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## Closing Disclosure: Deep Dive – Pages One and Two

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This is the fourth 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 and sixth part to discuss additional features of the Closing Disclosure. In this article, I will take you through a review of [Page One](#) and [Page Two](#) of the Closing Disclosure. In the 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).[i] The second article introduced and treated the numerous features of the Closing Disclosure (CD).[ii] In the third article, I provided the salient features of the Loan Estimate, in considerable detail.[iii] The first two articles were accompanied by detailed tables to be used for certain itemized categories and action requirements.

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 Bureau (CFPB).

One of the reasons I have written this series is to cut through the information noise. My concern stems from the nearly profiteering stance of the flourishing punditry to opine on TRID. This approach to learning seems to have become the norm recently at conferences, conventions, webinars, seminars, lectures, and pricey city-to-city forums. Indeed, also, people with no real experience in directing regulatory compliance, though having some training background, seem to hang out their TRID webinar shingle. I view the latter as but skills for generating leads for their affiliated pundits.

I happen to think that TRID is too important, being a generational change in disclosure, to hog the helpful information about TRID by charging a fee just so somebody could attend and possibly learn something about it. With that in mind, my firm recently established two proactive paths to a TRID knowledgebase:

- (1) We established the TEAM TRID™ task force,[iv] 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,[v] 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)).

Hopefully, you will have read the previous three articles. Now we will continue a detailed review of the new disclosures, by providing this fourth article on the Closing Disclosure. As indicated above, a fifth and sixth article will further elucidate the Closing Disclosure analysis.

In focusing on the Closing Disclosure, I will offer a perspective of its pertinent and critical highlights. As I have stated throughout this series, I caution you to realize that this review is not exhaustive or comprehensive, given that the TRID rule contains very complex disclosure requirements, and there are on-going updates and interpretations involving its implementation, some of which are borne of the CFPB's own issuances as well as the areas that may be subject to litigation.

Please consider my analysis carefully. Follow along with a copy of the Closing Disclosure. I will provide,

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where helpful, some information as **SUGGESTED GUIDANCE**. Allow at least two hours to consider this explication. And as I have admonished all along, make notes, raise questions, and seek answers from competent compliance professionals!

There are five pages to the Closing Disclosure. We will visit each of them, with particular interest in understanding their key features. Although I will take the CD somewhat in order, it should be noted that this method of explanation is not meant to suggest that each Closing Disclosure contains five pages or that in all instances the information described appears on that page in the same order. For example, Regulation Z allows an alternative “Calculating Cash to Close” table for transactions without sellers.[vi]

### PAGE ONE

The first page of the Closing Disclosure includes General Information, the Loan Terms table, the Projected Payments table, and the Costs at Closing table. The CD begins with the title “Closing Disclosure” and a form purpose statement, followed by three columns of basic information headed “Closing Information,” “Transaction Information,” and “Loan Information.”[vii] The page then includes three tables: “Loan Terms,” “Projected Payments,” and “Costs at Closing.”[viii] The text itself is required for federally related mortgage loans subject to TILA-RESPA disclosure integration. Note should be taken that the model form is for transactions subject to TILA only and not RESPA.

#### CLOSING INFORMATION

Under the heading “Closing Information,” the creditor must disclose:

- (1) Date Issued;
- (2) Closing Date;
- (3) Disbursement Date;
- (4) Settlement Agent;
- (5) File #;
- (6) Property; and
- (7) Sale Price or Appraised Prop. Value.

Under RESPA’s Regulation X, there is a requirement for listing the name of the settlement agent, place of settlement, property location, and settlement date.[ix] The CD discloses the same information, excluding the place of settlement, plus the date the disclosure is issued; the date funds are disbursed to the seller or consumer, as applicable; the sale price or appraised value of the property; and the file number assigned to the transaction by the closing agent.[x]

Let’s look more closely at how this section of the CD is assembled.

#### **DATE ISSUED**

The creditor must disclose the date the CD is delivered to the consumer, regardless of the method of delivery, labeled “Date Issued.”[xi]

#### **CLOSING DATE**

The creditor must disclose the consummation date for the transaction, labeled “Closing Date.”[xii]

#### **ADDITIONAL GUIDANCE**

In some transactions, the consummation date may change after the delivery of the CD, such as when the consumer waives the three-day waiting period between delivery of the CD and consummation.

