the disclosure provided to the seller. [§ 1026.19(f)(4)(iv)]
Multiple Transactions [§ 1026.17(d)]	<ul style="list-style-type: none"> In rescindable transactions, the Closing Disclosure must be given separately to each consumer who has the right to rescind under TILA, although the disclosures required for adjustable rate mortgages need only be provided to the consumer who expresses an interest in a variable-rate loan program. [§ 1026.19(b)] In transactions that are not rescindable, the Closing Disclosure may be provided to any consumer with primary liability on the obligation. NOTE: The CFPB provides this implementation tip – “some creditors may desire that each obligor to a transaction subject to § 1026.19(f) receive a Closing Disclosure to obtain a signature of customary recitals or certifications that are appended to the disclosure pursuant to § 1026.38(t)(5).”
Delivery timing to consumer [§ 1026.19(f)(1)(ii)]	<ul style="list-style-type: none"> Creditors must ensure that consumers receive the Closing Disclosure no later than three business days before consummation. [§ 1026.19(f)(1)(ii)(A)] Consummation is the time that a consumer becomes contractually obligated on the credit transaction, and may not necessarily coincide with the settlement or closing of the entire real estate transaction. [§ 1026.2(a)(13)] Timeshare transactions: the creditor must ensure that the consumer receives the Closing Disclosure no later than consummation. [§ 1026.19(f)(1)(ii)(B)]
Business Days [§§ 1026.2(a)(6), 1026.19(f)(1)(ii)(A) and (f)(1)(iii)]	<ul style="list-style-type: none"> For purposes of providing the Closing Disclosure, the term business day means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year’s Day, the Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. This requirement imposes a three-business-day waiting period, meaning that the loan may not be consummated less than three business days after the Closing Disclosure is received by the consumer. If a settlement is

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	<p>scheduled during the waiting period, the creditor generally must postpone settlement, unless a settlement within the waiting period is necessary to meet a bona fide personal financial emergency. [§ 1026.19(f)(1)(iv)]</p> <p>NOTE: Business day is given a different meaning for purposes of providing the Closing Disclosure than it is for purposes of providing the Loan Estimate after receiving a consumer’s application.</p>
<p>Waiving the three- business-day waiting period [§ 1026.19(f)(1)(iv)]</p>	<ul style="list-style-type: none"> • Consumers may waive or modify the three-business-day waiting period when: <ul style="list-style-type: none"> ○ The extension of credit is needed to meet a bona fide personal financial emergency. [§ 1026.19(f)(1)(iv)]; ○ The consumer has received the Closing Disclosure; and ○ The consumer (1) gives the creditor a dated written statement that describes the emergency, (2) specifically modifies or waives the waiting period, and (3) bears the signature of all consumers who are primarily liable on the legal obligation. [§ 1026.19(f)(1)(iv)] • The creditor is prohibited from providing the consumer with a pre-printed waiver form. [§ 1026.19(f)(1)(iv)] <p>NOTE: The CFPB provides this implementation tip – “for example, the imminent sale of the consumer’s home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, may be considered a bona fide personal financial emergency.” [Comment 19(f)(1)(iv)-1]</p>
<p>Corrected Closing Disclosures three-business-day waiting period [§ 1026.19(f)(2)(i) and (ii)]</p>	<ul style="list-style-type: none"> • The three-business-day waiting period requirement applies to a corrected Closing Disclosure that is provided when there are: <ul style="list-style-type: none"> ○ Changes to the loan’s APR; ○ Changes to the loan product; or, ○ The addition of a prepayment penalty. • If other types of changes occur, creditors must ensure that the consumer receives a corrected Closing Disclosure at or before consummation. [§ 1026.19(f)(2)(i) and (ii)]
<p>Settlement agent timing delivery to the seller [§ 1026.19(f)(4)(ii)]</p>	<p>The settlement agent must provide the seller its copy of the Closing Disclosure no later than the day of consummation. [§ 1026.19(f)(4)(ii)]</p>
<p>Imposing average charges instead of actual amount</p>	<ul style="list-style-type: none"> • Amount imposed on the consumer for any settlement service must not exceed the amount the settlement service provider actually received for

