

Know Before You Owe Mortgage Disclosure Rule Proposed Updates

Office of Regulations | November 2016



Consumer Financial
Protection Bureau

Disclaimer

- The Know Before You Owe mortgage disclosure final rule took effect on October 3, 2015.
- The Bureau issued amendments to the mortgage disclosure rule in January & July 2015.
- The Bureau proposed additional amendments to the mortgage disclosure rule on July 29, 2016.
- This presentation is current as of November 10, 2016. This presentation does not represent legal interpretation, guidance, or advice of the Bureau. While efforts have been made to ensure accuracy, this presentation is not a substitute for the rule. Only the rule and its Official Interpretations can provide complete and definitive information regarding requirements.

The Bureau's *ex parte* policy

- The *ex parte* policy applies when the Bureau has issued a proposed rulemaking.
- Under the policy, input Bureau staff receives is considered *ex parte* because it is outside of or in addition to the formal comment process. The complete *ex parte* policy is available at www.consumerfinance.gov/about-us/blog/promoting-openness-in-cfpb-rulemaking/.
- The Bureau strongly encourages the submission of written comments. Comments will be accepted through October 18, 2016 and may be submitted to <https://www.regulations.gov/comment?D=CFPB-2016-0038-0001>.

“Our proposed updates will clarify parts of our mortgage disclosure rule to make for a smoother implementation process.”

Richard Cordray, CFPB Director

Main proposed updates

1. Tolerances for total of payments
2. Housing assistance lending
3. Cooperatives
4. Privacy and sharing of information

TOLERANCES FOR THE TOTAL OF PAYMENTS

Tolerances for the total of payments

Loan Calculations

Total of Payments. Total you will have paid after you make all payments of principal, interest, mortgage insurance, and loan costs, as scheduled.

Finance Charge. The dollar amount the loan will cost you.

Amount Financed. The loan amount available after paying your upfront finance charge.

Annual Percentage Rate (APR). Your costs over the loan term expressed as a rate. This is not your interest rate.

Total Interest Percentage (TIP). The total amount of interest that you will pay over the loan term as a percentage of your loan amount.

Tolerances for the total of payments

Required disclosure: Disclose the total of payments as the sum of principal, interest, mortgage insurance, and loan costs paid by the consumer.

Proposed tolerance: The disclosed total of payments shall be treated as accurate if the amount disclosed as the total of payments:

1. Is understated by no more than \$100; or
2. Is greater than the amount required to be disclosed.

HOUSING ASSISTANCE LENDING

Housing assistance lending

Current exemption: Exempt from the required provision of the Loan Estimate, Closing Disclosure, special information booklet, *and* the RESPA disclosures, if the transaction satisfies criteria in § 1026.3(h)(1)-(6).

§ 1026.3(h)(5): the total of costs payable by the consumer at consummation is less than 1 percent of the amount of credit extended and includes no charges other than fees for recordation, application, and housing counseling

Proposal:

- Clarify that recording fees and transfer taxes may be charged in connection with the transaction without losing eligibility for the partial exemption.
- Recording fees and transfer taxes are excluded from the exemption's 1 percent threshold on costs; bona fide and reasonable application and housing counseling fees are still subject to the 1 percent threshold on costs.

COOPERATIVES

Cooperatives

Current coverage: The Know Before You Owe mortgage disclosure rule, including the Loan Estimate and Closing Disclosure, generally applies to closed-end consumer credit transactions secured by real property, other than reverse mortgages.

- ❑ State law determines whether the collateral securing the transaction is considered real property.

Proposal: Extend coverage to include all cooperative units, regardless of whether State law treats the cooperative unit as real property or personal property.

PRIVACY AND SHARING OF INFORMATION

Privacy and sharing of information

- The creditor or settlement agent is permitted to provide a separate Closing Disclosure to the consumer and the seller or third-party:
 - § 1026.38(t)(5)(v) currently permits certain modifications to separate the information of the consumer and seller
 - § 1026.38(t)(5)(vi) currently permits the deletion of certain information, with respect to the creditor and mortgage broker, and costs paid by the consumer, from the form provided to the seller or third-party

Privacy and sharing of information

Closing Disclosure

Closing Information

Date Issued
Closing Date
Disbursement Date
Settlement Agent
File #
Property

Sale Price

Transaction Information

Borrower

Seller

Summaries of Transactions

SELLER'S TRANSACTION

Due to Seller at Closing

01 Sale Price of Property
02 Sale Price of Any Personal Property Included in Sale

03
04
05
06
07
08

Adjustments for Items Paid by Seller in Advance

09 City/Town Taxes to
10 County Taxes to
11 Assessments to

12
13
14
15
16

Due from Seller at Closing

01 Excess Deposit
02 Closing Costs Paid at Closing (J)
03 Existing Loan(s) Assumed or Taken Subject to
04 Payoff of First Mortgage Loan
05 Payoff of Second Mortgage Loan

06
07
08 Seller Credit
09

Contact Information

REAL ESTATE BROKER (B)

Name

Address

__ License ID

Contact

Contact __ License ID

Email

Phone

REAL ESTATE BROKER (S)

Name

Address

__ License ID

Contact

Contact __ License ID

Email

Phone

SETTLEMENT AGENT

Name

Address

Privacy and sharing of information

Proposed Commentary: The creditor may make modifications to the Closing Disclosure form to accommodate the provision of separate Closing Disclosure forms to the consumer and the seller.