Under TILA, creditors are required to use the best information reasonably available to them to complete the CD, so the Closing Date will be based on that best information.[xiii] If the disclosure previously provided becomes inaccurate, the creditor must deliver a revised CD at consummation and the revised CD would disclose the actual consummation date. Accordingly, either consummation will occur on the date the creditor initially disclosed and be accurate, or the creditor will be required to revise the CD to reflect the date on which consummation actually occurs - and in either case the CD will reflect the actual date of consummation and not an estimate.

#### **DISBURSEMENT DATE**

TILA requires the creditor to disclose the date on which the “Closing Costs Financed (Paid from your Loan Amount)” in the Calculating Cash to Close table on page 3 of the Closing Disclosure, and “Cash From or To Seller” on page 3 of the Closing Disclosure, are expected to be paid to the consumer and seller, respectively, and labeled “Disbursement Date.”[xiv]

In a transaction that is not a purchase transaction, the creditor must disclose the date the amount of the consumer’s Loan Amount and/or Payoffs and Payments (in the Calculating Cash to Close table on page 3) is/are expected to be paid to the consumer or a third party.

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**SETTLEMENT AGENT**

Creditors must disclose the identity of the settlement agent conducting the closing, labeled "Settlement Agent." [xv] The name of the entity that employs the settlement agent should be provided; however, the name of the individual conducting the closing is not required.

**FILE NUMBER**

The CD must include the number assigned to the transaction by the closing agent for identification purposes, labeled "File #." The file number may contain any alphanumeric characters and need not be limited to numerals. [xvi]

**PROPERTY**

In this part of the CD, include the street address of the property, labeled "Property." This item must include the address, including zip code, of the property that secures or will secure the transaction or, if the address is unavailable, the location of the property using a zip code. (A creditor complies by disclosing a complete address as approved by the U.S. Postal Service.)

**SALE PRICE**

In a credit transaction involving a seller, the creditor must disclose the sale price for the property, labeled "Sale Price." In transactions not involving a seller (such as in a refinancing), the creditor must disclose the appraised value of the property, labeled "Appraised Prop. Value."

If no seller is a party to the transaction, the value to be disclosed is that determined by the appraisal or valuation used to underwrite the transaction, or if the creditor has obtained a more recent appraisal or valuation, the value determined by the more recent appraisal or valuation. For refinances where an appraisal is not obtained, the creditor may disclose an estimated property value and the label should be changed to "Estimated Prop. Value."

The creditor may use the estimate provided by the consumer at application, or if the creditor has performed its own estimate of the property value it may use that estimate if it is the value the creditor used to determine approval of the transaction. If personal property is included in the sale price of real property, the creditor may disclose the aggregate price without a reduction for the appraised or estimated value of the personal property. [xvii]

**TRANSACTION INFORMATION**

In the second column near the top of page 1 of the CD, the creditor discloses the names and addresses of the parties to the transaction (i.e., borrower, seller, and lender, as applicable) under the heading "Transaction Information." [xviii]

**SUGGESTED GUIDANCE**

- **Name and Address.** The name and mailing address for each consumer and seller must be provided, and if the names and mailing addresses do not fit in the space allocated on the Loan Disclosure, an additional page may be appended to the end of the form. [xix]
- **Addendum.** If the form does not provide enough space to include the required information for each seller, an addendum may be used, provided the creditor complies with the form requirements. [xx]
- **No Seller.** In transactions with no seller, such as a refinancing or home equity loan, the creditor must provide the name of the person or persons primarily liable under the obligation or who have a right of rescission. The disclosure of the seller's name and address may be left blank. [xxi]
- **Multiple Creditors.** If a credit transaction involves more than one creditor, the creditors must choose which one of them will provide the CD and a single, complete set of disclosures must be provided. [xxii]
- **To Whom Delivered.** If the transaction is rescindable, a CD must be provided separately to each consumer who has the right to rescind. In transactions that are not rescindable, a CD may be provided to any consumer with primary liability on the obligation.