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<p>received</p> <p>[§ 1026.19(f)(3)(i)-(ii)]</p>	<p>that service. However, an average charge may be imposed instead of the actual amount received for a particular service, as long as the average charge satisfies certain conditions.</p> <p>[§ 1026.19(f)(3)(i)-(ii); Comment 19(f)(3)(i)-1]</p> <ul style="list-style-type: none"> • An average charge may be used if the following conditions are satisfied [§ 1026.19(f)(3)(ii)]: <ul style="list-style-type: none"> ○ The average charge is no more than the average amount paid for that service by or on behalf of all consumers and sellers for a class of transactions; ○ The creditor or settlement service provider defines the class of transactions based on an appropriate period of time, geographic area, and type of loan; ○ The creditor or settlement service provider uses the same average charge for every transaction within the defined class; and ○ The creditor or settlement service provider does not use an average charge: <ul style="list-style-type: none"> ▪ For any type of insurance; ▪ For any charge based on the loan amount or property value; or, ▪ If doing so is otherwise prohibited by law. • If the creditor develops representative samples of specific settlement costs for a particular class of transactions, the creditor may charge the average cost for that settlement service instead of the actual cost for such transactions. An average-charge program may not be used in a way that inflates the cost for settlement services overall. <p>[Comment 19(f)(3)(ii)-1]</p> <ul style="list-style-type: none"> • Creditors should consult the commentary to § 1026.19(f)(3)(ii) for additional guidance on using average-charge pricing. <p>[See Comments 19(f)(3)(ii)-1 through -9]</p>
REVISIONS AND CORRECTIONS	
<p>Timing to correct or revise</p> <p>[§ 1026.19(f)(2)]</p>	<ul style="list-style-type: none"> • Creditors must redisclose terms or costs on the Closing Disclosure if certain changes occur to the transaction after the Closing Disclosure was first provided that cause the disclosures to become inaccurate. • There are three categories of changes that require a corrected Closing Disclosure containing all changed terms: <ul style="list-style-type: none"> ○ Changes that occur before consummation that require a new three-business-day waiting period. [§ 1026.19(f)(2)(ii)] ○ Changes that occur before consummation and do not require a new three-business- day waiting period. [§ 1026.19(f)(2)(i)] ○ Changes that occur after consummation. [§ 1026.19(f)(2)(iii)]

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<p>Changes before consummation requiring new waiting period</p> <p>(§ 1026.19(f)(2)(ii))</p>	<ul style="list-style-type: none"> • If one of the following occurs after delivery of the Closing Disclosure and before consummation, the creditor must provide a corrected Closing Disclosure containing all changed terms and ensure that the consumer receives it no later than three business days before consummation: [§ 1026.19(f)(2)(ii); Comment 19(f)(2)(ii)-1] <ul style="list-style-type: none"> ○ The disclosed APR becomes inaccurate: If the annual percentage rate (APR) previously disclosed becomes inaccurate, the creditor must provide a corrected Closing Disclosure with the corrected APR disclosure and all other terms that have changed. The APR's accuracy is determined according to § 1026.22. [§ 1026.19(f)(2)(ii)(A)] ○ The loan product changes: If the loan product previously disclosed becomes inaccurate, the creditor must provide a corrected Closing Disclosure with the corrected loan product and all other terms that have changed. [§ 1026.19(f)(2)(ii)(B)] ○ A prepayment penalty is added: If a prepayment penalty is added to the transaction, the creditor must provide a corrected Closing Disclosure with the prepayment penalty provision disclosed and all other terms that have changed. [§ 1026.19(f)(2)(ii)(C)] <p>Note: This period may be waived if the consumer is facing a <i>bona fide</i> personal financial emergency. [§ 1026.19(f)(1)(iv)]</p>
<p>Changes not requiring a new three-day waiting period</p> <p>[§ 1026.19(f)(2)(i)]</p>	<ul style="list-style-type: none"> • For any other changes before consummation that do not fall under the three categories above (i.e., related to the APR, loan product, or the addition of a prepayment penalty), creditor still must provide a corrected Closing Disclosure with any terms or costs that have changed and ensure that the consumer receives it. • For these changes, there is no additional three-business-day waiting period required. Creditor must ensure only that the consumer receives the revised Closing Disclosure at or before consummation. [§ 1026.19(f)(2)(i); Comment 19(f)(2)(i)-1 through -2]
<p>Consumer requests revised Closing Disclosure before consummation</p> <p>[§ 1026.19(f)(2)(i)]</p>	<ul style="list-style-type: none"> • For changes other than to the APR, loan product, or the addition of a prepayment penalty, creditor is not required to provide the consumer with the revised Closing Disclosure until the day of consummation. However, a consumer has the right to inspect the Closing Disclosure during the business day before consummation. [§ 1026.19(f)(2)(i)] • If a consumer asks to inspect the Closing Disclosure the business day before consummation, the Closing Disclosure presented to the consumer must