- ❑ Leave the applicable disclosure blank concerning the seller or consumer on the form provided to the other party;
- ❑ Omit the table or label, as applicable, for the disclosure concerning the seller or consumer on the form provided to the other party; or
- ❑ Provide to the seller, or assist the settlement agent in providing to the seller, a modified version of the form under § 1026.38(t)(5)(vi).

ADDITIONAL PROPOSALS

Additional proposals

- Calculating cash to close table calculations
- Disclosing principal reductions
- Distinguishing between model and sample forms
- Disclosure of simultaneous second liens
- Others

Additional proposals: Calculating cash to close

- **Cash-back purchase transactions**
- Required disclosures under “H. Other”
- Down payment \neq minimum cash investment
- Double counting
- Closing Costs Financed
- LE column on CD
- Negative/positive numbers

Calculating Cash to Close
Total Closing Costs (J)
Closing Costs Paid Before Closing
Closing Costs Financed (Paid from your Loan Amount)
Down Payment/Funds from Borrower
Deposit
Funds for Borrower
Seller Credits
Adjustments and Other Credits
Cash to Close

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Other Costs		
E. Taxes and Other Government Fees		
01 Recording Fees	Deed:	Mortga
02		
F. Prepays		
01 Homeowner's Insurance Premium (mo.)		
02 Mortgage Insurance Premium (mo.)		
03 Prepaid Interest (per day from to)		
04 Property Taxes (mo.)		
05		
G. Initial Escrow Payment at Closing		
01 Homeowner's Insurance per month for mo.		
02 Mortgage Insurance per month for mo.		
03 Property Taxes per month for mo.		
04		
05		
06		
07		
08 Aggregate Adjustment		
H. Other		
01		
02		
03		
04		
05		
06		
07		
08		
I. TOTAL OTHER COSTS (Borrower-Paid)		
Other Costs Subtotals (E + F + G + H)		

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Calculating Cash to Close

Total Closing Costs (J)

Closing Costs Paid Before Closing

Closing Costs Financed
(Paid from your Loan Amount)

Down Payment/Funds from Borrower

Deposit

Funds for Borrower

Seller Credits

Adjustments and Other Credits

Cash to Close

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Calculating Cash to Close	Use this table to see w	
	Loan Estimate	Final
Total Closing Costs (J)		
Closing Costs Paid Before Closing		
Closing Costs Financed (Paid from your Loan Amount)		
Down Payment/Funds from Borrower		
Deposit		
Funds for Borrower		
Seller Credits		
Adjustments and Other Credits		
Cash to Close		

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Calculating Cash to Close

Total Closing Costs (J)

Closing Costs Paid Before Closing

Closing Costs Financed
(Paid from your Loan Amount)

Down Payment/Funds from Borrower

Deposit

Funds for Borrower

Seller Credits

Adjustments and Other Credits

Cash to Close

Additional proposals: Principal reductions

Options for disclosing reductions in principal balance:

- H. Other in the Other Costs table
- Payoffs and payments table on alternative disclosure
- Additional page for customary recitals

Other Costs			
E. Taxes and Other Government Fees			
01 Recording Fees	Deed:	Mortga	
02			
F. Prepays			
01 Homeowner's Insurance Premium (mo.)			
02 Mortgage Insurance Premium (mo.)			
03 Prepaid Interest (per day from to)			
04 Property Taxes (mo.)			
05			
G. Initial Escrow Payment at Closing			
01 Homeowner's Insurance	per month for	mo.	
02 Mortgage Insurance	per month for	mo.	
03 Property Taxes	per month for	mo.	
04			
05			
06			
07			
08 Aggregate Adjustment			
H. Other			
01			
02			
03			
04			
05			
06			
07			
08			
I. TOTAL OTHER COSTS (Borrower-Paid)			
Other Costs Subtotals (E + F + G + H)			

Additional proposals: Model vs. sample forms

Model Forms

- H-24(A) and (G)
- H-25(A) and (H) through (J)
- H-28(A), (F), (I), and (J)