**LOAN INFORMATION**

In the third column near the top of page 1 of the CD, the creditor discloses information about the loan under the heading "Loan Information." [xxiii] With the exception of the mortgage insurance case number (labeled "MIC #"), the information mirrors the basic loan information disclosures required at the top right of

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Loan Estimate: Deep Dive

page 1 of the Loan Estimate: (1) Loan Term; (2) Purpose; (3) Product; (4) Loan Type; (5) Loan ID #; and (6) MIC #.

NOTE: The Rate Lock disclosure of the Loan Estimate does not appear on the Closing Disclosure because it is no longer relevant.

#### **SUGGESTED GUIDANCE**

- The Loan ID numbers on the Loan Estimate and Closing Disclosure must match. If a creditor uses the same loan ID number on several revised Loan Estimates, but adds after the number a hyphen and a number to denote the number of revised Loan Estimates in sequence, the creditor must disclose the loan ID number before the hyphen.[xxiv]
- A settlement company may use a different identification number for a transaction, which would be disclosed not in this column but as "File #" under the Closing Information column.
- The Loan ID # must be one that enables the creditor, consumer, and other parties to identify the transaction as the same transaction disclosed on the Loan Estimate.
- The Loan ID # may contain any alphanumeric character, which means that the number need not be limited to numerals.

#### **LOAN TERMS TABLE**

Creditors use a table to disclose key loan terms that mirror the Loan Terms table that appeared on the Loan Estimate.[xxv]

#### **PROJECTED PAYMENTS TABLE**

Under Regulation Z, the creditor is required to disclose a table that mirrors the Projected Payments table on the Loan Estimate, except for:[xxvi]

- (1) the added cross-reference in the statement "Amount can increase over time See page 4 for details" that appears under the "Estimated Taxes, Insurance & Assessment" subheading;
- (2) the different cross-reference in the statement "See Escrow Account on page 4 for details. You must pay for other property costs separately" that appears on the right side of the same row; and
- (3) the different rules applied for determining escrow payments.

Another difference from the Loan Estimate is that all amounts include cents.[xxvii]

#### **DETERMINING ESCROW PAYMENTS**

There are different rules for determining escrow payments are two:

- (1) For transactions subject to RESPA, the estimated escrow payments are determined under the escrow account analysis described in Regulation X.[xxviii]
- (2) For transactions not subject to RESPA, the estimated escrow payments may be determined under the escrow account analysis described in Regulation X or in the manner set forth in Regulation Z for the same escrow payment disclosure on the Loan Estimate.[xxix]

RESPA specifies how a creditor conducting an escrow account analysis must estimate disbursement amounts.[xxx] Briefly put:

- A. If the creditor knows the charge for a particular escrow item, the creditor must use that amount in estimating the disbursement.
- B. If the creditor does not know the charge, the creditor may base the estimate on the preceding year's charge, but may adjust the estimate to account for inflation.

Without getting into an extended observation in this article, I think the foregoing requirement that the creditor use actual charges, if known, may conflict with the TILA requirement[xxxi], as amended by the Dodd-Frank Act, that the creditor take into account the replacement costs of the property for hazard insurance when determining the estimated escrow account.

Under TILA,[xxxii] for consumer credit transactions secured by a first mortgage on the principal dwelling of the consumer (other than a reverse mortgage or open-end credit plan), the creditor is required to take into account the taxable assessed value of the property during the first year after consummation, including the value of any improvements constructed or to be constructed on the property, if known, and the replacement costs of the property for hazard or flood insurance, when disclosing estimated escrow payments. The Loan Estimate generally incorporates these statutory provisions, but expands the requirements to all transactions subject to disclosure integration.[xxxiii]

Clearly, the CFPB believes the TILA requirement for estimating escrow payments is appropriate for the Loan Estimate because it requires creditors to use a uniform standard for estimates and facilitates comparison, the disclosure of actual payment amounts, when known, is more appropriate for the CD to

avoid conflict with Regulation X. Accordingly, the CFPB used its regulatory flexibility authority to modify the TILA requirements<sup>[xxxiv]</sup> for the estimation of escrow payment amounts on the CD, implementing the two rules stated above, one for RESPA transactions and one for non-RESPA transactions.