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	<p>reflect any adjustments to the costs or terms that are known to the creditor at the time the consumer inspects it. [§ 1026.19(f)(2)(i)]</p> <ul style="list-style-type: none"> • Creditors may arrange for settlement agents to permit consumers to inspect the Closing Disclosure. [§ 1026.19(f)(1)(v) and Comment 19(f)(2)(i)-2] <p>NOTE: An example of a post-consummation event that would require a new Closing Disclosure is a discovery that a recording fee paid by the consumer is different from the amount that was disclosed on the Closing Disclosure. [Comment 19(f)(2)(iii)-1.i]</p> <p>Other post-consummation events that are not related to settlement, such as tax increases, do not require a revised Closing Disclosure. [Comment 19(f)(2)(iii)-1.iii]</p> <p>Guidance on when a creditor receives information sufficient to establish that an event has occurred after consummation, see Comment 19(e)(4)(i)-1.</p>
<p>Creditors required to provide corrected Closing Disclosures if terms or costs change after consummation</p> <p>[§ 1026.19(f)(2)(iii)]</p>	<ul style="list-style-type: none"> • Limited circumstances. Creditor must provide a corrected Closing Disclosure if an event in connection with the settlement occurs during the 30-calendar-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount paid by the consumer from what was previously disclosed. § 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1 • When a post-consummation event requires a corrected Closing Disclosure, creditors must deliver or place in the mail a corrected Closing Disclosure not later than 30 calendar days after receiving information sufficient to establish that such an event has occurred. [§ 1026.19(f)(2)(iii); Comment 19(f)(2)(iii)-1]
<p>Correcting Closing Disclosure if post-consummation event affects amount paid by seller</p> <p>[§ 1026.19(f)(4)(ii)]</p>	<ul style="list-style-type: none"> • Settlement agents must provide a revised Closing Disclosure if an event related to the settlement occurs during the 30-day period after consummation that causes the Closing Disclosure to become inaccurate and results in a change to an amount actually paid by the seller from what was previously disclosed. • The settlement agent must deliver or place in the mail a corrected Closing Disclosure not later than 30 calendar days after receiving information sufficient to establish that such an event has occurred. [§ 1026.19(f)(4)(ii)]
<p>Clerical errors discovered after consummation subject to the redisclosure obligation</p>	<ul style="list-style-type: none"> • Creditors must provide a revised Closing Disclosure to correct non-numerical clerical errors and document refunds for tolerance violations no later than 60 calendar days after consummation. [§ 1026.19(f)(2)(iv)-(v)] <p>NOTE: An error is clerical if it does not affect a numerical disclosure and</p>

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<p>[§ 1026.19(f)(2)(iv); Comment 19(f)(2)(iv)-1]</p>	<p>does not affect the timing, delivery, or other requirements that are imposed by § 1026.19(e) or (f). [Comment 19(f)(2)(iv)-1] Examples:</p> <ul style="list-style-type: none"> ○ If the Closing Disclosure identifies the incorrect settlement service provider as the recipient of a payment, the error would be considered clerical because it is non-numerical and does not affect any of the delivery requirements set forth in § 1026.19(e) or (f). ○ However, if the Closing Disclosure lists the wrong property address, which affects the delivery requirement imposed by § 1026.19(e) or (f), the error would not be considered clerical.
<p>Corrected Closing Disclosures when refunding money to cure tolerance violations</p> <p>[§ 1026.19(f)(2)(v)]</p>	<p>If the creditor cures a tolerance violation by providing a refund to the consumer, the creditor must deliver or place in the mail a corrected Closing Disclosure that reflects the refund no later than 60 calendar days after consummation. [§ 1026.19(f)(2)(v)]</p>

Source: TILA-RESPA Integrated Disclosure Rule, Small Entity Compliance Guide - September 2014, Consumer Financial Protection Bureau. The Closing Disclosure Table is extrapolated from several sections of this guide, as a primary source, in order to provide text and citations.

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This Closing Disclosure Table accompanies a White Paper, entitled “RESPA/TILA Integration – Part II: Closing Disclosure,” by Jonathan Foxx, President & Managing Director of Lenders Compliance Group, published December 2014 in National Mortgage Professional Magazine. This White Paper and Closing Disclosure Table constitute the second part of a four-part series, with accompanying charts, tables, and form specimens, appearing in National Mortgage Professional Magazine.

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