Closing Disclosure

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

Closing Information Date Issued Closing Date Disbursement Date Settlement Agent File # Property Appraised Prop. Value	Transaction Information Borrower Seller Lender	Loan Information Loan Term Purpose Product Loan Type <input type="checkbox"/> Conventional <input type="checkbox"/> FHA <input type="checkbox"/> VA <input type="checkbox"/> Loan ID # MIC #
Loan Terms		Can this amount increase after closing?
Loan Amount		
Interest Rate		
Monthly Principal & Interest <i>See Projected Payments below for your Estimated Total Monthly Payment</i>		
Prepayment Penalty		Does the loan have these features?
Balloon Payment		
Projected Payments		
Payment Calculation		
Principal & Interest		
Mortgage Insurance		
Estimated Escrow <i>Amount can increase over time</i>		
Estimated Total Monthly Payment		
Estimated Taxes, Insurance & Assessments <i>Amount can increase over time See page 4 for details</i>	This estimate includes <input type="checkbox"/> Property Taxes <input type="checkbox"/> Homeowner's Insurance <input type="checkbox"/> Other: <i>See Escrow Account on page 4 for details. You must pay for other property costs separately.</i>	In escrow?
Costs at Closing		
Closing Costs	Includes _____ in Loan Costs + _____ in Other Costs – <i>in Lender Credits. See page 2 for details.</i>	
Cash to Close	Includes Closing Costs. See Calculating Cash to Close on page 3 for details.	

CLOSING DISCLOSURE

PAGE 1 OF 5 - LOAN ID #

Additional proposals: Model vs. sample forms

Sample Forms

- H-24(B) through (F)
- H-25(B) though (G)
- H-28(B) through (E), (G), and (H)

Closing Disclosure

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

Closing Information		Transaction Information	Loan Information
Date Issued	4/15/2013	Borrower Michael Jones and Mary Stone 123 Anywhere Street Anytown, ST 12345	Loan Term 30 years
Closing Date	4/15/2013		Purpose Purchase
Disbursement Date	4/15/2013	Seller Steve Cole and Amy Doe 321 Somewhere Drive Anytown, ST 12345	Product Fixed Rate
Settlement Agent	Epsilon Title Co. 12-3456		Loan Type <input checked="" type="checkbox"/> Conventional <input type="checkbox"/> FHA
File #	12-3456	Lender Ficus Bank	<input type="checkbox"/> VA <input type="checkbox"/>
Property	456 Somewhere Ave Anytown, ST 12345		Loan ID # 123456789
Sale Price	\$180,000		MIC # 000654321

Loan Terms		Can this amount increase after closing?
Loan Amount	\$162,000	NO
Interest Rate	3.875%	NO
Monthly Principal & Interest <small>See Projected Payments below for your Estimated Total Monthly Payment</small>	\$761.78	NO
Prepayment Penalty	YES	As high as \$3,240 if you pay off the loan during the first 2 years
Balloon Payment		NO

Projected Payments		
Payment Calculation	Years 1-7	Years 8-30
Principal & Interest	\$761.78	\$761.78
Mortgage Insurance	+ 82.35	+ —
Estimated Escrow <small>Amount can increase over time</small>	+ 206.13	+ 206.13
Estimated Total Monthly Payment	\$1,050.26	\$967.91
Estimated Taxes, Insurance & Assessments <small>Amount can increase over time See page 4 for details</small>	\$356.13 a month	This estimate includes <input checked="" type="checkbox"/> Property Taxes <input checked="" type="checkbox"/> Homeowner's Insurance <input checked="" type="checkbox"/> Other: Homeowner's Association Dues <small>See Escrow Account on page 4 for details. You must pay for other property costs separately.</small>
		In escrow? YES YES NO

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

Additional proposals: Simultaneous subordinate liens

- Simultaneous loan for subordinate financing
 - Optional alternative disclosures permissible
 - Purpose “purchase”
 - Omit sales price from:
 - Summaries of transactions table
 - Calculating cash to close calculations
- 1st lien transaction
 - Proceeds of subordinate financing disclosed on 1st lien’s Closing Disclosure

Additional proposals

- Lender credits
- Per diem interest
- Post-consummation disclosures
- Revised Loan Estimates for informational purposes
- Trusts
- Shopping & written list of providers

Comment period

- Comment period ends on **October 18, 2016**
 - Email: FederalRegisterComments@cfpb.gov
 - Electronic: <https://www.regulations.gov/comment?D=CFPB-2016-0038-0001>
 - Mail/hand delivery

- Comments will be carefully considered during the development of the final rule

Compliance

- Reminder: This is a proposal.
- Implementation resources for the current rule:
<http://www.consumerfinance.gov/policy-compliance/guidance/implementation-guidance/tila-respa-disclosure-rule/>

Questions?