#### **SUGGESTED GUIDANCE**

- The amount of estimated escrow payments disclosed on the CD is considered accurate if it differs from the estimated escrow payment disclosed on the Loan Estimate due to the escrow account analysis described in Regulation X.<sup>[xxxv]</sup>
- The creditor must disclose taxes, insurance and assessment information on the Projected Payments table even when no escrow account will be established.

#### **COSTS AT CLOSING TABLE**

##### **STANDARD COSTS AT CLOSING TABLE**

Creditors must disclose the cash required from the consumer at consummation, with a breakdown of the amounts of loan costs and other costs associated with the transaction.<sup>[xxxvi]</sup>

This information must be included in a table entitled “Costs at Closing” nearly identical to the Loan Estimate’s “Costs at Closing” table, with the following differences:

- (1) the headings “Closing Costs” and “Cash to Close” appear without the word “Estimated;” and
- (2) the cross-reference to “Calculating Cash to Close” refers to page 3 instead of page 2.

Another difference from the Loan Estimate is that all amounts include cents.

##### **ALTERNATIVE COSTS AT CLOSING TABLE**

There is an alternative “Costs at Closing” disclosure<sup>[xxxvii]</sup> with a “From Borrower” check box for cash-out refinances (i.e., transactions without a seller).<sup>[xxxviii]</sup> If the Loan Estimate disclosed the optional alternative table,<sup>[xxxix]</sup> then this alternative CD table is required. Also, if this alternative CD table is used, then the creditor must use the optional alternative “Calculating Cash to Close Table” on page 3.

## **PAGE TWO**

#### **LOAN COSTS AND OTHER COSTS TABLES**

The Closing Disclosure must contain final details about the loan costs and other costs estimated in the “Loan Costs” and “Other Costs” tables on the Loan Estimate, using expanded versions of those tables headed “Loan Costs” and “Other Costs” under the master heading of “Closing Cost Details.”<sup>[xl]</sup> Disclosure items must appear in the same lettered categories as, using terminology consistent with, and in the same sequential order as, the Loan Estimate, facilitating the comparison of estimated and final loan terms and costs (with adjustments for charges that move from “Services Borrower Did Not Shop For” to “Services Borrower Did Shop For,” or vice versa, between the Loan Estimate and the Closing Disclosure). When items are added on the Closing Disclosure, subcategories must be re-alphabetized to reflect the addition(s).<sup>[xli]</sup>

#### **TWO-DIGIT LINE NUMBERING SYSTEM AND 3 OR 5 COLUMNS**

The CD adds a two-digit line numbering system, in contrast to the three-digit numbering system used on the RESPA HUD-1/1A settlement statement. For each item, the creditor must identify any third party providing the service, if applicable. Also, for each item, the creditor must use three (if no seller is involved) or five (if a seller is involved) columns to separate fees, as follows:

- (1) Borrower-Paid/At Closing;
- (2) Borrower-Paid/Before closing;
- (3) Seller-Paid/At closing;
- (4) Seller-Paid/Before Closing; and
- (5) Paid by Others.

The “Paid by Others” column does not distinguish between charges paid before or at closing because the distinction is not essential for determining the amounts due to or from the consumer and seller at consummation.

As with the Loan Estimate, the creditor must itemize its other charges after these specified charges within each appropriate category, in alphabetical order.

Charges disclosed in the Loan Costs and Other Costs tables under “Paid by Others” to include a notation of “(L)” to designate those charges paid by the creditor (lender) pursuant to the legal obligation between the creditor and the consumer,<sup>[xlii]</sup> thereby enabling a clear enumeration of how a lender credit was applied.<sup>[xliii]</sup>

## **LOAN COSTS TABLE**

### **GENERAL DESCRIPTION**

Like the Loan Costs table on the Loan Estimate, the Closing Disclosure's Loan Cost table includes subcategories A through C, followed by "D. TOTAL LOAN COSTS":

#### Loan Costs

- A. Origination Charges
- B. Services Borrower Did Not Shop For
- C. Services Borrower Did Shop For
- D. TOTAL LOAN COSTS (Borrower-Paid)

### **ORIGINATION CHARGES**

The first subcategory of loan costs in the Loan Costs table, labeled as "A. Origination Charges," includes all compensation paid to a loan originator; that is, a third party associated with the transaction, regardless of the party that pays the compensation.[xliv] Generally, the amounts should correspond to the same items disclosed as "Origination Charges" on the Loan Estimate.

Compensation from the consumer to a third-party loan originator is designated as borrower-paid at or before closing, as applicable. Compensation from the creditor to a third-party loan originator is designated as paid by others.[xlv]

### **SUGGESTED GUIDANCE**

- There is a prohibition of compensation from both the consumer and the creditor to the loan originator.[xlvi]
- The creditor must provide the identity of any third-party loan originator that ultimately receives compensation from the creditor.
- The amount of compensation paid to a third-party loan originator by a creditor must be calculated according to the guidance for calculating creditor-paid compensation for the purposes of determining the amount of points and fees.[xlvii] The amount would include the dollar value of salaries, commissions, and any financial or similar compensation considered points and fees.[xlviii]
- Regulation Z exempts from disclosure the amounts paid to the employee of a loan originator organization, which are excluded in the points and fees calculation.[xlix]

### **SERVICES BORROWER DID NOT SHOP FOR**

The second subcategory of loan costs in the Loan Costs table, labeled as "B. Services Borrower Did Not Shop For," includes costs of services required by the creditor and provided by persons other than the creditor for which the consumer could not or did not shop. The creditor must provide the identity of the person ultimately receiving the payment. The creditor must include any additional items of this sort it required but did not disclose on the Loan Estimate.[i]

### **SERVICES BORROWER DID SHOP FOR**

The third subcategory of loan costs in the Loan Costs table, labeled as "C. Services Borrower Did Shop For," includes services required by the creditor for which the consumer independently shopped. The creditor must provide the identity of the person ultimately receiving the payment. All services disclosed on the Loan Estimate as "Services Borrower Did Shop For" but for which the consumer did not shop must be moved to "Services Borrower Did Shop For" on the Closing Disclosure.[ii]

### **TOTAL LOAN COSTS AND SUBTOTAL OF LOAN COSTS**

In the last two rows of the Loan Costs table, the creditor must disclose the total loan costs amount, labeled "D. TOTAL LOAN COSTS (Borrower-Paid)," which is the sum of the Loan Costs disclosed in the "Borrower Paid/At Closing" and "Borrower Paid/Before Closing" columns.

Underneath this number, in the appropriate columns, the creditor must include the subtotals for the costs disclosed in the "Borrower-Paid/At Closing" and "Borrower-Paid/Before Closing" columns for "A. Origination Charges," "B. Services Borrower Did Not Shop For," and "C. Services Borrower Did Shop For." Charges designated seller-paid at or before closing, or paid by others, are not subtotaled here.[iii]

## **OTHER COSTS TABLE**

### **GENERAL DESCRIPTION**

Like the Other Costs table on the Loan Estimate, the Closing Disclosure's Other Costs table include subcategories E through H, followed by "I. TOTAL OTHER COSTS" and "J. TOTAL CLOSING COSTS," as follows:[iiii]

- Other Costs
- E. Taxes and Other Government Fees
- F. Prepaids
- G. Initial Escrow Payment at Closing
- H. Other
- I. TOTAL OTHER COSTS (Borrower-Paid)
- J. TOTAL CLOSING COSTS (Borrower-Paid)

#### **TAXES AND OTHER GOVERNMENT FEES**

The first subcategory of Other Costs in the Other Costs table, labeled “E. Taxes and Other Government Fees,” includes the same items disclosed under this subcategory on the Loan Estimate.[liv]

#### **SUGGESTED GUIDANCE**

- Unlike for the Loan Estimate, the CD requires itemization of the transfer taxes[iv] and does not require all transfer taxes to be aggregated on one line.[lvi]
- The itemization of transfer taxes must reflect the actual division of transfer taxes between the consumer and seller, instead of only including the transfer taxes that the consumer could pay as is required on the Loan Estimate, because any negotiations between the consumer and seller will be resolved by consummation.
- The creditor must include the name of the government entity assessing the transfer tax.
- Transfer taxes may be itemized as provided in state or local law and the real estate purchase contract.

#### **PREPAIDS**

The second subcategory of Other Costs, labeled “F. Prepaids,” includes the items disclosed under this subcategory on the Loan Estimate. The creditor must include the name of the person ultimately receiving the payment, except for the disclosure of Prepaid Interest, and the total of the itemized Prepaids.[lvii]

#### **SUGGESTED GUIDANCE**

- The interest rate used to determine the amount of Prepaid Interest is the Interest Rate disclosed on page one of the Closing Disclosure.[lviii]
- Prepaid Interest is disclosed as a negative number if the calculation results in a negative number.[lix]
- If interest is not collected for a portion of a month or other period between closing and the date from which interest will be collected with the first monthly payment, then \$0 must be disclosed under Prepaid Interest.[lx]
- Property taxes are the items that meet the definition of “mortgage-related payments”:[lxi] “[o]bligations that are related to the ownership or use of real property and paid to a taxing authority, whether on a monthly, quarterly, annual, or other basis,” including “obligations that are equivalent to property taxes, even if such obligations are not denominated as ‘taxes.’”[lxii]

#### **INITIAL ESCROW PAYMENT AT CLOSING**

The third subcategory of Other Costs, labeled “G. Initial Escrow Payment at Closing,” includes the items disclosed under this subcategory on the Loan Estimate along with their actual cost, the applicable aggregate adjustment under TILA,[lxiii] and the total of the items.[lxiv]

#### **SUGGESTED GUIDANCE**

- The creditor must state the amounts it requires the consumer to place into a reserve or escrow account at consummation to be applied to recurring charges for property taxes, homeowner’s and similar insurance, mortgage insurance, homeowner’s association dues, condominium dues, and other periodic charges.[lxv]
- Each charge must be identified with a relevant label, monthly payment amount, and the number of months’ payments collected at consummation.[lxvi]
- The method used to determine the aggregate adjustment for purposes of establishing the reserve or escrow account is described in TILA, the methodology for which is illustrated in Appendix E to RESPA Regulation X.[lxvii] Result of the calculation will always be a negative number or zero, except for amounts due to rounding.[lxviii]
- Escrow payments are paid to a creditor (or a mortgage servicer if one has been identified at closing), while prepaid amounts generally are paid to third parties.
- The aggregate adjustment[lix] must be listed as the last item disclosed under the “Initial Escrow Payment at Closing” subheading.[lxx]
- Amounts disclosed under this subheading are those amounts[lxxi] included in the definition of “escrow account” under RESPA.[lxxii]

#### **OTHER**

The fourth subcategory of Other Costs, labeled “H. Other,” like the same subcategory on the Loan Estimate, lists other services required or obtained in the real estate closing by the consumer, seller, or other party (and not required by the creditor or disclosed elsewhere on the Closing Disclosure). The label for any cost that is a component of title insurance must begin with “Title—.” The label for costs of premiums for separate insurance, warranty, guarantee, or event-coverage products must include the parenthetical “(optional)” at the end.[<sup>lxxiii</sup>]

#### **SUGGESTED GUIDANCE**

- Charges falling in this subcategory include all real estate brokerage fees, homeowner’s or condominium association charges paid at closing, home warranties, inspection fees, and other fees that are part of the real estate transaction but not required by the creditor or disclosed elsewhere in Closing Cost Details.
- The creditor must calculate any owner’s title insurance premium in a jurisdiction that permits simultaneous issuance title insurance rates by using the full owner’s title insurance premium, adding any simultaneous issuance premium for issuance of lender’s coverage, and then deducting the full premium for lender’s coverage disclosed under Services Borrower Did Not Shop For or Services Borrower Did Shop For.[<sup>lxxiv</sup>]
- The cost of a premium for an owner’s title insurance policy must always be labeled with “Title—” at the beginning, and labeled “(optional)” at the end when designated borrower-paid at or before closing.[<sup>lxxv</sup>]
- The total amount of the real estate commission charged by any real estate brokerage must be disclosed under this subcategory, regardless of the identity of the party that may hold any earnest money deposit. Additional charges made by real estate brokerages or agents are separately itemized as additional items for services rendered, with a description of the service and the identification of the person ultimately receiving the payment.[<sup>lxxvi</sup>]

#### **TOTAL OTHER COSTS AND OTHER COSTS SUBTOTALS**

Following the label “I. Total Other Costs (Borrower-Paid),” which states the total of “Borrower-Paid/At Closing” and “Borrower-Paid/Before Closing” Other Costs, the creditor must include the subtotal for each of the two columns of Borrower-Paid Other Costs (“Borrower-Paid/At Closing” and “Borrower-Paid/Before Closing”). The creditor does not include subtotals for any of the other columns (“Seller-Paid/At Closing,” “Seller-Paid/Before Closing,” and “Paid by Others”), which are subtotaled on the line for “Closing Costs Subtotals (D+I),” as explained below.[<sup>lxxvii</sup>]

#### **TOTAL CLOSING COSTS**

The creditor must disclose the sum of the borrower-paid Loan Costs and Other Costs, labeled “J. TOTAL CLOSING COSTS (Borrower-Paid),” which is the total amount of consumer-paid closing costs (D+I). This disclosure is followed by two rows – the first row showing the subtotals of Loan Costs (A+B+C) and Other Costs (E+F+G+H) for each column and the second row showing any Lender Credits for each column (as negative numbers).[<sup>lxxviii</sup>]

If a refund is provided to cure a tolerance violation (i.e., because an amount exceeds the limitations on increases in closing costs, the lender must include the amount in the appropriate column of Lender Credits and an explanatory statement; for instance, “Lender Credits (includes \$200 credit for increase in Closing Costs above legal limit)”.

#### **SUGGESTED GUIDANCE**

- I recommend that the lender review the methodological requirements to designating specific closing costs paid by the lender,[<sup>lxxix</sup>] which is intended to permit the itemization of lender credits in accordance with the legal obligation between the creditor and the consumer.
- Generally, undesignated lender credits also must be appropriately reflected on the CD.[<sup>lxxx</sup>]

In the next article in this six-part series, I will discuss Page Three of the Closing Disclosure. Page Three contains two sections: (1) *Calculating Cash to Close*, which 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 amount; and (2) *Summaries of Transactions*, which summarizes the consumer and seller portions of the transaction.

[i] Foxx, Jonathan, *RESPA/TILA Integration – Part I: Overview and Loan Estimate*, pp 28-54, National Mortgage Professional, October 2014

[ii] Foxx, Jonathan, *RESPA/TILA Integration – Part II: Closing Disclosure and Action Plan*, pp 26-50, National Mortgage Professional, December 2014

[iii] Foxx, Jonathan, *Loan Estimate: Deep Dive*, pp xx-xx, National Mortgage Professional, June 2015

[iv] [www.teamtrid.com](http://www.teamtrid.com)

[v] [www.tridhotline.com](http://www.tridhotline.com)

[vi] So creditors that take that option will provide different information on CD page 3 than appears on the



standard CD page 3 [see model form H-25(E)]

[vii] Regulation Z § 1026.38(a)

[viii] The format of this disclosure is based on a model form, entitled H-25.

[ix] Regulation X, Appendix A

[x] Regulation Z § 1026.38(a)(3)

[xi] Regulation Z § 1026.38(a)(3)(i). Comment 38(a)(3)(i)-1 refers to the commentary for the corresponding item on the Loan Estimate, Regulation Z § 1026.37(a)(4).

[xii] Regulation Z § 1026.38(a)(3)(ii)

[xiii] Regulation Z § 1026.19(f)(1)(i)

[xiv] Regulation Z § 1026.38(a)(3)(iii)

[xv] Regulation Z § 1026.38(a)(3)(iv)

[xvi] Regulation Z § 1026.38(a)(3)(v)

[xvii] Regulation Z § 1026.38(a)(3)(vii) and Comment 38(a)(3)(vii)-1. Note also, when personal property secures a transaction, a description of the personal property may be disclosed to the extent it fits in the space provided for in the CD as modeled on form H-25.

[xviii] Regulation Z § 1026.38(a)(4)

[xix] Comment 38(a)(4)-1

[xx] Regulation Z § 1026.38(t)(3); also Comment 38(a)(4)-1

[xxi] Comment 38(a)(4)-2

[xxii] Comment 38(a)(4)-3

[xxiii] Regulation Z § 1026.38(a)(5)

[xxiv] Comment 38(a)(5)(v)-1

[xxv] Regulation Z § 1026.38(b). For guidance, see Comment 38(b)-1, referring to the commentary on the corresponding Loan Estimate provision, Regulation Z § 1026.37(b).

[xxvi] Regulation Z § 1026.38(c)

[xxvii] Comment 38(c)-1 refers to the commentary on the corresponding Loan Estimate provision, Regulation Z § 1026.37(c)

[xxviii] Regulation X § 1024.17

[xxix] Regulation X § 1024.17, or in the manner set forth in Regulation Z § 1026.37(c)(5)

[xxx] Regulation X § 1024.17(c)(7)

[xxxi] TILA § 128(b)(4)(B)

[xxxii] TILA § 128(b)(4)

[xxxiii] Regulation Z § 1026.37(c)

[xxxiv] TILA § 128(b)(4)(B)

[xxxv] Regulation X § 1024.17. See also Comment 38(c)(1)-1

[xxxvi] Regulation Z § 1026.38(d)

[xxxvii] Comment 38(d)(2)-1

[xxxviii] Regulation Z § 1026.38(d)(2)

[xxxix] Regulation Z § 1026.37(d)(2)

[xl] Regulation Z § 1026.38(f) and (g)

[xli] As with the rest of model form H-25, the text illustrated by the form is required for federally related mortgage loans covered by the TILA-RESPA Disclosure Integration Rule, but is a model form for transactions subject to TILA only and not RESPA.

[xlii] Comment 38(h)-3

[xliii] Comment 38(f)-1

[xliv] Regulation Z § 1026.38(f)(1)

[xlv] Comment 38(f)(1)-2

[xlvi] Regulation Z § 1026.36(d)(2). See also Comment 38(f)(1)-2.

[xlvii] Regulation Z § 1026.32(b)(1)(ii)

[xlviii] Regulation Z § 1026.32(b)(1)(ii). See also Comment 38(f)(1)-3.

[xlix] Pursuant to Regulation Z § 1026.32(b)(1)(ii)

[l] Regulation Z § 1026.38(f)(2) and Comment 38(f)(3)-1

[li] Regulation Z § 1026.38(f)(3)

[lii] Regulation Z § 1026.38(f)(4)-(5) and Comment 38(f)(5)-1

[liii] Regulation Z § 1026.38(g)

[liv] Regulation Z § 1026.38(g)(1) and Comment 38(g)(1)-1, which refers to the corresponding Loan Estimate provisions for guidance (Comments 37(g)(1)-1 through -4).

[lv] Regulation Z § 1026.38(g)(1)(ii)

[lvi] Comment 38(g)(1)-2.

[lvii] Regulation Z § 1026.38(g)(2) and Comment 38(g)(2)-1, which refers to Comments 37(g)(2)-1 and -2 for further guidance.

[lviii] Comment 38(g)(2)-4

[lix] Comment 38(g)(2)-2

[lx] Comment 38(g)(2)-3

[lxi] Comment 43(b)(8)-2

[lxii] Comment 38(g)(2)-5

[lxiii] Regulation X § 1024.17(d)(2)

[lxiv] Regulation Z § 1026.38(g)(3)

[lxv] Comments 38(g)(3)-1 and -4

[lxvi] Comment 38(g)(3)-1

[lxvii] Regulation X § 1024.17(d)(2)

[lxviii] Comment 38(g)(3)-2

[lxix] As required by Regulation Z § 1024.17(d)(2)

[lxx] Comment 37(g)(3)-2  
[lxxi] Comment 37(g)(3)-5  
[lxxii] Regulation X § 1024.17(b)  
[lxxiii] Regulation Z § 1026.38(g)(4)  
[lxxiv] Comment 38(g)(4)-2  
[lxxv] Idem  
[lxxvi] Comment 38(g)(4)-4  
[lxxvii] Regulation Z § 1026.38(g)(5)-(6), Comment 38(g)(6)-1  
[lxxviii] Regulation Z § 1026.37(h)(1)-(3)  
[lxxix] Comments 38(f)-1 and 38(h)(3)-1  
[lxxx] Regulation Z § 1026.38(h)(1), Comment 38(h)(3)-1



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